

The Law Commission

(LAW COM. No. 181)

TRANSFER OF LAND

TRUSTS OF LAND

*Laid before Parliament by the Lord High Chancellor
pursuant to section 3(2) of the Law Commissions Act 1965*

*Ordered by The House of Commons to be printed
8 June 1989*

LONDON
HER MAJESTY'S STATIONERY OFFICE

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The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

The Commissioners are—

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TRUSTS OF LAND

Summary

In this report the Law Commission, as part of its programme for the simplification of conveyancing, makes recommendations as to the reform of the law relating to trusts of land.

We consider that the present dual system of trusts for sale and strict settlements is unnecessarily complex, ill-suited to the conditions of modern property ownership, and liable to give rise to unforeseen conveyancing complications. We propose that it should be replaced by an entirely new system, applicable to all trusts of land except existing Settled Land Act settlements, set out in broader and simpler provisions designed to resolve existing difficulties whilst continuing to provide security for beneficiaries and purchasers alike.

The report contains a draft Bill to give effect to the recommendations.

THE LAW COMMISSION

Item IX of the First Programme

TRANSFER OF LAND

TRUSTS OF LAND

To the Right Honourable the Lord Mackay of Clashfern, Lord High Chancellor of Great Britain.

PART I

INTRODUCTION

1.1 This report sets out our recommendations for reform of the law relating to trusts of land. Our review of strict settlements and trusts for sale began in October 1984 as part of our property law programme.¹ In October 1985 we published a working paper containing a range of proposals for reform of the law relating to trusts of land.² We invited the submission of observations and suggestions from interested individuals and organisations. We received many valuable comments, for which we are most grateful. A list of the commentators is set out in Appendix B.

The present law

1.2 As we observed at the outset of the working paper, the law on settled land and on trusts for sale is more than adequately dealt with in existing legal writings. For that reason, the working paper contained only a brief introductory summary of the present law, confining detailed explanation to particular points under discussion and referring the reader to the standard textbooks³ for a more general account of the law. The same approach has been adopted in this report. For ease of reference, the introductory summary given in the working paper is reproduced⁴ below:

“The present system

[2.1] At present there are two possible ways of creating successive interest in land, and one of creating concurrent interests. Where successive interests are concerned, whichever system is used, the beneficial interest of the life tenant and the remainderman are equitable only.⁵ The difference between the two systems lies principally in how the legal estate is held and who has the powers of management. Where successive interests are created under the Settled Land Act 1925, the tenant for life has a beneficial life interest. However, for the purposes of dealing with the land he also holds the legal estate.⁶ He has wide powers of management. A purchaser will be able to acquire a legal fee simple absolute from the tenant for life free from the equitable interest created by the settlement provided that the purchaser pays the purchase money to at least two trustees or to a trust corporation. Where successive interests are created behind a trust for sale, the legal estate is held by the trustees, and generally it is they who have the powers of management. A purchaser will be able to acquire the legal estate free from the equitable interest from the trustees by paying the purchase money to the trustees.

[2.2] Concurrent interests in land usually exist behind a trust for sale.⁷ The only permitted concurrent interest in the legal estate is a joint tenancy. Legal tenancies in common were abolished by s.34 of the Law of Property Act 1925. Therefore the effect of a conveyance to two or more people as beneficial joint tenants is that they hold the legal estate as joint tenants on trust for sale, for themselves as beneficial

¹ Item IX of the First Programme.

² Working Paper No. 94, *Trusts of Land*.

³ Megarry and Wade, *The Law of Real Property*, 5th ed., (1984), pp. 311–464; Cheshire and Burn's *Modern Law of Real Property*, 14th ed., (1988), pp. 169–337.

⁴ With original footnotes, renumbered for the purpose of this Report.

⁵ Law of Property Act 1925, s.1.

⁶ This is not so if he is an infant, or in some other way incapacitated, when there are complex provisions as to who should exercise the powers of the tenant for life.

⁷ Law of Property Act 1925, ss.34–36. Where land is settled under the Settled Land Act 1925 and there are joint tenants for life, there will be no trust for sale.

joint tenants, and the effect of a conveyance to two or more people as tenants in common is that they too hold the legal estate as joint tenants on trust for sale, but for themselves as tenants in common.”

The problems

1.3 Those aspects of the present law which have given rise to most difficulty are fully discussed in the following pages of this report. They may for convenience be summarised as follows: firstly, the current dual system is unnecessarily complicated, the settled land provisions being particularly so; secondly, the trust for sale mechanism is not appropriate to the conditions of modern home ownership; thirdly, it is possible for testators or grantors to trigger the (complex) mechanisms of the strict settlement quite unintentionally. The problems were outlined in the Working Paper as follows:⁸

“A. Dual system

[3.2] The following problems are those that arise because, at present, successive interests in land can be created either as settled land under the Settled Land Act 1925 or as interests behind a trust for sale. It has often been suggested that a dual system is unnecessary and that one system for successive interests would be sufficient. Originally the two systems performed different functions.⁹ The strict settlement, using combinations of life interests and entailed interests (which before 1926 could exist as legal estates), was intended to keep land within the ownership of a particular family. In many cases the tenant for life would occupy the land. The trust for sale was used either where a sale was actually intended, or where the land concerned was intended to be an investment, to be bought and sold as market conditions demanded, the tenant for life being paid the income from it. By the mid-19th century it was apparent that strict settlements caused difficulty in that, if the settlement was not well drafted, the powers of the tenant for life were too limited to enable the land to be managed properly, and however the settlement was drafted, sale of the land was extremely difficult as no person had the power to convey the fee simple. A series of reforming statutes culminating in the Settled Land Act 1925 increased the powers of the tenant for life and ensured that there was also some person able to convey the fee simple in the land. At the same time the Law of Property Act 1925, s.1 prevented life interests from existing as legal estates, so that all settlements had to take effect behind a trust. The effect of these reforms has been to remove many of the differences between the two systems of settlement. In either system the land can be sold and the strict settlement is no longer an effective method of keeping land in the family. The remaining differences centre on who makes the decisions with respect to the land. It is arguable that the differences are not sufficient to justify the continuing existence of two systems.

[3.3] *Priority given to settled land.* The legislation is so phrased that when successive interests are created, a trust for sale must be expressly adopted (except where imposed by statute); otherwise the Settled Land Act will apply. This means that where trusts of land are created without proper advice it is almost certain that the land will be settled. This is most likely to occur where wills are, as often happens, drawn up without advice. In some cases this will be what the testator would have wanted, but in many cases it will not be and additional expense for the beneficiaries may result because additional documents and a different form of probate are required. If an inadvertent settlement is created by will and the executors do not realise this, problems may be caused for purchasers (see below).

[3.4] *Definition of trust for sale.* Inadvertent settlements may arise not through failure to decide which is required but through failure to create a valid trust for sale. The definition of a trust for sale as an immediate binding trust for sale has been criticised.¹⁰ As a definition it is poor because it defines a thing as a particular kind of that thing. The word “binding” has caused particular problems because a

⁸ With original footnotes, renumbered for the purpose of this Report.

⁹ For a full historical account see Simpson, *An Introduction to the History of Land Law*, (1961), pp. 188–194, 218–224.

¹⁰ Law of Property Act 1925, s.205(1)(xxix), and see Megarry and Wade, *The Law of Real Property*, 5th ed., (1984), pp. 386–388.

trust should be binding anyway and the courts have considered that it must mean something other than the trustees being under a duty to sell.¹¹

[3.5] *Rights of residence.* In other cases, settled land has been created inadvertently because a right of residence has been conferred on a person for his or her lifetime. It is not entirely clear that the conferment of such a right was intended to be sufficient to bring the land within the Settled Land Act. The technical question to be decided was whether land “stands for the time being limited in trust for any persons by way of succession”.¹² However the courts have made it clear that they will treat such land as settled land especially if there is no other way to protect the rights of the life resident.¹³ Giving such a person all the powers of disposition and management of a tenant for life has been much criticised. There should be some provision for giving rights of residence during a person’s lifetime which do not cause technical complications. This problem is discussed further below.¹⁴

B. Making good title

[3.6] If a purchaser of land subject to a trust for sale fails to comply with the provisions of s.27 of the Law of Property Act 1925, which states that the purchase price must be paid to at least two trustees (or a trust corporation) the conveyance will not be void, although interests under the trust for sale will not be overreached. If a purchaser of settled land fails to comply with the provisions of s.18 of the Settled Land Act 1925, the conveyance will be void except in so far as it binds the beneficial interest of the tenant for life. In some circumstances a purchaser may be protected by s.110 of the settled Land Act, which is discussed in the following paragraph. It is questionable whether it is necessary for the position of a purchaser to vary in this way.

[3.7] The drafting of s.110 of the Settled Land Act 1925 has led to the suggestion that it fails to give purchasers enough protection and that they may have to examine the trust instrument themselves, contrary to the general principles of the Settled Land Act 1925. This is probably a theoretical problem rather than a practical one. A real problem that has arisen is the relationship between s.110 and s.18 of the Act. Section 110 is meant to give some protection to a purchaser if he buys in good faith, but under s.18, if land is settled land, then any unauthorised disposition is void. It is not certain which prevails, nor is it clear whether s.110 offers any protection where the purchaser does not know that he is dealing with the tenant for life.¹⁵

[3.8] Where settled land is created by will (particularly a home-made one) it is easy for the executors not to realise this and they may, for example, vest the land in trustees rather than in the tenant for life. It may then be difficult for either the tenant for life or the trustees or their successors to make a good title to a later purchaser.¹⁶

¹¹ *Re Parker's Settled Estates* [1928] Ch. 247; *Re Ryder and Steadman's Contract* [1927] 2 Ch. 62; *Re Norton* [1929] 1 Ch. 84; *Re Beaumont Settled Estates* [1937] 2 All E.R. 353; *Re Sharpe's Deed of Release* [1939] Ch. 51.

¹² Settled Land Act 1925, s.1(1).

¹³ *Re Duce and Boots Cash Chemists (Southern) Ltd.* [1937] Ch. 642; *Bannister v. Bannister* [1948] 2 All E.R. 133; *Binions v. Evans* [1972] Ch. 359.

¹⁴ Para. 16.16 of the Working Paper, as follows (footnotes omitted):

“*Inadvertent settlements.* Inadvertent settlements fall into two categories. The first are those where the intention is to create some sort of trust or settlement, and the settlor, by failing expressly to subject the land to a trust for sale, brings it within the Settled Land Act 1925. If, as is likely, this is a trust in a will, the executors may not realise the true effect of the provisions and the wrong procedure may be followed, causing problems for subsequent purchasers. . . . The second type of inadvertent settlement occurs when a person is given the right to reside in a property during his lifetime, and subject to that right the property is conveyed or passes on death to another. At present the result of such an arrangement may be that the land is settled land under the Settled Land Act 1925, and the person with the right of residence is the tenant for life with full powers of disposition and management. This result may be thought to be unsatisfactory, as there was no intention to confer such an extensive interest on the tenant for life. However, these cases should not necessarily be seen as wrongly decided. As Megarry and Wade put it, “it has to be remembered that the deliberate policy of the Act is that the statutory powers must always be available, so that the land is not sterilised, and that these powers cannot be restricted or fettered, whatever the settlor’s intentions. This policy may naturally produce unintended results, but that is not necessarily a good reason for excluding a case from the purview of the Act.”

¹⁵ Compare *Weston v. Henshaw* [1950] Ch. 510 with *Re Morgan's Lease* [1972] Ch. 1.

¹⁶ As, for example, in *Re Duce and Boots Cash Chemists (Southern) Ltd.* [1937] Ch. 642.

[3.9] There is no formal provision for the termination of a trust for sale. This means that purchasers of land which has been subject to a trust for sale may be put in the position of having to investigate the trusts in order to ascertain that the trust for sale has ended.¹⁷

C. Control by beneficiaries

[3.10] In general the beneficiaries of a trust of land are treated no differently from the beneficiaries of a trust of any other kind of property. This may, itself, be the cause of some problems. Land is not like most other kinds of property: each piece is, in principle, unique, and, more importantly, it may be the place where the beneficiaries live, or want to live in the future. Questions of control over the land are therefore particularly important.

[3.11] *Those entitled to settled land in remainder.* It is impossible for a remainderman to prevent the sale of the land, unless there is lack of good faith on the part of the tenant for life. This leaves the remainderman in a very weak position because the land may have already been sold before he becomes aware of the tenant for life's intention to sell.¹⁸

[3.12] *Duty to consult.* The trustees of land held on a statutory trust for sale¹⁹ have a duty to consult the beneficiaries.²⁰ There is no such duty where express trusts for sale are concerned. Even as regards statutory trusts the provision is weak. It only applies "so far as is practicable". The trustees only have to give effect to the wishes of the beneficiaries "so far as consistent with the general interest of the trust" and a purchaser is not affected by the trustees' failure to carry out or comply with the result of any consultation.

[3.13] *Delegation.* It has been suggested that the power to delegate the management of land to a tenant for life of land held on trust for sale is inadequate. If the power to delegate is not exercised, the tenant for life is left with no control, which may be unsatisfactory if the trust for sale is being used as a substitute for settled land. If the power is exercised, ownership and management are separated, which may be undesirable. The trustees retain the legal interest. If the tenant for life is not in possession, he may not be able to bring an action in his own name to protect the reversion of any property leased. As he is not the covenantee, he cannot sue on the covenants in the lease. It may be that these difficulties do not cause problems in practice as the trustees always take appropriate action, but, in theory at least, they do exist. . . . In addition it has been said,²¹ "Psychologically in the management of a country estate this duty to act in the name of another seems unsound". Whether this is true today seems less likely. Ownership and management are commonly separated, for example in limited companies, and we doubt that there is any general issue of principle at stake. Making trustees delegate certain powers in certain situations would minimise the difference between the two systems.

[3.14] *Sale subject to consent.* In settled land it is not possible to make the sale of the land or the exercise of other powers subject to the consent of some other person,²² for example, a remainderman. Making the consent of a beneficiary necessary for the sale of land held on trust for sale does not seem to have caused any problems and a similar provision could be made for settled land.

Specific Settled Land Act problems

[3.15] *Complexity.* Perhaps the greatest difficulty of the Settled Land Act 1925 is its sheer complexity. Three different aspects will serve to illustrate this.

- (i) The Act always requires the use of at least two documents, the vesting deed which vests the legal estate in the tenant for life (or whoever is entitled to exercise his powers) and the trust instrument which declares the trusts.²³ If land is acquired after the settlement has been created, a subsidiary vesting deed must be executed vesting the land in the tenant for life (or whoever is

¹⁷ Except where joint tenants were holding on trust for themselves and there is only one survivor: Law of Property (Joint Tenants) Act 1964.

¹⁸ See, for example, *England v. Public Trustee* (1968) 112 S.J. 70.

¹⁹ See para. 2.2 of the Working Paper (set out in para. 1.2 of this Report).

²⁰ Law of Property Act 1925, s.26(3) substituted by the Law of Property (Amendment) Act 1926, Sched.

²¹ Potter, "Strict Settlement and Trust for Sale", (1944) 8 Conv. (N.S.) 147, 157.

²² Settled Land Act 1925, s.106.

²³ Settled Land Act 1925, ss.4, 5.

entitled to exercise his powers).²⁴ Hence where there are frequent purchases of land for a settlement, there may be a considerable number of vesting deeds. There are no equivalent provisions for trusts for sale. The deed which vests the land in trustees for sale may also declare the trusts, or there may be two separate documents where that is convenient.²⁵

- (ii) The Settled Land Act 1925 does not only provide for the straightforward settlement of a life interest followed by interests in remainder. It also covers a wide range of conditional interests and determinable fees, and land conveyed to infants. Here there is no tenant for life in the proper sense and the Act has to make elaborate provisions giving certain people all the powers of the tenant for life.²⁶
- (iii) Because the Act applies in certain circumstances without this being appreciated by the settlor, it can happen that no trustees are appointed by him. Thus a simple gift of land to X for life remainder to Y creates a settlement and it is necessary for trustees to be appointed. Again this necessitates complex provisions as to who are to be the trustees where none are appointed.²⁷

[3.16] *Conflict of interest.* It has been suggested that there is an inherent conflict involved in the position of the tenant for life. The legal estate and all the powers of dealing with it are vested in him and under s.16 of the Settled Land Act 1925 he is a trustee. Yet he is, at the same time, the principal beneficiary. While it is quite usual for a trustee to be a beneficiary, given the lack of any other restraints on the tenant's powers, the conflict may become real. It seems that where there is a conflict of interests, the tenant for life is not treated like an ordinary trustee. It has been held that the court will not intervene if the tenant for life allows the estate to become derelict, but only if there is evidence that he has refused to exercise his powers.²⁸ Thus the remaindermen may inherit an estate much diminished in value and have no remedy. Similarly the interests of the remaindermen may be adversely affected by a sale of the settled land at a low price. Again, they may have no effective remedy²⁹ 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 estate not worth suing. While it is clear that the courts, recognising the risks arising from conflicts of interest, usually make the purchase of trust property by a trustee virtually impossible,³⁰ in one case where the tenant for life purchased the settled land without the proper procedure being adopted, the sale was simply allowed to stand.³¹

E. Trust for sale—specific problems

[3.17] *Co-ownership.* The Law of Property Act 1925 imposes a statutory trust for sale wherever land is conveyed to co-owners—whether in equity they are joint tenants or tenants in common.³² Thus, wherever a couple buy a house, they become trustees for sale of it although a sale is probably not what they intend. In 1925, owner-occupation of dwellings was far less usual than nowadays and, where it did exist, it was less likely that a house would be purchased in joint names.³³ The co-ownership envisaged by the Law of Property Act would have arisen in a different context, where, for example, property was left to children in equal shares. In such a case, a sale at some stage was likely. As far as co-ownership is concerned, a system devised for one set of social circumstances is being used for very different circumstances.

[3.18] *The doctrine of conversion.* The doctrine of conversion states that where land is held on trust for sale, the interests of the beneficiaries are deemed to be

²⁴ Settled Land Act 1925, s.10.

²⁵ Law of Property Act 1925, s.27(1): the purchaser is not concerned with the trusts.

²⁶ Settled Land Act 1925, ss.20–24.

²⁷ Settled Land Act 1925, ss.30–34.

²⁸ *Re Thornhill's Settlement* [1941] Ch. 24.

²⁹ *England v. Public Trustee* (1968) 112 S.J. 70.

³⁰ Pettit, *Equity and The Law of Trusts*, 5th ed., (1984), pp. 374–376.

³¹ *Re Pennant's Will Trusts* [1970] Ch. 75.

³² Law of Property Act 1925, ss.34, 36.

³³ Co-ownership arises when two or more people rent property, as would have been more usual in 1925, but most of the problems seem to occur when the co-owners own the fee simple or a long lease.

interests in the proceeds of sale, even before the land has been sold. The doctrine developed during the 18th century.³⁴ In the early cases, the nature of the beneficial interests was in question because the law of inheritance differed depending on whether property was real or personal. The doctrine of conversion meant that land held on trust for sale devolved as personality. When reform of land law was being considered, it was the doctrine of conversion that made the trust for sale a useful tool in the simplification of conveyancing: since the interests were not in the land anyway, it was easy to provide that a purchaser should take free of them.³⁵ Now, however, the doctrine of conversion causes problems. To say that a person with an equitable joint tenancy or an equitable tenancy in common has no interest in the house but only an interest in the proceeds of sale, when no sale is contemplated, is wholly artificial. The courts have refused to allow the doctrine of conversion to operate fully in some cases.³⁶ The position therefore now is that the doctrine of conversion applies for some purposes but not for others, depending on the particular circumstances. This is clearly unsatisfactory.

[3.19] *Powers conferred by s.30 of the Law of Property Act 1925.* Problems have arisen with s.30 of the Law of Property Act 1925 as to who can apply under the section, the extent of the powers of the court and the factors to be taken into account in exercising the court's discretion. On the face of it, the section only enables an application to be made if the trustee is refusing to sell. However the courts have found ways of protecting beneficiaries who wish to prevent a sale.³⁷ It also appears that a trustee who has no beneficial interest in the land may be unable to apply, so that the section does not provide a remedy where the trustees cannot agree to a sale.³⁸

[3.20] While the court is given power to make such order as it thinks fit, it is not certain whether this extends to ordering one co-owner who has sole occupation to pay an occupation rent to the other who is not in occupation.³⁹ It is probably desirable that they should have power to do so, as this provides a possible solution to the problem that where a sale is refused because of the wishes of one co-owner, the other is deprived of a valuable financial asset.

[3.21] A considerable amount of case law exists as to how the discretion should be

³⁴ Lightwood, "Trusts for Sale", (1927) 3 C.L.J. 59.

³⁵ See Fourth Report of the Acquisition and Valuation of Land Committee, Cmd. 424, 1919, especially Appendix IV Part I, the Memorandum by B. L. Cherry.

³⁶ e.g. *Williams & Glyn's Bank v. Boland* [1981] A.C. 487.

³⁷ See, e.g. *Bull v. Bull* [1955] 1 Q.B. 234.

³⁸ See Law Reform Committee, 23rd Report, para. 3.63.

³⁹ See further para. 8.10 of the Working Paper, as follows (footnotes omitted):

"*Occupation rents.* If each beneficiary has a right to occupy, should the courts have the power to order, for example, one co-owner to pay money to the other in respect of that occupation? The present law is discussed at some length at first instance in *Dennis v. McDonald* [[1982] Fam. 63, at pp. 70-71], where Purchas J. accepted that "the true position under the old authorities was that the Court of Chancery and Chancery Division would always be ready to inquire into the position as between co-owners being tenants in common either at law or in equity to see whether a tenant in common in occupation of the premises was doing so to the exclusion of one or more of the other tenants in common for whatever purpose or by whatever means. If this was found to be the case, then if in order to do equity between the parties an occupation rent should be paid, this would be declared and the appropriate inquiry ordered. Only in cases where the tenants in common not in occupation were in a position to enjoy their right to occupy but chose not to do so voluntarily, and were not excluded by any relevant factor, would the tenant in common in occupation be entitled to do so free of liability to pay an occupation rent". However, it appears that such a power to require payment of a rent only exists if the situation is one where the court would have power to order a sale. The question that arises is whether this power should be placed on a statutory footing, or whether it is best to leave the court with the widest powers possible under a re-drafted s.30. The advantage of legislating is, as always, that it would bring greater certainty, and so make settlements out of court more likely. The disadvantage in this particular case is that to bring greater certainty, one would have to define, with some precision, the situations in which an occupation rent could be paid, and to do so would restrict what is at present a broad jurisdiction. In addition, one might have to lay down principles on which the rent is to be calculated, a matter on which there is relatively little law. Should it be related to the market rent, or to the fair rent as if a tenancy of the dwelling were regulated under the Rent Act 1977 or to the "reasonable rent" as if it were a restricted contract? An alternative measure might be the income lost to the non-occupier through not being able to invest the money he would have received had the property been sold. The circumstances in which the rent might be ordered to be paid seem to be so varied that any attempt at precise definition is likely to lead to unjust results. Accordingly, we suggest that, at most, there should be a provision along the lines that the occupation rent should, so far as equitable and practicable, compensate a beneficiary for his loss of occupation rights."

exercised. Generally the court will look at the purpose for which the trust was created, and see whether the purpose still exists.⁴⁰ Particular difficulties have arisen as to the weight to be given to the children's interests,⁴¹ and where one co-owner is bankrupt.⁴²

[3.22] *Occupation right.* It is not clear whether a tenancy in common confers on beneficiaries as against trustees a right to occupy the land.⁴³

[3.23] *Creation of tenancy in common.* It has been suggested that a tenancy in common cannot be created informally by e.g. financial contributions, because s.34(1) of the Law of Property Act states that undivided shares can only be created "as provided by the Settled Land Act 1925 or as hereinafter mentioned". The Settled Land Act 1925, s.36(4) states that undivided shares can only be created under a trust instrument or under the Law of Property Act 1925. This means that only expressly created or statutorily imposed undivided shares can exist. However the courts seem to have accepted the existence of informally created tenancies in common behind a trust for sale.⁴⁴ The position could be clarified by statute.

[Paragraphs [3.24] (severance) and [3.25] (ascertaining the equitable interests) are not reproduced: the problems mentioned in the working paper are not peculiar to trusts of land and thus fall outside the scope of the present report. Work in this area was felt best left over to become the subject of a separate project in the future].

F. Powers of trustees

[3.26] The Law Reform Committee has already discussed some problems relating to the powers of trustees of land and of the tenant for life.⁴⁵ These are discussed below in the context of our fifth proposal. Two further problems which should be mentioned are:

(i) *Power to mortgage.* Where land is held by co-owners, there is generally a trust for sale. Trustees for sale have the powers of a tenant for life under the Settled Land Act. As such, they cannot raise the initial purchase price by mortgage.⁴⁶ This probably does not matter often, because the co-owners as beneficiaries are unlikely to object, and mortgagees do not in practice do so. However, it is one more illustration of the difficulties caused by using an inappropriate structure for co-ownership.

(ii) *Power to appoint attorney.* Since co-owners are trustees for sale, if there are only two co-owners (as is usually the case) one cannot appoint the other as his or her attorney.⁴⁷ This causes inconvenience and expense, as a third party must be involved. In addition trustees should use a special trustee form of attorney rather than the general one, and failure to use the right form may delay or invalidate a transaction.⁴⁸

G. Bare trusts

[3.27] Generally, where two or more people hold interests in land, then either the Settled Land Act will apply or there will be a trust for sale. However, a bare trust is within neither system, and so is to some extent an anomaly. A bare trust exists when the entire beneficial interest is vested in one person and the legal estate in another. The trustee in such a case has no duties other than to obey the beneficial owner, who is, to all intent, the real owner. Such a trust may arise, for example,

⁴⁰ *Re Buchanan-Wollaston's Conveyance* [1939] Ch. 738; *Bull v. Bull* [1955] 1 Q.B. 234; *Barclay v. Barclay* [1970] 2 Q.B. 677.

⁴¹ Compare *Rawlings v. Rawlings* [1964] P. 398, 419 and *Burke v. Burke* [1974] 1 W.L.R. 1063, 1067.

⁴² *Re Holliday* [1981] Ch. 405; *Re Lowrie* [1981] 3 All E.R. 353.

⁴³ It was accepted in *Bull v. Bull* [1955] 1 Q.B. 234 that they did have a right of occupation but this has been criticised. See Crane (1955) 19 Conv. (N.S.) 146. In *Williams & Glyn's Bank v. Boland* [1981] A.C. 487 Lord Wilberforce noted Denning L.J.'s view in *Bull v. Bull* with approval.

⁴⁴ See further para. 6.5 of the Working Paper [reproduced in this Report at footnote 51].

⁴⁵ Law Reform Committee, 23rd Report, Powers and Duties of Trustees, Cmnd. 8733.

⁴⁶ See *Emmet on Title*, 19th ed., para. 10.140.

⁴⁷ Trustee Act 1925, s.25(2), as substituted by Powers of Attorney Act 1971, s.9(2).

⁴⁸ *Walia v. Michael Naughton Ltd.*, *The Times*, 1 December 1984. [Since reported at [1985] 1 W.L.R. 1115 and [1985] 3 All E.R. 673. See now also s.3(3) of the Enduring Powers of Attorney Act 1985 and Law Society's Gazette, 18 May 1988, p. 4. Preliminary work has been carried out in this area, which falls beyond the scope of the present report and may become the subject of a separate project in due course].

because land held on trust for several beneficiaries has become vested in one adult beneficiary, or because land is being held by a nominee. A more frequent situation which may involve a bare trust arises where the property of any unincorporated association is held on trust for its members by trustees.⁴⁹ Generally bare trusts do not cause problems for purchasers, because either the purchaser is aware of the equitable interest and investigates to ensure the sale is with the consent of the beneficial owners, or he is unaware and takes free of them as a bona fide purchaser of the legal estate for value without notice. However, the overreaching machinery provided by s.2 of the Law of Property Act 1925 does not apply to bare trusts,⁵⁰ and there may be situations where a purchaser fails to obtain a good title.

Summary

[3.28] It will be seen from the preceding paragraphs that many of the problems spring from the existence of two systems which can each be used for much the same purpose and yet have major differences in the way they operate. Added to this is the preference that the legislation shows for the creation of settled land, so that land may inadvertently come within the Settled Land Act 1925, even though this is inappropriate. However although it appears at first sight that the legislation governing the two systems covers all possible situations, it has become apparent that this is not so. Bare trusts are not catered for, and lifetime rights of residence have only been made to fit within settled land with difficulty.⁵¹

The proposals

1.4 The proposals made in the working paper were grouped under five headings. Proposal I was that the present dual system of trusts for sale and strict settlements should be replaced by an entirely new system, under which all land held on trust would be held by trustees with a power to sell and a power to retain the land. Proposal II suggested that there should be no new settled land, and that all successive interests should fall under a trust for sale. Proposal III was that, where successive interests are created, there should no longer be a presumption in favour of the strict settlement. Proposal IV sketched out a new system of co-ownership. Finally, Proposal V contained a few specific suggestions, which could be combined with any of the preceding proposals.

1.5 In the working paper, we expressed a preference for the scheme set out in Proposal I. It was our view that the introduction of a completely new system would be the most satisfactory means of resolving the current problems. We consider that the principal difficulty with the present law is its obvious complexity. In comparison with

⁴⁹ *Worthing Rugby Football Club Trustees v. Inland Revenue Commissioners* [1985] 1 W.L.R. 409.

⁵⁰ Except where the bare trust has arisen because a trust for sale has ended and the purchaser buying from trustees for sale can assume the trust continues: Law of Property Act 1925, s.27.

⁵¹ See also as to co-ownership and trusts for sale, paras. 6.4 and 6.5 of the Working Paper, as follows:

“[6.4] *Co-owners*. The automatic imposition of a trust for sale on co-owners who may have purchased the property for their own occupation is highly artificial and difficult to explain to a lay client. As has been said, the structure of co-ownership laid down in 1925 is no longer suitable for modern conditions. Under this proposal, land held by co-owners would be held on trust, but there would be no duty to sell. Since there is no duty to sell, the doctrine of conversion would not be applicable, as this doctrine depends on there being a duty to sell, with equity assuming that the sale has taken place, even when it has not.

[6.5] At present, although it is clear that the 1925 legislation was intended to impose a trust for sale in all cases of beneficial co-ownership, there are some circumstances which it did not expressly cover. These are identified by Megarry and Wade [*The Law of Real Property*, 5th ed., (1984), p. 438] as follows:

- (i) a conveyance to A (an infant) and B (an adult) as tenants in common;
- (ii) a conveyance to A and B as joint tenants, where equity requires them to take as beneficial tenants in common, e.g. because they are partners, or contribute purchase-money in unequal shares;
- (iii) a conveyance to X purchasing as trustee for A and B who are equitable owners in common of the purchase-money; and
- (iv) a declaration by A as sole owner, that he holds on trust for himself and B in equal shares.

In addition the courts have assumed that where land is purchased in the name of one person alone, and another person contributes to the purchase price, the land is held by the sole legal owner on trust for sale for himself and the other person who contributed [*Bull v. Bull* [1955] 1 Q.B. 234, *Williams & Glyn's Bank v. Boland* [1981] A.C. 487]. We would suggest that clear provision should be made so that wherever concurrent interests in land are created, that land should be held under the new trust.”

See now para. 3.5 of this Report and clause 1 of the draft Bill, implementing the above proposal by means of a comprehensive definition of “trust of land”.

trusts of personalty, the law relating to trusts of land appears extremely complex and convoluted. Despite this, it does not cover all those situations in which land is held on trust. In recommending that the law relating to trusts of land should be set out in the form of broader and simpler provisions, our aim is to place trusts of land on a similar footing to that of trusts of personalty. We consider that this simplification will resolve many of the particular difficulties while providing security for purchasers of land.

1.6 On consultation, we found there to be considerable support for Proposal I. Several of those who responded strongly approved of our proposed new system. However some consultees did favour the retention of the existing dual system. The majority of these were, in effect, suggesting that there is a need for Settled Land Act settlements or their functional equivalent—a need for which neither Proposal I nor Proposal II would provide. Opposition to Proposal I was largely in these terms. Nevertheless, the information which we received in response to the working paper confirmed that although some strict settlements are currently in existence, very few new settlements are being created. In addition, we consider that, if the powers of delegation held by trustees of land are broadened, settlors will be able to create what is, in effect, an ‘enhanced’ strict settlement. This being the case, we consider that the merits of a unitary system far outweigh the possible disadvantages of “phasing out” the Settled Land Act.

1.7 We confirm our initial preference for a single trust of land to apply to both concurrent and successive interests in land. The interests themselves will be unchanged: the difference lies in the trust machinery. Under the new system, trustees will hold the legal estate on trust with a power to sell and a power to retain the land, and, as at present, it will always be possible to convey the legal estate free of equitable interests.

The structure of the report

1.8 This report is arranged in three parts, Part I being this introductory section. Part II is further divided into three sections. The first of these discusses how the trust of land will affect the holding of different kinds of interest. The next section sets out the structure of the trust. Finally there is a discussion of miscellaneous matters. Part III summarises the recommendations made in the main body of the report. A draft bill to give effect to those recommendations is annexed (Appendix A), as is a schedule setting out the main statutory provisions affected, in both original and amended form (Appendix C).

PART II

THE TRUST OF LAND

A. INTERESTS

2.1 In the working paper,⁵² we set out the main interests for which any system, whether it be unitary or dual, should provide, these being: concurrent interests, successive interests, the interests of minors, the interests of purchasers, and interests under bare trusts.

Concurrent Interests

3.1 At present, most concurrent interests fall under a trust for sale, either expressly or by implication.⁵³ The defining feature of the trust for sale, at least as it was originally designed, is that the trustees are under a duty to sell the trust land. Implicit in this is the notion that this land should be held primarily as an investment asset rather than as a 'use' asset.

3.2 This formulation may well have been suitable or convenient for the purposes which it was designed to serve. However, since the passing of the 1925 property legislation, social conditions have altered to such an extent that the invariable imposition of a duty to sell now seems wholly artificial. This is largely because the incidence of owner-occupation has, over the last sixty-three years, risen to such a level that most dwellings are now owner-occupied.⁵⁴ Most of these are occupied by joint owners. One consequence of this is that the imposition of a duty to sell seems clearly inconsistent with the interests and intentions of the majority of those who acquire land as co-owners. In such cases the intention will rarely be that the land should be held pending a sale; it is much more probable that it will be retained primarily for occupation. In other words, the property will not be held simply as an investment asset, but rather as a 'use' asset.

3.3 The courts have sought to neutralise this artificiality by developing the principle that, where the 'collateral purpose' of the trust is, for example, to provide a family or matrimonial home,⁵⁵ and where that purpose still subsists, the court may, in the exercise of its discretion under section 30 of the Law of Property Act 1925, refuse to order a sale.⁵⁶ In that a single trustee is no longer able to force a sale (as against occupiers' interests), the 'use' value of the property is given recognition.⁵⁷ It is, however, somewhat illogical that the courts should be required to develop and maintain a doctrine which takes as its foundation the artificiality of the trust for sale.

⁵² Working Paper No. 94, paras. 4.1–4.6

⁵³ Sections 34 and 36 of the Law of Property Act 1925 impose an implied trust for sale wherever there is equitable co-ownership of land. Although these statutory provisions are, to say the least, unclear as to whether or not a trust for sale arises where there is equitable co-ownership behind a sole legal title, the decision in *Bull v. Bull* [1955] 1 Q.B. 234 establishes that it will do so. This interpretation was approved by the House of Lords in *Williams and Glyn's Bank Ltd. v. Boland* [1981] A.C. 487. Similarly, it would seem that an implied trust for sale will arise where there is co-ownership at law but not in equity (*Wilson v. Wilson* [1969] 3 All ER 945). The obvious instance in which equitable co-ownership will not trigger a trust for sale is that of joint life tenancies under a strict settlement.

⁵⁴ Although there are no available figures for 1925, some indication of the rate of owner-occupation may be gleaned from the fact that in 1914 7% of houses were owner-occupied, the figure in 1938 being 43%. (Source: Housing Policy Technical Volume, Pt. 1, (1977). Figures are for England and Wales only.) By 1984 the percentage had risen to 61%. (Source: Social Trends, (1986). Figures are for Great Britain as a whole.) See also Working Paper No. 94, para. 3.17.

⁵⁵ Although recent case-law has centred largely on what is termed a 'family-based' approach, the collateral purpose may take some other form. (The term 'primary purpose' is often used as an alternative to 'collateral purpose', use of the former term reflecting a trend towards the exclusion of the duty to sell.)

⁵⁶ This discretion has been exercised very broadly indeed. In *Williams v. Williams* [1976] Ch. 278, at 285, Lord Denning M.R. suggested that "... [judges] nowadays have great regard to the fact that the house is bought as a home in which the family is to be brought up. It is not treated as property to be sold nor as an investment to be realised for cash". Similarly, Ormrod L.J. observed in *Re Evers' Trust* [1980] 1 W.L.R. 1327, at 1332, that "... [t]his approach to the exercise of discretion ... enables the court to deal with substance, that is reality, rather than form, that is, convenience of conveyancing ...".

⁵⁷ Contrast the approach taken in *Re Mayo* [1943] Ch. 302. See para. 12.3.

3.4 As a corollary of the duty to sell, and in accordance with the doctrine of conversion,⁵⁸ any interest held under a trust for sale is an interest in the proceeds of the sale of the land. Consequently, the beneficiaries are deemed not to have an interest in land as such.⁵⁹ Once again, the courts have intervened to mitigate the artificiality of the position.⁶⁰ This intervention has, however, resulted in an unsatisfactory division between those circumstances in which an interest under a trust for sale will be held to be an interest in land and certain others in which it will not, or might not.⁶¹

3.5 Our proposals in relation to concurrent interests are focused upon two features of the trust for sale. Our principal recommendations are, firstly, that all land which previously would have been held under an implied trust for sale⁶² should now be held under the new system by trustees with a power to retain and a power to sell,⁶³ and, secondly, that the doctrine of conversion should cease to apply. Thus, the main purpose of the trust will no longer be the realisation of the capital value of the land. Although this purpose is often seen as a merely notional one, judicial interpretation has not been so consistent as to exclude the occasional reappearance of the 'old' approach.⁶⁴ The new system will be more readily intelligible to non-lawyers than the trust for sale. The point here is not simply that it should be easier for practitioners to explain the law to their clients, but also that co-ownership should take a form which non-lawyers can make sense of for themselves.

3.6 A scheme giving trustees of land a power to sell and a power to retain the land would correspond much more closely to the perceptions of most co-owners. Although many of these owners might be surprised to learn that they are trustees of any kind, the new system, given its simplicity and the fact that it bases the powers of trustees on those of an absolute owner, should be a considerably more accessible concept than that of the trust for sale. This scheme will, in addition, put the exercise of judicial discretion under section 30 on a rather better footing than at present. Although the courts have exercised this discretion quite broadly, the starting point has always been that there is a duty to sell. This has confined the development of judicial doctrine to the formulation of reasons why sale should not take place. If the trustees have, as we recommend, a power either to sell or to retain rather than a power merely to postpone sale, the terms of the discretionary jurisdiction will be more in accord with the circumstances which they are required to accommodate. The jurisdiction will be framed with sufficient breadth to permit a genuinely flexible approach.⁶⁵ Furthermore, the doctrine of conversion being founded upon the duty to sell, the removal of that duty will carry with it the foundation of the doctrine. Therefore, we recommend that the doctrine of conversion should be abolished in relation to all trusts, whenever created. The equitable interests of the beneficiaries will continue to be overreached if payment is made to two trustees, the interests becoming interests in the proceeds of sale if or when the land is sold.⁶⁶ In this way, the practical utility (in conveyancing terms) of the doctrine will remain undiminished.

⁵⁸ This doctrine is based on the rule that 'equity looks on that as done which ought to be done'. Given that land held under a trust for sale is held under a duty to sell, equity 'anticipates' this sale and 'converts' the interests of the beneficiaries into interests in personality. The 'old' view of the doctrine was well expressed by Cross L.J. in *Irani Finance Ltd. v. Singh* [1971] Ch. 59, at 80: "The whole purpose of the trust for sale is to make sure, by shifting the equitable interests away from the land and into the proceeds of sale, that a purchaser of the land takes free from the equitable interests. To hold these to be equitable interests in the land itself would be to frustrate this purpose."

⁵⁹ See Anderson, "The Proper, Narrow Scope of Equitable Conversion in Land Law", (1984) 100 L.Q.R. 86, for the argument, based on a review of the case law from the early eighteenth century onwards, that this "absolutist" interpretation of the doctrine of conversion has only recently crept into judicial doctrine.

⁶⁰ The clearest example of this is the decision in *Williams and Glyn's Bank Ltd. v. Boland* [1981] A.C. 487, particularly Lord Wilberforce's observation that "... to describe the interests of spouses in a house jointly bought to be lived in as a matrimonial home as merely an interest in proceeds of sale, or rents and profits until sale, is just a little unreal ...".

⁶¹ There may, for example, be a distinction between 'family' purposes and commercial ones. Where land is held uniquely for investment the courts might be less ready to characterise the doctrine as "unreal". Indeed, even where 'family' trusts are concerned there are indications that the *Boland* approach will not be uniformly followed. For example, Lord Oliver's judgement in *City of London Building Society v. Flegg* [1987] 2 W.L.R. 1266 echoes the dictum of Cross L.J. in *Irani Finance Ltd. v. Singh* [1971] Ch. 59 (see footnote 58).

⁶² Including cases of equitable co-ownership behind a sole legal title: see footnote 53. This is achieved in the draft Bill by the comprehensive definition of "trust of land" in clause 1.

⁶³ This will be one consequence of giving trustees of land the powers of an absolute owner. See para. 10.6.

⁶⁴ See, for example, footnote 61.

⁶⁵ We consider that the courts should have a broad power to deal with any dispute involving a trust of land.

⁶⁶ We are at present reviewing the operation of the overreaching mechanism: see Working Paper No. 106.

3.7 We consider that where a trust of land is expressly created, the settlor should still be able to impose a duty to sell upon the trustees. However, where a duty to sell is so imposed, a power to retain will be statutorily implied, whether or not there is a contrary intention. Furthermore, the express imposition of a duty to sell will not carry with it the implication that the interests of the beneficiaries are 'converted' to personalty. These interests will, as outlined above, remain interests in land until sale actually occurs.

Successive Interests

4.1 Successive interests may at present be accommodated under either a trust for sale or a strict settlement. One of the more obvious difficulties with the present system is that the strict settlement is accorded priority over the trust for sale. Wherever successive interests in land are created they take effect under a strict settlement unless there is an express provision to the effect that they are to be held on trust for sale. Consequently, it is all too easy for a testator inadvertently to bring into operation the Settled Land Act mechanism with all its attendant complexities.⁶⁷ Although the testator's 'intention' may in such circumstances be a rather elusive factor,⁶⁸ there cannot be many cases in which it would not be desirable to avoid the potential complications. The difficulty is in part that the complexity of strict settlements may expose the beneficiaries to added trouble and expense (in, for example, obtaining probate or appointing trustees), neither of which may seem justifiable where the property concerned is a small family home. Perhaps more significantly, Settled Land Act conveyancing is so rare that many practitioners may not be sufficiently familiar with the provisions of the Act to recognise the implications of such a will. Where the correct formalities have not been complied with, and the conveyance has been obtained from the wrong person, purchasers will be faced with the additional expense of remedial action.⁶⁹

4.2 Similarly, a strict settlement may be created inadvertently wherever a person is granted a right to occupy property during their lifetime. In the case of *Bannister v. Bannister*⁷⁰ the Court of Appeal held that a life interest which arose under a constructive trust "... ha[d] the effect of making the beneficiary a tenant for life within the meaning of the Settled Land Act, 1925."⁷¹ This interpretation of the Settled Land Act gives such beneficiaries the full powers of a life tenant in circumstances which suggest that the grant may not have been intended to carry with it these powers of sale and management. Although the courts might in the future regard the residential licence as a more apt construction in these situations, there may nevertheless be situations in which the strict settlement offers the only means of protecting the life interest.

4.3 Our recommendation is that it should no longer be possible to create Settled Land Act settlements and that, consequently, all successive interests should fall under the new system. Existing settlements will not be affected. In so recommending, we are conscious that there are some who consider that the Settled Land Act mechanism should continue to be available. In considering these responses, our view was that there were, in opposition to these, compelling reasons for adopting the course which we recommend. The information made available to us on consultation strongly suggests that, in recent years, the incidence of new express settlements has steadily declined, to the extent that there are today almost no new settlements.⁷² Presumably, one explanation for this is that the strict settlement was designed to give effect to a form of 'family'

⁶⁷ Typically, this might occur where a testator devises property to his wife for the duration of her life, and thereafter to his children absolutely.

⁶⁸ To maintain that a particular testator 'intended' or did not 'intend' the consequences which a strict settlement might entail is to make a rather contrived judgement as to what that testator **would** have agreed to had the legal technicalities been in his mind.

⁶⁹ See, for example, *Re Duce and Boots Cash Chemists (Southern) Ltd.* [1937] Ch. 642, and, generally, Prof. E. C. Ryder, "Settled Land: Mistakes and Their Consequences", (1962) C.L.P. 194.

⁷⁰ [1948] 2 All E.R. 133; see also *Binions v. Evans* [1972] Ch. 359.

⁷¹ [1948] 2 All. E.R. 133, at p. 137.

⁷² Those practitioners who responded to our request for information indicated that there are very few strict settlements currently 'on file', most of these having been established decades ago. Only one firm expressly proposed to create new settlements in the future.

ownership which is not as prevalent, nor as much favoured, as it then was.⁷³ Indeed, the Settled Land Act mechanism is not a particularly effective means of keeping land 'in the family'.⁷⁴

4.4 The essential distinction between the strict settlement and the trust for sale, as ways of providing for successive interests in land, is that each offers a quite different scheme for management of the trust land. Whereas in the trust for sale control of the land lies with the trustees, under a strict settlement the life tenant has most of the powers of management. Therefore, the question is whether, given that there may be some circumstances in which one might wish to give full powers of management to the current occupier of the land, this objective can only be effectively achieved within the framework of the Settled Land Act. An important consideration here is that, although this feature of the Settled Land Act may have its advantages, it is one which has, in practice, produced some undesirable consequences. Of these, the most obvious is the conflict of interests inherent in the position of the tenant for life, who, on the one hand, has a duty to act as trustee⁷⁵ but, on the other, is the principal beneficiary.⁷⁶ This may be of particular importance where the life tenant exercises the power to sell the estate. The terms or timing of the sale, or, indeed, the question of whether there ought to be a sale at all, are matters which will be of legitimate concern to the remaindermen, yet the latter have little or no legal right to intervene.⁷⁷ Furthermore, although the life tenant may be a trustee, there are indications that the duties which attach to this role will not be as rigorously enforced as they are in other trust situations.⁷⁸

4.5 Besides the 'family' settlement, there are other examples of situations in which the strict settlement might be preferred to the trust for sale or trust under the new system. In the context of matrimonial arrangements, it may, for example, be desired that the survivor should have the powers of a life tenant but that the capital should ultimately pass to the children of a previous marriage. In many of these instances, it may be simpler to do this by way of the Settled Land Act machinery. More generally, it might be considered appropriate that the current occupier of the land, being uniquely placed to do so, should have responsibility for the overall maintenance of the property, or for the collection of rents. We consider that these facilities should, in substance, continue to be available; settlors should be allowed to place control of the trust in the hands of those beneficiaries who are most directly interested in the trust land. Thus, our recommendations include a proposal that the new system should include such powers of delegation as are necessary to permit this.⁷⁹

4.6 The principal advantage of the new system is its simplicity. It will eliminate many of the difficulties which are liable to follow from the constitution of an implied strict settlement, particularly where the existence of that settlement has gone unrecognised.⁸⁰

4.7 Under the new system, successive interests will be held under the same provisions as those governing trusts of concurrent interests. Where at present successive interests would be expressly subjected to a trust for sale, the new system will replace the old machinery in the same way as it will in the case of concurrent interests. The reforms will thus include not only the improvements set out above, but also the increased flexibility which should result from the implementation of our recommendations as to, for example, the powers of trustees and the delegation of those powers. The most

⁷³ For examples of the traditional role of the strict settlement, see English and Saville, *Strict Settlement: A Guide For Historians*.

⁷⁴ There is, of course, nothing to prevent the life tenant selling the land so as to realise its capital value. In addition, liability to taxation is such as to render the 'dynastic' strict settlement quite unattractive. (See Mellows, *The Law of Succession*, 4th ed., chapter 24.)

⁷⁵ Settled Land Act 1925, s.16.

⁷⁶ See further para. 3.16 of the Working Paper (set out in para. 1.3 of this report).

⁷⁷ As Prof. Ernest Scamell, (1957) C.L.P. 152, at p. 162, observes: "... It is true that some protection against a capricious exercise of a tenant for life's powers is provided by section 107 of the Act which requires him to act as a trustee in such exercise, but this section does not apply to a capricious non-exercise of his powers, and in any event the cases show that the duties imposed by the section are very slight."

⁷⁸ See Working Paper No. 94, para. 3.16 (set out in para. 1.3 of this Report).

⁷⁹ See para. 11. Trustees under a trust for sale may already delegate their powers of management to a beneficiary under section 29 of the Law of Property Act 1925.

⁸⁰ See para. 4.1.

extensive reforms, however, will be those which follow where the new system replaces the implied or express strict settlement.

4.8 Where at present strict settlements would arise by implication—where, that is, there is a grant of a life interest in land, or where successive interests are created by will—the recommended reforms will be particularly beneficial. The problem of the ‘unintended’ strict settlement is perhaps the most immediate and substantial difficulty in the present system. Furthermore, where a trust arises by implication, there is an added premium on the qualities of simplicity and flexibility. Under our proposals, such life interests will take effect under the new system, the trustees’ powers of sale and management being limited accordingly. Given that these interests are not generally intended to carry with them the powers of a tenant for life, particularly the power of disposition, it seems advantageous that the overall power of management should be vested in trustees,⁸¹ not least because the freedom of action which is built into the role of the tenant for life⁸² may, in this connection, be particularly undesirable.

4.9 The introduction of a unitary trust mechanism should eliminate many of the conveyancing difficulties which can at present arise where the existence of a strict settlement goes unrecognised.⁸³ Similarly, whereas at present the existence of an implied strict settlement will usually trigger the operation of sections 30 to 34 of the Settled Land Act (which contain some rather complicated provisions as to the nomination of trustees), under the new system the trustees will quite simply be those persons who hold the legal estate in the land.⁸⁴ Where there is only one such trustee, the provisions of section 36(6) of the Trustee Act 1925 (as amended⁸⁵) will enable the appointment of an additional trustee or trustees.

4.10 Where the trust is created expressly, the provisions which we recommend should, once again, offer greater simplicity and flexibility. To begin with, there will be some simplification of the formalities of constitution. Whereas the constitution of a strict settlement requires the execution of two separate documents, a vesting instrument and a trust deed, under the new system the only formalities required will be those which are at present essential to the creation of any trust of land.⁸⁶ For those who wish to avoid disclosure of the apportionment of beneficial interests, the loss of the ‘curtain principle’ may prove inconvenient, but standard trust mechanisms could be used to achieve a similar result.⁸⁷ The advantage of the change is that it avoids the complications which can occur where there are a number of vesting deeds.⁸⁸

4.11 One of our foremost concerns was to provide a suitable facility for those settlors who might wish to construct something analogous in substance (if not in form) to the strict settlement. Our recommendation as to the delegation of trust powers will enable settlors to go beyond the delegation provisions of the trust for sale. They will be able to construct what would in effect be an ‘enhanced’ strict settlement. Such a settlement would not be precisely the same as a strict settlement because the trustees will retain the legal title. Delegation will be by way of power of attorney, which means that it will be clear to any potential purchaser or transferee that they are dealing with an attorney.

4.12 Given that such a settlement will be subject to the powers given to the court by the revised section 30,⁸⁹ remaindermen will be placed in a much stronger position than they are under a strict settlement. They will be able to apply to the court to challenge any exercise of the trust powers by the trustees or by a life tenant. This means that, although the court may give priority to the wishes of the life tenant,⁹⁰ remaindermen will have at their disposal an effective means of protecting their interest.

⁸¹ Where no trustees have been appointed by the grantor or settlor, those persons holding the legal estate will act as trustees. (See para. 9.2.)

⁸² See para. 4.4, and footnote 74.

⁸³ See para. 4.1.

⁸⁴ See para. 9.2.

⁸⁵ See para. 9.1.

⁸⁶ Viz., the requirements of the Law of Property Act 1925, s.53(1)(b).

⁸⁷ It would, for example, still be possible to execute two documents should this be desired.

⁸⁸ Which will be the case where, for example, there have been several acquisitions of land under an existing settlement.

⁸⁹ See para. 12.

⁹⁰ See para. 12.13.

Minors

5.1 At present, minors cannot hold a legal estate in land, and it is provided that the Settled Land Act machinery should come into operation wherever there is an attempted conveyance of land to a minor.⁹¹ The substitution of the new system in these cases will again simplify matters, without, as the Working Paper makes clear,⁹² introducing any substantive changes. Minority will remain a disability and an attempted conveyance to a minor will take effect as a declaration of trust, the land being held by the relevant trustee or trustees under the new system. Where the conveyance is made *inter vivos*, the grantor will hold the land as trustee for the minor. Where the disposition is testamentary, the personal representatives of the settlor will act as trustees. Where land is conveyed to a minor jointly with an adult, the adult will hold the land on trust for himself and the minor, as joint tenants or as tenants in common according to the terms of the conveyance.

5.2 Section 27 of the Settled Land Act is rather ambiguous in that it does not explicitly provide for those situations in which a legal estate is conveyed to minors as tenants in common. Under the new system, an attempted conveyance of land to minors, whether as joint tenants or as tenants in common, will take effect within terms similar to those which will apply to conveyances to a sole minor. Once again, the trustees will be either the personal representatives of the settlor, or the *inter vivos* grantor, and the land will be held for the minors either as joint tenants or tenants in common, whichever is appropriate.

5.3 Subsections (3), (4), (5) and (6) of section 19 of the Law of Property Act 1925 make provision for conveyances on trust or by way of mortgage. It being our recommendation that a conveyance of a legal estate in land to a minor should create a trust in favour of that minor, these provisions will no longer be necessary.

Purchasers

6.1 We are at present reviewing the mechanisms which were provided for the protection of purchasers and beneficiaries by the legislation of 1925.⁹³ The new system will retain the mechanism by which purchasers may, on the fulfilment of certain conditions, take the legal estate free of the interests of the beneficiaries.⁹⁴ It may be that our work on overreaching will result in a recommendation that the balance between the interests of beneficiaries and purchasers be altered. Nevertheless, purchasers will be in no less secure a position than purchasers of land held on trust for sale. In (substantially) duplicating those provisions which currently apply to trusts for sale, and in extending them to circumstances which would at present fall under the provisions of the Settled Land Act, purchasers of what would now be a settled land estate will find the process of conveyance rather simpler.

6.2 Moreover, such purchasers will no longer be faced with the hazards of an ineffective disposition of settled land⁹⁵ or an 'unrecognised' strict settlement.⁹⁶ The overreaching mechanism will operate much as it currently does in relation to trusts for sale. This means that there can be no question of a disposition being void; the danger, to the extent that there is one, is that purchasers dealing with a single trustee might not appreciate that they are in fact dealing with trust property. Given that the purchaser

⁹¹ Law of Property Act 1925, s.1(6), Settled Land Act 1925, s.1(1)(ii)(d). Under s.27(1) of the latter Act, such a conveyance takes effect as a contract for valuable consideration to execute a full settlement but in the meantime to hold the land in trust, for the infant. As a minor cannot be a tenant for life, s.26 provides that the trustees of the settlement should have the powers of a tenant for life.

⁹² Working Paper No. 94, para. 6.6.

⁹³ See Working Paper No. 106.

⁹⁴ Our recommendations will not interfere with those provisions which limit the number of legal estates which may be held and the number of persons who can hold any one estate.

⁹⁵ Any assessment of the nature and extent of this hazard will depend upon an interpretation of sections 18(1) and 110 of the Settled Land Act 1925. The particular question to be asked here is, to what extent does section 110 mitigate the effect of section 18? The problem may be illustrated by reference to the divergence between the approach taken by Danckwerts J. in *Weston v. Henshaw* [1950] Ch. 510, and that adopted by Ungood-Thomas J. in *Re Morgan's Lease* [1972] Ch. 1. For a full discussion, see Gray and Symes, *Real Property and Real People* (1981), pp. 171-176. It may also be that the effect of section 110 is, in certain circumstances, to require purchasers to examine the trust instrument.

⁹⁶ See para. 4.1.

will often have notice of the equitable interests of the beneficiaries,⁹⁷ and that even where he does not most purchasers nowadays will be alert to the hazard of overriding interests,⁹⁸ this danger seems rather more foreseeable than a situation such as that disclosed by the facts of *Weston v. Henshaw*.⁹⁹

Bare Trusts

7.1 As we said in the Working Paper:¹⁰⁰ “It is useful in some situations for the legal estate and equitable interests to be separated even though the trustee has none of the usual duties of a trustee. It is important that any proposed change should not make such a separation impossible”. At present, so-called bare trusts¹⁰¹ fall outside the statutory dual system of trusts for sale and strict settlements. The lack of relevant statutory provisions as to such matters as trustees’ powers, rights of beneficiaries and protection of purchasers is thought inconvenient and can occasion confusion in practice. However, such trusts will fit without difficulty within our proposed new unitary system. Beneficial owners would, of course, when creating the bare trust remain able to limit the powers of the trustees;¹⁰² for example, the powers of disposition may be made exercisable only with the consent, or at the direction, of a named person.

B. THE TRUST

Creation

8.1 It is our view that the new system should cover all trusts of land, including so-called ‘bare’ trusts.¹⁰³ Consequently, we consider that the application of the system should not be conditional upon the fulfilment of any special formalities. The only requirement will be that the trust be properly constituted within the terms of general trust law. This will bring trusts of land into line with trusts of personalty, in that there will be a single body of law covering all such trusts.

8.2 The new system will apply whether the trust is expressly created or statutorily implied. It will apply (in place of a trust for sale) wherever there is a conveyance of land to equitable co-owners. In addition, and in line with our view that all trusts of land should be brought within the new system, it will also apply wherever equitable interests in land arise by way of resulting, constructive, or implied trusts. Successive interests in land being necessarily equitable, these will in future automatically be subject to the new system. All this is simply achieved by the all-embracing definition of ‘trust of land’ in clause 1 of the Bill.

8.3 One of the major policies underlying our recommendations is that use of the Settled Land Act 1925 should in the future be reduced to a minimum. The reasons for this policy have been discussed in those paragraphs which deal with successive interests.¹⁰⁴ At this point, suffice it to say that we are convinced—after a review of the evidence available to us—that the introduction of a unitary system would be particularly beneficial. Our recommendations are designed to ensure that, after the commencement date, there should be no new strict settlements. If an existing settlement acquires

⁹⁷ Where the property is registered land, the beneficial interests will often be protected by means of an entry restricting the registered proprietor’s powers of disposition and caution. Where the land is unregistered, the equitable doctrine of notice prevails, except where there is a right of occupation under the Matrimonial Homes Act 1983, in which case that interest may be registered as a Class F land charge within the terms of section 2(7) of the Land Charges Act 1972.

⁹⁸ After *Boland*, one of the foremost concerns of purchasers and their advisers will be the avoidance of potential overriding interests. It is worth noting here that one of the recommendations of the Third Report on Land Registration (Law Com. No. 158, para. 3.34(7)) is that any registered proprietor or chargee against whom an overriding interest is asserted should be entitled to seek indemnity.

⁹⁹ [1950] Ch. 510. The facts of this case were that a mortgagee lent money on the security of a legal mortgage to a borrower who, although a tenant for life of a strict settlement, had in his possession title deeds showing him to be absolute and beneficial owner of the estate. It was on the basis of these deeds that the mortgagee took the mortgage and paid the mortgage money over to the borrower.

¹⁰⁰ Working Paper No. 94, para. 4.6.

¹⁰¹ “A simple (or bare) trust is one in which property is vested in one person on trust for another, the nature of the trust not being prescribed by the settlor but being left to the construction of the law, as where property is transferred to T ‘on trust for B absolutely’. In such a case, T must permit B to enjoy the trust property, and must obey his instructions as to disposing of it.” *Snell’s Principles of Equity*, 28th ed. p. 104.

¹⁰² See para. 10.10.

¹⁰³ See footnote 101.

¹⁰⁴ Paragraphs 4.1–4.12.

more land, that land will be held under the new system. Similarly, where land which is already settled land would continue to be so only by virtue of a new instrument, that land would also be held under the new system. In addition to a general provision stating that there should be no new settlements, the Bill expressly provides for those circumstances in which a strict settlement will at present arise.¹⁰⁵

Trustees

9.1 Where a trust arises by way of a conveyance to co-owners, the trustees will, as at present, be the first four named in the conveyance. They will, however, hold the legal estate on trust under the new system rather than on trust for sale. Where new trustees are to be appointed,¹⁰⁶ we recommend that section 36 of the Trustee Act 1925 should apply as at present, subject however to an amendment. We recommend that where the beneficiaries are ascertained, *sui juris*, and unanimous, they should be able to exercise the right of appointment currently exercised by the remaining trustees. The beneficiaries' right would take priority over the trustees' right under section 36(1)(b). However, in order that purchasers might continue to enjoy the protection of section 38 of the Trustee Act,¹⁰⁷ the beneficiaries will exercise their right indirectly. In other words, they will merely direct the appointment of a new trustee, the formal deed of appointment being executed by the remaining trustees. Where the mental disorder of an existing trustee necessitates the new appointment, the beneficiaries would be able to give the direction to the trustee's receiver or (if no receiver was acting) to any person authorised for that purpose by the Court of Protection.¹⁰⁸ In order to avoid confusing distinctions, the amendment will apply to trusts of personalty as well as trusts of land.

9.2 Where successive interests are created, the trustees will be either those persons appointed by the settlor or, failing this, whoever has the legal estate currently vested in him. Where necessary, the court will have recourse to the power which it currently possesses under section 41 of the Trustee Act 1925.¹⁰⁹ Where there is an attempted conveyance of land to a minor, an *inter vivos* 'conveyance' will constitute a declaration by the grantor that he holds the land on trust for that minor. In testamentary dispositions to a minor, the personal representatives will become trustees. Where the trust of land arises on intestacy, the administrators of the estate will, as at present, become trustees.

Powers

10.1 In determining the nature and extent of the trust powers there are two related considerations. Firstly, there is the question of **what** powers should be created and, secondly, there is the question **how** those powers should be distributed and located. These two considerations are clearly related, as the scheme of distribution will determine the utility and efficacy of the powers themselves. This point is well illustrated by a comparison of the trust for sale with the strict settlement—in each of these, substantially the same powers¹¹⁰ are arranged to quite different effect: with the former,

¹⁰⁵ See clauses 13, 14, 15, 16 and 17.

¹⁰⁶ e.g. where a trustee is dead, remains out of the U.K. for more than a year, desires to be discharged, refuses or is unfit to act, is incapable of acting or is an infant; has been removed under a power in the trust instrument; or where existing trustee(s), being not more than three (none a trust corporation) wish to appoint an additional trustee.

¹⁰⁷ Section 38 provides that: (1) a statement, contained in any instrument by which a new trustee is appointed for any purpose connected with land, to the effect that a trustee has remained out of the U.K. for more than a year or refuses or is unfit to act, or is incapable of acting, or that he 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; and (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.

¹⁰⁸ The new subsection (1B) of section 36, inserted by clause 18(2) of the draft Bill, adopts the wording of section 22 of the Law of Property Act 1925 (as amended). The position of the mentally incapacitated trustee who has delegated his powers by enduring power of attorney has not been examined as part of the present exercise: this has been left over to be dealt with as part of a separate examination of the use of powers of attorney by trustees.

¹⁰⁹ Section 41 of the Trustee Act 1925 provides that the court may, whenever it is expedient to appoint a new trustee or trustees and it is found inexpedient, difficult or impracticable to do so without the court's assistance, make an order appointing a new trustee or trustees, either in substitution for, or in addition to, any existing trustee or trustees.

¹¹⁰ See section 28 of the Law of Property Act 1925.

they are vested in the trustees for sale, whilst with the latter, they are generally vested in the tenant for life. We consider that a scheme of distribution should provide for optimum flexibility, and that the best way of achieving this is to start from the basis of the trust for sale model—namely that of the trustee-manager—grafting onto this powers of delegation which are broad enough and flexible enough to enable distribution of trust powers to the beneficiaries with current interests.

10.2 Should they wish to do so, settlors will be able to use the provisions of the new system to ensure that the trust powers are vested in the life tenant; it will, in other words, be possible, by expressly directing that there should be a particular delegation, to achieve much the same result as that which at present flows automatically from the constitution of a strict settlement. In addition, the new system will enable settlors to set limits upon the exercise of the trustees' powers. With the strict settlement it is, of course, not possible to limit the freedom of action of the tenant for life to any real effect,¹¹¹ which is why settlors can do little to give remaindermen an effective say in the management of the land. Although the trust for sale is quite flexible in this respect, and although remaindermen can be given some foothold—by making the sale of the land subject to the consent of certain named persons¹¹²—the duty to sell cannot be delegated to the life tenant for more than one year.¹¹³ Consequently, it is impossible to give an occupying beneficiary all the powers of a tenant for life under a strict settlement. Under the new system, trustees will have a power to sell and a power to retain, and they will be able, without limitation as to time, to delegate these powers to any beneficiary with a present, vested, interest in possession. Thus, under the new system, settlors will be able to construct a settlement which, while giving an occupying beneficiary powers analogous to those of a tenant for life under a strict settlement, also inhibits (if they so wish) that beneficiary's powers of disposition. In this way the new system will couple the simplicity of a unitary trust with an enhancement of the flexibility which is provided within the current system.

10.3 Where a trust arises impliedly, the trust powers will, of course, be vested in trustees. It is our view that, given the circumstances in which an implied trust of land is most likely to arise, namely where there is concurrent co-ownership, or where a life interest in land is created, this is quite acceptable. Either there will be little change to the present position, as where the trust is one of concurrent interests, or there will be some measure of improvement, as where the trust replaces the implied strict settlement. In this latter case, particularly where there is a non-testamentary grant of a life interest in land, it seems right that the trust powers should remain vested in trustees rather than in the holder of that life interest.¹¹⁴ Nevertheless, where appropriate, the power of delegation will be available.

10.4 As regards the nature and extent of the trust powers themselves, we consider that trustees of land should be put in much the same position as an absolute owner. The circumstances of most trusts of land will be such that those persons to whom the legal label of 'trustee' is attached are quite likely to regard themselves as the 'owners' of the trust land. Even where this is not the case, it is desirable that the trustees should have the powers necessary to make efficient use of the land. Our proposals are designed to reflect this state of affairs whilst maintaining the general equitable duties of trustees.¹¹⁵ Therefore, although the powers will be approximate to those of an absolute owner, they will not be quite as readily exercisable.

10.5 In recommending that trustees of land should have all the powers of an absolute owner, our aim is not simply to tack additional powers on to those which trustees for sale currently possess, so as to arrive at a more 'complete' inventory. Rather, it is to make the scheme of powers as broadly based and as flexible as possible. The powers of trustees for sale are expressed as a rather complex and fragmented set, and, in accordance with our policy that trusts of land should be analogous to those of

¹¹¹ See para. 4.4.

¹¹² Law of Property Act 1925, s.28(1).

¹¹³ Section 25 Trustee Act 1925. See also para. 11.1. Under section 29 of the Law of Property Act 1925, the trustees' powers (but not sale) may be (revocably) delegated for a longer period.

¹¹⁴ It is seen as one of the drawbacks of the present system that such holdings necessarily attract the powers of a tenant for life under a strict settlement. See para. 4.2.

¹¹⁵ See para. 10.9.

personalty, it is our view that this composite of powers should be dissolved into a simple and widely-framed provision.¹¹⁶

10.6 Perhaps the most significant consequence of giving trustees the powers of an absolute owner is that these trustees will now have a power either to sell or to retain the land. This will, of course, be one of the more fundamental elements in the specification of the trust under the new system. For example, the inclusion of these powers provides a foundation for restructuring of the jurisdiction of the court under section 30. Similarly, it facilitates the construction of a unitary trust in that (coupled with extended powers of delegation) it substantially retains the facility which is at present offered by the Settled Land Act.

10.7 Trustees of land will have a power to apply proceeds of sale of trust land, or any part thereof, to the purchase of land, either for occupation by the beneficiaries or for investment. Although trustees for sale do have a power to apply trust money to the purchase of land, the courts have interpreted the scope of this power rather restrictively. Thus, in *Re Power's Will Trusts*¹¹⁷ it was held that, where the trustees were expressly given all the powers of investment of an absolute owner, this power could not be exercised to purchase land for occupation by beneficiaries. Similarly, it has been held that where all the trust land has been sold the trustees cease to be trustees for sale and hence cease to be within the statutory provisions.¹¹⁸

10.8 Our recommendation is that trustees should have a broad power to apply some or all of any proceeds of sale to the purchase of land, either as an investment or for occupation by the beneficiaries. This power would extend to the purchase of freehold or leasehold legal estates. It would not be restricted to property where the lease has more than sixty years left to run:¹¹⁹ we felt that such a restriction was neither necessary nor desirable in today's economic climate, in which shorter leases may often be regarded as good and prudent investments, appropriate to the particular circumstances of the trust and the beneficiaries. The fixing of a minimum period, of whatever length, could only be the result of an arbitrary decision and, bearing in mind that there are circumstances in which it is quite conceivable that even a freehold might represent an imprudent or inappropriate investment, it seemed sensible to give trustees maximum flexibility, leaving general equitable rules to govern the use of such flexibility. In addition, the powers of trustees of land to mortgage, lease, or sell the land should be analogous to those held by absolute owners. Any money realised by the exercise of these powers will be held upon the same trusts as the land is or was held.

10.9 Although the powers conferred by clause 4 of the draft Bill are very broad, their exercise will not be unfettered. General equitable rules will continue to ensure that these powers can only be properly exercised in the interests of the beneficiaries.¹²⁰ This will, of course, put trusts of land on much the same footing as those of personalty. To the extent that this power includes a power to invest proceeds of sale, its exercise will also be governed by the Trustee Investment Act 1961.

10.10 There may of course be some express limitation of these powers, either by way

¹¹⁶ Section 28 of the Law of Property Act provides that trustees for sale shall have all the powers held by the tenant for life and the trustees of a strict settlement. This definition by analogy is rather clumsy, and does not provide trustees for sale with a sufficiently extensive set of powers.

¹¹⁷ [1947] Ch. 572. See *Emmet on Title*, 19th ed., para. 23.032, for the suggestion that such a purpose might be brought within the power of investment by allowing the life tenant into occupation as a licensee on an undertaking to pay outgoings and to give vacant possession on three months notice. It is further suggested that this decision may not apply at all to statutory powers.

¹¹⁸ *Re Wakeman* [1945] Ch. 177. Cf. *Re Wellstead's Will Trusts* [1949] Ch. 296.

¹¹⁹ Capital money arising under the Settled Land Act 1925 may not be invested in leasehold land with less than 60 years to run: section 73(1)(xi).

¹²⁰ The duties of trustees are fully set out in the textbooks. See, for example, *Snell's Principles of Equity*, 28th ed., Pt. II, ch. 7; Pettit, *Equity and the Law of Trusts*, 5th ed., ch. 17.

"The duties of trustees are many . . . In carrying out the trusts [the trustees] must take due care of the trust property by investing it prudently and in the manner directed; they must give information to the beneficiaries when required, and in some cases submit to their directions; they must comply with any directions of the court and when in difficulty seek its aid; and, finally, they must make no profit out of the trust unless authorised." *Snell's Principles of Equity*, 28th ed., pp. 212–213.

In addition, under the principle *delegatus non potest delegare*, trustees are under a duty to act personally unless delegation of their functions is authorised by the trust instrument or by statute: *Ibid.*, at p. 263.

of provisions subjecting their exercise to the consent of some person or persons, or by way of express restrictions in the trust instrument. In either of these cases, there will be no derogation from the principle that a purchaser should not be required to examine a trust instrument to determine the validity of a conveyance. Therefore, we recommend that purchasers should not be affected by an express limitation of the trustees' powers unless they have notice of that limitation. Clearly, it is in the interest of beneficiaries that there should be some means of ensuring that purchasers do have notice of such a restriction. Accordingly, we further recommend that the trustees should have a duty to take reasonable steps to ensure that any restriction upon their powers is brought to the attention of prospective purchasers. In the case of registered land, trustees should be required to apply for a restriction to be entered on the register of title. Failure on the part of trustees to take such reasonable steps—whether by way of registration (where appropriate) or otherwise—would place them in breach of trust. Beneficiaries with an interest in registered land may protect their position by entering a caution on the register¹²¹ (there is, however, no equivalent measure available to beneficiaries with an interest in unregistered land).

Delegation of Trust Powers

11.1 Our recommendations include a proposal that trustees of land should have a rather broader power of delegation¹²² than they have at present. The major purpose of this extended power is, as we have seen, to enable a beneficiary under a trust of land to be given much the same powers as a tenant for life under a strict settlement. The power of delegation of trustees for sale is insufficient for this purpose because, although the trustees may delegate their powers of management to a beneficiary,¹²³ the duty to sell cannot be effectively delegated.¹²⁴ We recommend that this bar should be removed so as to allow the delegation (without limitation as to time) of all the trust powers in relation to land to any beneficiary with a present, vested, interest. These powers might not be delegated to beneficiaries who have a future or contingent interest, or to those who have a purely monetary interest. The effect of this reform would be to allow the delegation of all the trust powers in relation to land to those persons to whom trustees for sale may at present delegate only their powers of management.

11.2 Delegation will be effected by the grant of a power of attorney.¹²⁵ This means that, as with the trust for sale,¹²⁶ delegation will be on a personal, revocable, basis, with the trustees retaining the legal estate. Thus, even where the trust powers are delegated to a beneficiary, that beneficiary will not be in a position which exactly mirrors that of a tenant for life. The fact that delegation is by way of power of attorney means that, in any dealings with the trust land, it will be clear to those with whom the beneficiary is dealing that he is only acting *qua* attorney. This may be said to have certain disadvantages,¹²⁷ but there are important counter-balancing benefits, particularly for purchasers and, to a lesser extent, for the other beneficiaries. It is to be presumed that most settlors would favour such a restraint.

11.3 One effect of delegation under section 29 of the Law of Property Act is that the trustees are no longer liable to the other beneficiaries for the acts or defaults of the person(s) to whom the powers of management have been delegated.¹²⁸ It is our view that this makes the trustees' liability too narrow. As it is our recommendation that

¹²¹ *Elias v. Mitchell* [1972] Ch. 652.

¹²² Although delegation would be one of the *powers* of an absolute owner, its exercise would conflict with a trustee's *duty* to act personally unless authorised by the trust instrument or by statute: *Snell's Principles of Equity*, 28th ed., p. 263.

¹²³ Section 29, Law of Property Act 1925.

¹²⁴ Section 25 of the Trustee Act 1925, as amended by the Powers of Attorney Act 1971, provides that a trustee may delegate the trusts, powers and discretions vested in him as trustee for a maximum of 12 months only. However, section 3(3) of the Enduring Powers of Attorney Act 1985 (which was intended simply to enable beneficial co-owners to give enduring powers despite attendant trusteeship) appears to allow trustees to delegate, by means of an enduring power of attorney, considerably more widely than is permitted by section 25 of the Trustee Act 1925.

¹²⁵ It is one of the curious features of the Law of Property Act that there is no provision as to how delegation should be effected.

¹²⁶ Law of Property Act 1925, section 29(1).

¹²⁷ See, for example, the comments of Potter, "Strict Settlement and Trust for Sale", (1944) 8 Conv. (N.S.) 147, at p. 157.

¹²⁸ Section 29(3).

delegation should take place within the terms of section 25 of the Trustee Act 1925, so it will follow that trustees of land will be liable to the other beneficiaries for the acts or defaults of the donee(s). Therefore, the trustees will have a clear incentive to adopt a supervisory role.

Powers of the Court

12.1 The courts have interpreted section 30 of the Law of Property Act so broadly as to enable them, in settling a dispute relating to a trust for sale, to give effect to what they perceive to be the purpose of the trust or the intention of the parties in acquiring the trust land. It is our view that the courts should have a similarly broad power to settle disputes concerning trusts of land under the new system.

12.2 There are, however, two main problems with this interpretation. The first, which might be described as a problem of 'form', is that this approach sits uneasily upon the statutory formulation of the trust for sale. Although the 'primary purpose' doctrine may mitigate the artificiality of this formulation, nevertheless it begs many questions about the nature of the trust for sale. The second, or 'substantive', problem is that the doctrine cannot satisfactorily deal with the implications of the duty to sell. The imposition of this duty continues to restrict adversely the courts' discretion.

12.3 The source of the first problem is that any interpretation of the section 30 discretion should, logically, be rationalised in terms of the trust for sale scheme as a whole. The formal terms of the trust for sale are, as we have seen,¹²⁹ quite unsuited to modern conditions of home ownership. Whether or not one remains within the traditional approach, these terms impose some degree of artificiality upon any exercise of the discretion. If, on the one hand, primacy is given to the duty to sell (following the interpretation adopted by Simonds J. in *Re Mayo*),¹³⁰ the trust for sale is defined in such a way as to remain within the constraints imposed by a 'traditional' approach.¹³¹ If, on the other hand, the doctrine of the 'primary purpose' is applied, this artificiality can only be neutralised by formulating reasons for the displacement of the primacy of the duty to sell. There is something odd about a doctrine whose essential purpose is so obviously the circumvention of an inconvenient provision. It is not that there is anything illogical or unrealistic about the substance of the approach, rather it is that this 'creative' interpretation hangs upon the practical unsuitability of the statutory definition. It is somewhat unsatisfactory that court practice should be thus adapted to the inadequacies of the trust for sale.

12.4 As regards the second problem, the imposition of a duty to sell means that, although the court may make "such order as it thinks fit", this discretion may be restricted to a power to either order or refuse a sale.¹³² This makes the court's discretion rather 'one-dimensional'. On this view, it is not (for example) possible for the court to refuse to order a sale and yet impose an occupation rent.¹³³ This obviously limits the effectiveness of the discretion as a means of doing justice to all parties.¹³⁴

12.5 Our recommendations in relation to section 30 should be viewed in the context of the proposed new system as a whole. It is our view that a restructuring of the trust powers, and in particular the elimination of the duty to sell, should clear the way for a genuinely broad and flexible approach. The courts will not be required to give

¹²⁹ See para. 3.

¹³⁰ [1943] Ch. 302, at p. 304: "It appears to me that the judicial discretion conferred by s.30 of the Law of Property Act 1925, must be exercised in the same way as the discretion which is exercisable by the court in the case of an instrument containing an express trust for sale. The trust for sale will prevail unless all [the] trustees agree in exercising the power to postpone."

¹³¹ For which see para. 3.

¹³² See, for example, the comments of Purchas J. in *Dennis v. McDonald*, [1982] Fam. 63, at p. 73: "I do not think that [section 30] enables the court to make orders where an order for sale is not made. Only orders ancillary to an order for sale which are necessary to implement the sale are envisaged by the words of the section. The words are "and the court may make such order as it thinks fit" and not "or the court may make such other orders," etc."

¹³³ Though, as in *Dennis v. McDonald*, an order for payment of an occupation rent may be justified in terms other than those of the Law of Property Act.

¹³⁴ Though see *Re Evers' Trust* [1980] 1 W.L.R. 1327 for an instance in which a refusal to order a sale was conditional upon an undertaking by an occupying co-habitant to indemnify her co-trustee. The threat of sale can be an inducement to negotiate terms.

preference to sale, and, in making orders, will not be restricted to making ones which are simply ancillary to sale.

12.6 As regards the circumstances in which applications to the court should be allowed, our general view is that the courts should be able to intervene in any dispute relating to a trust of land.¹³⁵ Looking at the way in which the courts have approached trusts for sale, it seems that they are already disposed to taking this approach.¹³⁶ There is at present one important restriction, this being that it is not at present possible to apply to the court to prevent either a sale or the exercise of a power.¹³⁷ We recommend that any interested person should be able to apply to the court either to force or prevent a sale, or to force or prevent the exercise of the trustees' powers. This would mean that, in contrast to the trust for sale, any beneficiary or trustee will be able to ask the court to exercise any of the powers described in the next two paragraphs.

12.7 As with the question of trust powers generally, our aim is to express the courts' powers by way of a broad provision rather than by drawing up an inventory. This may not give the courts many more powers than they currently exercise in relation to trusts for sale; our recommendations as to the making of applications and orders may be of greater importance in securing added flexibility.¹³⁸ Similarly, if the trustees have more powers, then the courts' overall 'capacity' will be increased accordingly.

12.8 Generally, this broad power will include powers to interfere with the trustees' exercise of any of the trust powers, to dispense with any contents, or to regulate beneficiaries' occupation of land.¹³⁹

12.9 As regards the exercise of these powers, it is our view that the court's discretion should be developed along the same lines as the current 'primary purpose' doctrine. This approach was moulded to practical requirements,¹⁴⁰ and we consider that it gets the balance more or less right. Nevertheless, we recommend that section 30 should set out some guidelines for the exercise of the court's discretion, the aim being to consolidate and rationalise the current approach. The criteria which the courts have evolved for settling disputes over trusts for sale are ones which will continue to have validity in the context of the new system.¹⁴¹ One function of the guidelines will be to put these criteria on a statutory footing. For example, although it seems clear that the courts will not be slow to protect the interests of children, much may depend upon whether the trust purpose is deemed to be the provision of a 'matrimonial' home or of a 'family' home.¹⁴² Our recommendation here is that the welfare of children should be expressly defined as an independent consideration. The aim is to ensure that the interests of children are not linked to the interests of particular beneficial owners.

12.10 Aside from the welfare of children, the court is directed to have regard to five other factors: the intentions of the settlor; the purpose for which the land was acquired; the wishes of any adults entitled to interests in possession; the interests of any creditor who has obtained a charging order under the Charging Orders Act 1979 against any person for whose benefit trust land is held; and any other matters which appear to the court to be relevant. These guidelines are not designed to restrict the exercise of judicial discretion by either narrowing it in breadth or giving certain interests formal priority

¹³⁵ Under the Trustee Act 1925, section 57, or the Settled Land Act 1925, section 64, the courts already have jurisdiction to add to the powers of trustees of land.

¹³⁶ For example, in *Bull v. Bull* [1955] 1 Q.B. 234, the court adopted a broad definition of the trust for sale so as to bring the case within the terms of section 30.

¹³⁷ This may also be seen as following from the imposition of the duty to sell.

¹³⁸ To put it in other words, it seems that any restriction upon the court's powers results more from the fact that the conditions under which applications may be made are quite narrow, than from a restrictive definition of the powers themselves.

¹³⁹ As to beneficiaries' rights of occupation, see para. 13.3 *et seq.*

¹⁴⁰ Even though it may have developed 'in spite of' the statutory formulation of the trust for sale.

¹⁴¹ It is envisaged that there will be much of value in the existing body of case law, even though these cases assume that there is a duty to sell.

¹⁴² If the purpose is defined as that of providing a 'family' home, then provision for children is implicit in that purpose. If, on the other hand, the purpose is deemed to be that of providing a 'matrimonial' home, the interests of children may be linked to those of the beneficial owners. Compare the cases of *Dennis v. McDonald* [1982] 2 W.L.R. 275, and *Re Holliday* [1980] 3 All E.R. 385 with that of *Re Evers' Trust* [1980] 1 W.L.R. 1327. See *Webb* (1982) 98 L.Q.R. 519.

over certain others.¹⁴³ They are simply designed to indicate some of the more important factors to which the courts should have regard.

12.11 The Insolvency Act 1986 provides for cases in which an application for sale under section 30 is consequential to the insolvency of one of the beneficial owners. Where an application for sale is made by the trustee in bankruptcy of an insolvent, the Insolvency Act provides that this application should be heard in the bankruptcy court, applying the guidelines set out in section 336 of that Act. These guidelines are, however, only applicable to cases of insolvency in which the property concerned is a dwelling house held on trust by the bankrupt jointly with a spouse or former spouse. In other words, the section 336 guidelines do not cover all cases of insolvency. That section does not cover land in which the bankrupt is beneficially interested but which is held on trust for him by his spouse.

12.12 We consider that, if cases of insolvency are to be dealt with in accordance with a separate set of rules, then these rules should apply to all cases of insolvency, regardless of whether or not the property concerned is a dwelling house. We do, however, recognise that applications for the sale of a family home should not be treated on exactly the same basis as other categories. Therefore, we recommend that the provisions of the Insolvency Act 1986 should be extended to cover all applications for sale in which a beneficiary has been adjudged bankrupt, but that paragraphs (b), (c) and (d) of subsection 336(4) of the Insolvency Act 1986 (respectively requiring the court to have regard to: the conduct of the spouse or former spouse, so far as contributing to the bankruptcy; the needs and financial resources of the spouse or former spouse; and the needs of any children) should apply only where the trust land is or has been the home of the bankrupt or the bankrupt's spouse or former spouse.

12.13 The discussion of court powers has thus far proceeded largely on the assumption that we are concerned with concurrent interests. As regards successive interests, the effect of our recommendations will be to replace in this respect the relevant provisions of the Settled Land Act 1925¹⁴⁴ with section 30 of the Law of Property Act 1925 (as amended). This section will be broader and stronger than the existing provisions. One particularly advantageous consequence of this is that remaindermen will be able to make applications under section 30 for a review of the decisions of the trustees, or of any beneficiary to whom the trust powers have been delegated. It may, in this context, be appropriate to consider whether the life tenant's wishes should be given priority over the wishes of other beneficiaries, particularly as we are concerned that the new system should, as much as possible, enable settlors to reproduce the conditions of a strict settlement. It is, however, our view that there should be no restrictions upon the exercise of the court's discretion. The guidelines set out in the revised section 30 reflect our concern that the wishes of the settlor be given some weight.

Position of Beneficiaries

13.1 Clearly, a primary concern of beneficiaries is that the trust land should be managed for their benefit.¹⁴⁵ Given the general requirement that trustees must act within the terms of the trust,¹⁴⁶ there are two factors to be considered in determining how well served beneficiaries are by a given scheme. First, there is the question whether the trustees' powers are such as to enable them to manage the trust land in the interests of all the beneficiaries. Second, there is the question whether the beneficiaries have a sufficient say in the exercise of these powers.

¹⁴³ Clearly, the terms of these guidelines may influence the exercise of the discretion in some way. For example, it may be that the courts' approach to creditors' interests will be altered by the framing of the guideline as to the welfare of children. If the welfare of children is seen as a factor to be considered independently of the beneficiaries' holdings, the courts may be less ready to order the sale of the home than they are at present.

¹⁴⁴ Section 64. This section gives the court a power to authorise a tenant for life to conclude any transaction which (although outside his powers) would be for the benefit of the land or of those persons interested in it. In addition to this, recourse may be had to the (more extensive) provisions of the Variation of Trusts Act 1958.

¹⁴⁵ The difficulty here is, of course, that what is in the interest of one beneficiary may not be in the interest of another.

¹⁴⁶ If they are not to be in breach of trust.

13.2 It being our recommendation that trustees of land should be given powers similar to those of an absolute owner, the trust powers will be wide enough to permit efficient management of the land. In specifying the scope of these powers, it seems necessary to set out expressly the position regarding beneficiaries' rights of occupation. It is not clear whether trustees for sale have a power to let beneficiaries into occupation, and it may also be that, although under the new system the trustees will have the powers of an absolute owner, this would not be considered a proper exercise of those powers.

13.3 We recommend that certain beneficiaries should have a right to occupy the trust land. This right will extend only to beneficiaries with a present, vested, interest in the land.¹⁴⁷ Given that not all land held on trust will be held for occupation,¹⁴⁸ the right will be further restricted to the occupation of land which has been provided or acquired for beneficiaries' occupation, whether from the commencement of the trust or at any time later. In letting any eligible beneficiary into occupation of this land, the trustees will have a power to agree or impose reasonable terms as to occupation rents, repairing obligations, and outgoings.

13.4 Where more than one beneficiary is eligible to occupy trust land, the trustees will have a discretionary power to exclude or restrict the occupation right of any of them. In exercising their discretion, the trustees will be directed to have regard to the purpose of the trust, the circumstances of the eligible beneficiaries, and any other relevant factors. Those beneficiaries whose right of occupation has been so restricted may be granted some form of compensation.¹⁴⁹

13.5 As regards the question of consultation, where the beneficiaries are also the only trustees of the trust, the effect of our recommendations will be to put them (corporately) in much the same position as an absolute owner. Where, however, there are beneficiaries who are not also trustees, the question of consultation and intervention arises far more acutely.¹⁵⁰ At present, the Law of Property Act provides that trustees should as far as possible consult the beneficiaries and, so far as consistent with the general interest of the trust, give effect to their wishes.¹⁵¹ In the case of an express trust for sale, this provision applies only if expressly included in the trust instrument. We recommend that the provision be amended so that it applies to all trusts of land (whether for sale or not), unless expressly excluded in the trust instrument.

13.6 Within the new system, beneficiaries will be in a comparatively better position than beneficiaries of current trusts of land.¹⁵² For example, given that the terms governing applications under section 30 will be less restrictive than they are at present,¹⁵³ beneficiaries will have greater scope to challenge the decisions of the trustees and generally influence the management of the trust land.

Termination of the Trust

14.1 Under section 17 of the Settled Land Act 1925, where the estate owner holds the land free from other equitable interests under a trust instrument the trustees are bound to execute a deed declaring that they are discharged from the trust. A purchaser can then assume that the land is no longer settled land. There has never been a comparable provision for trusts for sale. In the working paper we suggested that there should be such a provision for all trusts of land, and this proposal was particularly well received by consultees.

14.2 It is not possible to reproduce the provisions of section 17 exactly because that section assumes that the legal estate is held by someone who is beneficially entitled to the land. Trustees for sale already have a duty, if requested by a beneficiary entitled to

¹⁴⁷ In other words, those with a purely monetary interest, or with a future or contingent interest, will be excluded. Where the trust is a discretionary one, beneficiaries will only come within the class if and when the trustees have exercised the discretion in their favour.

¹⁴⁸ It may be held for investment, either wholly or in part.

¹⁴⁹ Either by way of payments made by the occupying beneficiary or by way an increased share in the profits of the land. See clause 7 of the draft Bill.

¹⁵⁰ Of course, it may be that a beneficiary has been delegated all the trust powers.

¹⁵¹ Section 26(3).

¹⁵² It should be noted that, as regards beneficiaries under a trust of concurrent interests, the very nature of their interest will be changed. They will have an interest in the land rather than merely in the proceeds of sale.

¹⁵³ See para. 12.

have the legal estate vested in him, to transfer the legal estate to the beneficiary. Where the proceeds of sale are held in trust for persons of full age in undivided shares absolutely, those persons can require the trustees to vest the land in them as joint tenants on trust for sale.

14.3 The effect of our reforms will be to give trustees a power to convey the land to those who are absolutely entitled to it. This power will be exercisable whether or not the conveyance is requested by the beneficiary or beneficiaries. In so conveying the land, trustees will be under a duty to execute a deed of discharge so as to protect purchasers.

C. OTHER MATTERS

Family Charges and Rentcharges

15.1 Strict settlements will at present arise wherever land is charged with the payment of a charge or annuity for the benefit of any person.¹⁵⁴ As it is our policy that there should be no new strict settlements, it is necessary to make alternative provision for this kind of arrangement. We recommend that land which is subjected to a rentcharge or family charge should be held under the new system, the legal owner holding the land on trust for the benefit of himself and the person(s) to whom the charge is payable. This will have little practical effect on dealings with the charged land. At present, if the beneficiary of the strict settlement conveys the legal estate as subject to the charge, then the conveyance need not be in the prescribed form for conveyances of settled land. The purchase money need not be paid to two trustees, and the purchaser or transferee takes the land subject to the charge. Under the new system, conveyances will be of equal simplicity. The trustee may either convey the land as encumbered by the charge, or appoint a second trustee so as to overreach the charge in accordance with the provisions of section 2 of the Law of Property Act.¹⁵⁵

Entailed Interests

16.1 In the working paper¹⁵⁶ we proposed that the creation of new entailed interests should be prevented. This proposal met with strong approval from several consultees. At present, entailed interests can only be constituted behind a strict settlement. Given that our recommendations are designed to minimise use of the Settled Land Act 1925, it seems logical to suggest that there should be no new entails, particularly as the latter would have little purpose outwith the framework of a strict settlement. We recommend that an attempt to create an entailed interest in land should operate as a grant of a fee simple absolute, unless the grantor has an equitable interest only. In this latter case, the attempt to create an entail will take effect as a declaration of trust on the part of the settlor or the personal representative that the land is held on trust (under the new system) for the grantee absolutely. It is at present possible to create entailed interests in personalty. Given that we are concerned to approximate the positions of trusts of real and personal property, we further recommend that it should no longer be possible to create entailed interests in personal property.

Conditional and Determinable Fees

17.1 By virtue of section 7 of the Law of Property Act 1925, a fee simple which is subject to a legal or equitable right of entry or re-entry is a fee simple absolute and hence a legal estate. Our recommendations are not designed to affect this provision, and these estates would continue to be legal estates. However, where a person is granted a conditional or determinable fee in land which does not come within section 7 the land would be held on trust under the new system, the trustees being the grantor or personal representatives (as appropriate).

Charities

18.1 At present, land held under charitable trusts is covered by section 29 of the Settled Land Act 1925.¹⁵⁷ As it is our aim that the Settled Land Act should in future be

¹⁵⁴ Settled Land Act 1925, s.1(1)(v).

¹⁵⁵ We are currently engaged in a review of the law relating to overreaching. See Working Paper No. 106.

¹⁵⁶ See Working Paper No. 94, para. 6.8.

¹⁵⁷ This section provides that land vested in trustees on or for charitable ecclesiastical or public trusts is deemed to be settled land for the purposes of that section only. This provision does not, however, cover all charitable trusts of land. It seems clear that some land is conveyed to trustees on trust for sale to be held for charitable purposes. In such cases the trustees have a duty to sell, but in other respects section 29 applies.

used as little as possible, we consider that charitable trusts of land should come within the scope of our project. Although the Bill contains a general definition which has the effect that all land held on trust should be subject to the provisions of the Law of Property Act 1925 as amended,¹⁵⁸ we take the view that there is a need to provide explicitly for the position with regard to trusts for charitable, ecclesiastical, or public purposes.¹⁵⁹ It is not intended that there should be any alteration of (or any other effect upon) the Charities Act 1960, section 29.¹⁶⁰

18.2 Certain provisions of the Bill will apply only to charitable, ecclesiastical and public trusts. We recommend that where a purchaser has notice that he is dealing with land held on charitable trusts, he should satisfy himself that the trustees have obtained any required consents or orders. In addition to the general requirement that trustees with limited powers should bring these limitations to the attention of purchasers, there is a further specific provision to the effect that trustees holding registered land under charitable trusts should enter an appropriate restriction on the register of title.

Intestacy

19.1 At present, where a person dies intestate all his property, whether real or personal, which is not already money, is held on trust for sale.¹⁶¹ Where a person dies leaving a will his property is not subjected to a trust for sale unless a trust for sale is created by that will.¹⁶² In cases where a trust for sale has been imposed either by will or on intestacy, the situation differs from that of 'ordinary' trusts for sale in that the eventual beneficiaries do not on the death of the testate or intestate become beneficiaries under the trust for sale.¹⁶³

19.2 Our proposals are not designed to alter the relationship between personal representatives and beneficiaries under either an intestacy or an express trust for sale. We do, however, recommend that trusts for sale should no longer automatically arise on intestacy, since no practical justification for this could be perceived. Accordingly, we propose that section 33 of the Administration of Estates Act 1925 be amended so as to provide that, in cases of intestacy, the deceased's estate should be held by his personal representatives on trust under the new system. The personal representatives would hold the property, after meeting those costs and expenses which are at present set out in subsection 33(2), on the same terms as those of subsections 33(2)–(7). This amendment is designed to affect both real and personal property.

19.3 As it is our policy that trusts of land which arise on death should be similar in nature to *inter vivos* trusts, we recommend that the Administration of Estates Act 1925 should be amended so as to provide personal representatives with the powers conferred on trustees of land under section 28 of the Law of Property Act 1925 (as amended).¹⁶⁴

¹⁵⁸ See clause 1.

¹⁵⁹ Hence the inclusion of clause 17.

¹⁶⁰ Which prevents the sale of certain charitable land without the permission of the Charity Commissioners.

¹⁶¹ Administration of Estates Act 1925, s.33(1). The personal representatives of the deceased have power to postpone sale for such period as they think proper.

¹⁶² In such a case, the Administration of Estates Act 1925 gives the executors the powers of trustees for sale. It should be noted that section 39 also applies to intestate estates, and it is not altogether clear how sections 33 and 39 are meant to relate to each other.

¹⁶³ The personal representatives are in a fiduciary position and the rights of the beneficiaries are protected by the court, which ensures that the assets are duly administered. The beneficiaries do not have direct equitable interests in the property which is to be distributed.

¹⁶⁴ Because the deceased's property is legally and beneficially vested in the personal representatives, the latter will not be trustees of land simply by virtue of holding land.

PART III

SUMMARY OF RECOMMENDATIONS

20.1 The present dual system of trusts for sale and strict settlements should be replaced by an entirely new system, applicable to both concurrent and successive interests in land, and 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, as at present, would be able to convey the legal estate free of equitable interests.

[Paragraphs 1.4–1.7; Clause 1]

20.2 *Interests*

Concurrent interests—Land which previously would have become subject to an implied trust for sale should be held by trustees with a power to retain and a power to sell. The doctrine of conversion should be abolished in relation to all trusts, whatever the property and whenever created. It should still be possible for a duty to sell expressly to be imposed but a power to retain should be statutorily implied, contrary intention notwithstanding.

[Paragraphs 3.5–3.7; Clauses 8–12; 19; 21]

Successive interests—It should no longer be possible to create Settled Land settlements and all successive interests should fall under the new system. (Existing settlements would not be affected.)

[Paragraph 4.3; Clauses 13–14]

Minors—Minority should remain a disability and an attempted conveyance of land to a minor should take effect as a declaration of trust, the land being held by the relevant trustee(s) under the new system.

[Paragraphs 5.1–5.3; Clause 15]

Purchasers—The new system should retain the overreaching mechanism, which would operate much as it currently does in relation to trusts for sale.

[Paragraphs 6.1–6.2]

Bare trusts—These should come within the new system.

[Paragraph 7.1; Clause 1]

20.3 *The Trust*

Creation—There should be no special formalities, the only requirement being 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 Settled Land Act settlements. There should be no new settled land and 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.

[Paragraphs 8.1–8.3; Clauses 1; 13–14]

Trustees—Where a trust arises by way of a conveyance to co-owners, the trustees should be, as at present, the first four named in the conveyance. Where new trustees are to be appointed, section 36 of the Trustee Act 1925 should apply, subject to an amendment (applicable to trusts of personalty as well as trusts of land) enabling beneficiaries who are ascertained, *sui juris* and unanimous to exercise, by direction, a priority right of appointment. Where successive interests are created, the trustees should be those appointed by the settlor, failing which, whoever had the legal estate currently vested in him. An attempted conveyance to a minor *inter vivos* would constitute a declaration of trust by the grantor. In testamentary dispositions to a minor, the personal representatives would become trustees. Where a trust arises on intestacy, the administrators of the estate would, as at present, become trustees.

[Paragraphs 9.1–9.2; Clauses 11; 14; 15; 18]

Powers—Trustees should be given all the powers of an absolute owner, subject to general equitable duties as to the exercise of those powers and, in relation to investment, by the Trustee Investment Act 1961. The powers could be expressly limited but, in the absence of actual notice, purchasers should not be affected by any such limitation. Trustees should be under a duty to take reasonable steps to ensure that any such limitation is brought to the attention of prospective purchasers.

[Paragraphs 10.1–10.10; Clause 4]

Delegation—Delegation should be under section 25 of the Trustee Act 1925, by way of power of attorney, and should allow the delegation (without limitation as to time) of all the trust powers in relation to land to any beneficiary with a present, vested interest.

[Paragraphs 11.1–11.3; Clause 5]

Powers of the Court—Section 30 of the Law of Property Act 1925 should be amended (a) so as to enable any trustee or other interested person to apply to the court to intervene in any dispute relating to a trust of land; (b) to include guidelines for the exercise of the court's discretion.

In cases of insolvency, the provisions of section 336 of the Insolvency Act 1986 should be extended to cover all applications for sale in which a beneficiary has been adjudged bankrupt, but paragraphs (b), (c), and (d) of subsection (4) should apply only where the trust land is the home of the bankrupt or his spouse or former spouse.

In relation to successive interests, the relevant provisions of the Settled Land Act 1925 should be replaced by Section 30 of the Law of Property Act 1925 (as amended).

[Paragraphs 12.6–12.13; Clause 6]

Position of Beneficiaries—Beneficiaries with a present, vested interest should have a right to occupy trust land which has been provided or acquired for beneficiaries' occupation, trustees having power to agree or impose reasonable terms as to occupation rents, repairing obligations, and outgoings. Where there is more than one eligible beneficiary, trustees should have a discretionary power, having regard to the purpose of the trust, the circumstances of the eligible beneficiaries and any other relevant factors, to exclude or restrict the occupation right of any of them. Beneficiaries whose right of occupation had been so restricted might be granted compensation. There should be an amendment to the consultation provisions of section 26(3) of the Law of Property Act 1925 to make them applicable to all trusts of land unless expressly excluded.

[Paragraphs 13.3–13.5; Clauses 3; 7]

Termination—Trustees should be empowered to convey the land to those absolutely entitled to it. The power should be exercisable whether or not the conveyance had been requested by the beneficiary or beneficiaries. In so conveying the land, trustees should be under a duty to execute a deed of discharge.

[Paragraph 14.3; Clause 2]

20.4 Other Matters

Family charges and rentcharges—Land subject to a rentcharge or family charge should be held on trust under the new system, the legal owner holding the land on trust for the benefit of himself and the person(s) to whom the charge is payable. The trustee may convey the land as encumbered or appoint a second trustee so as to overreach the charge in accordance with section 2 of the Law of Property Act 1925.

[Paragraph 15.1; Clause 14]

Entailed interests—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.

[Paragraph 16.1; Clause 16]

Conditional and determinable fees—Where a person is granted a conditional or determinable fee in land which does not come within section 7 of the Law of Property Act 1925, the land should be held under the new system, the trustees being the grantor or personal representatives.

[Paragraph 17.1; Clause 14]

Charities—Trusts for charitable, ecclesiastical or public purposes would be subject to the provisions of the Law of Property Act 1925 as amended. (No alteration of, or other effect upon, the Charities Act 1960, section 29 is intended.) Where a purchaser has notice that he is dealing with land held on charitable trusts, he should satisfy himself that the trustees have obtained any required consents or orders. Trustees holding registered land under charitable trusts should enter an appropriate restriction on the register of title.

[Paragraphs 18.1–18.2; Clause 17]

Intestacy—Section 33 of the Administration of Estates Act 1925 should be amended so as to provide that, in cases of intestacy, the deceased's estate (both real and personal property) be held by his personal representatives on trust with a power to sell. The Administration of Estates Act 1925 should be amended so as to provide personal representatives with the powers conferred on trustees of land under section 28 of the Law of Property Act 1925 (as amended).

[Paragraphs 19.2–19.3; Clauses 11; 20]

(Signed) ROY BELDAM, *Chairman*
TREVOR M. ALDRIDGE
BRIAN DAVENPORT
JULIAN FARRAND
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MICHAEL COLLON, *Secretary*

30 December 1988*

* All substantive work on this Report was completed before 30 December 1988, but submission and publication were delayed by final editorial work and the completion of the consequential provisions in the annexed draft Bill.

Trusts of Land Bill

ARRANGEMENT OF CLAUSES

Preliminary

Clause

1. Meaning of “trust of land” and “trustees of land”.

*Application of provisions relating to trusts for sale
to all trusts of land with amendments*

2. Duration and termination of trusts of land.
3. Duty of trustees to consult beneficiaries.
4. Powers of management etc. of trustees.
5. Delegation of powers by trustees of land.
6. Powers of court in respect of exercise of functions by trustees of land and trust disputes.

Right of beneficiary to occupy trust land

7. Right of beneficiary to occupy trust land.

Ending of statutory imposition of trusts for sale

8. Trusts on which mortgaged property held after redemption barred.
9. Land held in personalty settlements.
10. Joint ownership of land without trust for sale.
11. Trusts on intestacy.
12. Trusts arising on reverter of sites.

Phasing out of Settled Land Act 1925

13. No new settled land.
14. Dispositions formerly creating settled land to operate as dispositions on appropriate trusts.
15. Conveyances to minors.
16. Effect of attempts to create entailed interests.
17. Trusts of land for charitable, public or ecclesiastical purposes.

Miscellaneous provisions

18. Appointment of new trustees.

Trusts of Land

Clause

19. Power to postpone sale to apply to all trusts for sale despite contrary intention.
20. Powers etc. of trustees of land to apply to personal representatives.
21. Abolition of doctrine of conversion as respects trust property.

Supplementary provisions

22. Interpretation.
23. Minor and consequential amendments and repeals.
24. Short title, commencement and extent.

SCHEDULES:

Schedule 1 —Minor and Consequential Amendments.

Schedule 2 —Repeals.

DRAFT

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B I L L

INTITULED

An Act to make provision with respect to land held subject to trusts, the functions of trustees holding land and of personal representatives and the appointment of trustees; to prevent the creation of new entailed interests; to abolish the doctrine of conversion as respects property held by trustees or personal representatives; and for connected purposes. A.D. 1989.

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:—

Preliminary

1.—(1) In this Act—

'trust of land' means any trust (whenever created and whether express, implied or constructive) subject to which land is held, other than a trust which is a settlement to which the Settled Land Act 1925 applies; and

Meaning of
"trust of land"
and "trustees of
land".

1925 c. 20.

'trustees of land' means the persons holding land on such a trust (including personal representatives holding land as trustees).

(2) In section 205(1) of the Law of Property Act 1925 after paragraph (xxix) there shall be inserted—

“(xxixa) ‘trust of land’ and ‘trustees of land’ have the same meanings as in the Trusts of Land Act 1989;”.

*Application of provisions relating to trusts for sale
to all trusts of land with amendments*

2.—(1) For section 23 of the Law of Property Act (duration of trusts for sale) there shall be substituted—

Duration and
termination of
trusts of land.

EXPLANATORY NOTES

Clause 1

1. Clause 1 contains two definitions, designed to bring all trusts except existing Settled Land Act settlements under the umbrella of the new single trust system (see report, paragraphs 1.6-1.7, 3.5, 4.3, 5.1-5.2, and 7.1).

Subsection (1)

2. In this subsection:-

(a) "trust of land" is defined as any trust (express, constructive or implied) other than a settlement to which the Settled Land Act 1925 applies. (It thus includes trusts for sale, bare trusts and charitable trusts, and settlements created after commencement of the present Act (see clauses 13 and 14 below)).

(b) "trustees of land" are defined as the persons holding land on such a trust, including personal representatives holding land as trustees. (Personal representatives who have not assented in writing in their own favour as trustees continue to hold the legal estate in land as personal representatives and do not, therefore, fall within the definition: *Re King's Will Trust* [1964] Ch. 542).

Subsection (2)

3. This subsection adds the two definitions to those in section 205(1) of the Law of Property Act 1925.

Clause 2

4. This clause deals with the duration and termination of trusts of land, substituting a re-draft for the present section 23 of the Law of Property Act 1925 (duration of trusts for sale).

Subsection (1)

5. This subsection sets out the new section 23:-

Subsection (1)

This effectively re-enacts the protection for the purchaser afforded by the present section 23: a trust of land is deemed to continue, so far as a purchaser is concerned, until the land has been conveyed to, or under the direction of, a beneficiary who is sui juris and absolutely entitled to it under that trust.

Trusts of Land

1925 c.20.

"Trusts of land

Duration and termination of trusts of land.

23.—(1) Subject to subsection (2) of this section, a trust of land shall, so far as the position of any purchaser of the land is concerned, be deemed to continue until the land has been conveyed to or under the direction of a person who is sui juris and for whom the land is held absolutely under the trust (whether or not he is beneficially entitled to it).

(2) Where trustees of land hold the land on trust absolutely for a person who is sui juris (whether or not he is beneficially entitled to it)—

(a) they may convey the land to him absolutely, notwithstanding that they have not been required to do so; and

(b) if they execute such a conveyance (whether or not they have been so required), they shall execute a deed declaring that they are discharged from the trust so far as that land is concerned.

(3) A purchaser of land in respect of which a deed has been executed in pursuance of subsection (2)(b) is entitled to assume that the land has ceased to be subject to the trust.”.

(2) This section applies whether the trust is created before or after the commencement of this Act.

Duty of trustees to consult beneficiaries.

1925 c.20.

3.—(1) Section 26 of the Law of Property Act 1925 (which contains provisions as to consents to the exercise of a trust for sale) shall have effect subject to the amendments in subsections (2) to (4) (which apply those provisions to the exercise by any trustees of land of any functions).

(2) In subsection (1)—

(a) for the words “execution of a trust for sale of land” there shall be substituted the words “exercise of any function by any trustees of land”; and

(b) for the words from “execution” to “trustees for sale” there shall be substituted the words “exercise by them of that function”.

(3) In subsection (2) for the words “execution of any such trust or power” and “execution of the trust or the exercise of the power” there shall be substituted respectively the words “exercise of any such function” and “exercise of that function”.

(4) In subsection (3) for the words “Trustees for sale” and “the rents and profits of the land until sale” there shall be substituted respectively the words “Trustees of land” and “the land”.

(5) For the second sentence of subsection (3) (trustees’ duty to consult with beneficiaries not to apply in express trusts unless contrary intention apparent in disposition creating trust) there shall be substituted—

EXPLANATORY NOTES

Subsections (2) and (3)

These implement paragraphs 14.1 to 14.3 of the report, which recommend that there should be a provision similar to section 17 of the Settled Land Act for all trusts of land. Trustees are empowered to convey trust land to a person who is sui juris and absolutely entitled to it, whether or not so required by him; however, if they do so, they must execute a deed of discharge, which will entitle a purchaser to assume that the land has ceased to be subject to that trust.

Subsection (2)

6. This applies the new provisions to all trusts of land, whenever created.

Clause 3

7. This clause deals with the duty of trustees to consult beneficiaries and contains amendments to section 26 of the Law of Property Act 1925 (consents to the execution of a trust for sale).

Subsections (1) to (4) and (6)

8. These subsections contain the amendments necessary to extend the provisions of section 26 to all trusts of land.

Subsection (5)

9. This subsection implements the recommendation in paragraph 13.5 of the report that subsection (3) of section 26 be amended so that the trustees' duty to consult applies unless expressly excluded in the trust instrument.

Subsection (7)

10. This applies the new provisions to all trusts of land, whenever created.

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“This subsection shall apply except in so far as provision to the contrary is made by the disposition creating the trust.”

(6) In subsection (4) for the words “trust for sale” there shall be substituted the word “trust”.

(7) This section applies whether the trust was created before or after the commencement of this Act.

4.—(1) For section 28 of the Law of Property Act 1925 (powers of management etc. conferred on trustees for sale) there shall be substituted— Powers of management et of trustees.

“Powers of management etc. of trustees of land. 28.—(1) Subject to the provisions of this section and to any restrictions imposed by any enactment on the exercise by trustees of land of any particular power, such trustees shall have all the powers of an absolute owner in relation to the land subject to the trust. 1925 c. 20. 1925 c.20.

(2) Without prejudice to the powers conferred on them by the Trustee Investments Act 1961 or otherwise, trustees of land may purchase—

(a) an estate in fee simple absolute in possession in any land in England or Wales; or

(b) a term of years absolute in any such land, for any purpose they think fit.

(3) In exercising their powers under subsection (1) or (2) of this section trustees of land shall have regard to the rights and claims of all the persons interested in the land (whether beneficially or otherwise).

(4) In subsections (2) and (3) “trustees of land” includes the trustees of the proceeds of sale of land which immediately before its sale was subject to a trust of land or was or was deemed to be settled land for the purposes of the Settled Land Act 1925; and the reference in subsection (3) to “land” shall be construed accordingly.

(5) Where under a trust of land the land subject to the trust becomes vested absolutely in persons of full age in undivided shares (whether beneficially or not), the trustees may, subject to the following provisions of this section, partition the land or any part of it and provide by way of mortgage or otherwise for the payment of any equality money.

(6) The trustees shall give effect to any such partition by conveying the land partitioned in severalty (whether or not subject to any legal mortgage created for raising equality money) to persons of full age either absolutely or on trust, according to the rights of the persons interested under the partition.

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Clause 4

Subsection (1)

11. This subsection substitutes a re-draft for the present section 28 of the Law of Property Act 1925 (powers of management, etc., conferred on trustees for sale). The new section 28 contains eleven subsections:-

12. *Subsections (1) to (4)*

These subsections implement the recommendation, discussed in paragraphs 10.1 to 10.9 of the report, that trustees of land should be given all the powers of an absolute owner in relation to trust land (subject to their general equitable duties as trustees and, in relation to the investment of proceeds of sale, to the provisions of the Trustee Investment Act 1961). Specifically mentioned is the power to purchase freeholds or leaseholds (for any term). In exercising their powers, trustees are expressly required to have regard to the interests of the beneficiaries. "Trustees of land" include trustees of the proceeds of sale of land which, prior to sale, was trust land (including land which either was, or was deemed to be, settled land) and "land" is to be construed accordingly.

13. *Subsections (5) to (9)*

These subsections effectively re-enact subsections (3) and (4) of the present section 28 (partition), with amendments so as to apply them to all trusts of land.

14. *Subsection 10*

This subsection implements the recommendation contained in paragraph 10.10 of the report that it should be possible expressly to limit trustees' powers, by making them subject to consent or otherwise.

15. *Subsection (11)*

This makes it clear that the expression "authorised attorney" in the new subsection (7) means an attorney acting under a registered enduring power of attorney.

Subsection (2)

16. This subsection implements the recommendations in paragraph 10.10 of the report (a) that purchasers should not be affected by an express limitation of the trustees' powers unless they have notice of it; (b) that trustees should be under a duty to take reasonable steps to ensure that any limitation on their powers is brought to the attention of prospective purchasers; and (c) that if the trust land is registered, trustees whose powers are limited

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(7) Before exercising their powers under subsection (5) the trustees shall obtain the consent of the persons, if any, of full age who are interested in possession in the land (other than as mere annuitants) or, in the case of a person suffering from mental disorder, of his receiver or authorised attorney; but a purchaser may assume that all such consents which are necessary have been obtained.

(8) 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.

(9) If a share in the land is absolutely vested in a minor, subsections (5) to (8) of this section shall 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 on trust for him.

(10) This section shall not apply if or to the extent that provision to the contrary is made by the disposition creating the trust and, in particular, if that disposition requires any consent to be obtained to the exercise of any power, the power may not (subject to section 26 of this Act) be exercised without that consent.

(11) In subsection (7) "authorised attorney" means an attorney acting under the authority of a power of attorney which is registered under section 6 of the Enduring Powers of Attorney Act 1985."

1985 c. 29.

(2) After that section there shall be inserted—

"Protection of purchasers from trustees with limited powers.

28A.—(1) Where the powers of trustees of land are limited by virtue of section 28(10) of this Act—

- (a) if the land is registered under the Land Registration Act 1925, the trustees shall apply under section 58 of that Act (power to place restrictions on the register) for an entry to be placed on the register of title to prevent any transaction concerning the land being effected otherwise than in conformity with that limitation; and
- (b) if the land is not so registered, the trustees shall take all reasonable steps to bring the limitation to the notice of any purchaser of the land.

(2) Where land subject to a trust is not so registered—

- (a) a purchaser of the land is entitled to assume that the powers of the trustees are not limited by virtue of section 28(10) of this Act unless he has actual notice to the contrary; and

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should be required to apply for a restriction to be entered on the register of title. The necessary provisions are contained in an additional section (28A), to be inserted after section 28 of the Law of Property Act 1925.

Subsection (3)

17. This applies the new provisions to all trusts of land, whenever created, and, where the trust is of the proceeds of sale of land, whenever the sale took place.

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(b) in favour of a purchaser without such notice such a limitation shall not invalidate any exercise of those powers.”.

(3) This section applies whether the trust was created before or after the commencement of this Act and, where the trust is a trust of the proceeds of sale of land, whether the sale took place before or after its commencement.

Trusts of Land

Delegation of powers by trustees of land.

1925 c.20.

5.—(1) For section 29 of the Law of Property Act 1925 (delegation of powers of management by trustees for sale) there shall be substituted—

“Delegation of powers by trustees of land.

29. The power conferred by section 25(1) of the Trustee Act 1925 (delegation by trustees by power of attorney for period not exceeding 12 months) may be exercised by a trustee of land so as to delegate any functions as respects land subject to the trust for an indefinite period if every donee of the power of attorney is a person of full age with a vested interest in possession in the land (other than a mere annuitant).”.

(2) This section applies whether the trust was created before or after the commencement of this Act, but does not affect the operation of section 29 as respects any delegation of powers before that time.

Powers of court in respect of exercise of functions by trustees of land and trust disputes.
1986 c. 45.

6.—(1) For section 30 of the Law of Property Act 1925 (powers of court where trustees for sale refuse to exercise powers) there shall be substituted—

“Powers of court as respects trusts of land.

30.—(1) Any person who is a trustee of land or is interested (whether beneficially or otherwise) in the land may apply to the court for an order under this section.

(2) On an application under this section the court may make such order as it thinks fit—

(a) as to the exercise by the trustees of any of their functions; or

(b) for the settlement of any dispute which has arisen concerning the trust or the land subject to it.

(3) In considering on such an application whether to order that land subject to a trust be sold, the court shall, subject to subsection (5) of this section, have regard—

(a) to the intentions of the settlor;

(b) to the purpose for which the land was acquired;

(c) if the land includes any dwelling, to the welfare of any minor who occupies or might reasonably be expected to occupy it as his home;

(d) to the wishes of any persons of full age who are entitled to interests in possession in the land or, in the case of a dispute between them, of the majority (according to the value of their combined interests) of those persons;

(e) to the interests of any creditor who has obtained a charging order under the Charging Orders Act 1979 against any person for whose benefit any land subject to the trust is

EXPLANATORY NOTES

Clause 5

18. This clause deals with the delegation of powers by trustees of land.

Subsection (1)

19. This subsection sets out a redrafted section 29 of the Law of Property Act, implementing the recommendation discussed in paragraphs 11.1 to 11.3 of the report that the power of delegation conferred by section 25 of the Trustee Act 1925 should be extended to allow the delegation (without limit of time) of any functions in relation to trust land to any beneficiary of full age with a present, vested interest (other than a mere annuitant).

Subsection (2)

20. This subsection applies the section to all trusts of land, whenever created, but specifies that it does not affect the operation of section 29 in relation to any delegation prior to commencement.

Clause 6

21. This clause deals with the powers of the court in relation to trustees' exercise of their functions and to trust disputes.

Subsection (1)

20. This subsection implements, by means of a re-drafted section 30 of the Law of Property Act 1925, the recommendations in paragraphs 12.1 to 12.10 of the report. The new section 30 has six subsections:-

21. *Subsections (1), (2) and (6)*

These are designed to ensure (a) that any person who is a trustee of, or otherwise interested in, trust land may apply to the court under the section; and (b) that the court's powers are sufficiently broad to enable it to make such order as it thinks fit, as to the exercise by trustees of any of their functions, or for the settlement of any dispute concerning the trust or trust land. "Land" includes the proceeds of sale of land which was trust land immediately prior to its sale.

22. *Subsection (3)*

This subsection sets out factors to which the court must have regard in considering whether to order sale of trust land.

23. *Subsection (4)*

This makes it clear that where the application relates to the exercise by trustees of their powers

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or may be held; and

(f) to any other matters appearing to the court to be relevant.

(4) Where an application under this section relates to the exercise by trustees of their powers under section 7 of the Trusts of Land Act 1989, the court shall have regard also to the matters mentioned in subsection (3)(c) of that section.

(5) Subsection (3) does not apply in the case of an application to which section 335A of the Insolvency Act 1986 applies (applications by the trustee of a bankrupt for the sale of land).

(6) In subsections (1) and (2) of this section "land" includes the proceeds of sale of land which was immediately before its sale subject to the trust in question.

(7) The county court has jurisdiction under this section where the land which is to be dealt with in the court does not exceed the county court limit in capital value or net annual value for rating."

(2) At the beginning of Chapter V of the Insolvency Act 1986 there shall be inserted—

"Rights under trusts of land

Rights under trusts of land.

335A.—(1) Any application by a trustee of a bankrupt's estate under section 30 of the Law of Property Act 1925 (powers of court in respect of powers of trustees of land and trust disputes) 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 under that section as it thinks just and reasonable having regard—

(a) to the interests of the bankrupt's creditors;

(b) to all the circumstances of the case other than the needs of the bankrupt; and

(c) in a case where section 336(6) applies, to the other matters there mentioned.

(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."

(3) In section 336 of the Insolvency Act 1986—

(a) subsection (3) which is superseded by subsection (2) shall be omitted; and

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under clause 7 (below) in relation to beneficiaries' occupation of trust land, the court is to have regard also to the circumstances and wishes of the beneficiaries who have a right to occupy the land.

24. *Subsection (5)*

This specifies that subsection (3) does not apply where the application is made by the trustee of a bankrupt for the sale of land. Such applications are subject to different guidelines (see below).

Subsections (2) and (3)

25. These subsections set out the amendments necessary to implement the recommendations in paragraph 12.12 of the report that in cases of insolvency, the provisions of section 336 of the Insolvency Act 1986 should be extended to cover all applications for sale in which a beneficiary has been adjudged bankrupt, but that paragraphs (b), (c) and (d) of subsection (4) of that section should apply only where the trust land is or has been the home of the bankrupt or the bankrupt's spouse or former spouse.

Subsection (4)

26. This subsection applies the section to all trusts, whenever created and to applications made before, as well as after, commencement.

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- (b) in subsection (4) (factors to be considered by the court on such applications as mentioned in subsections (2) and (3) of that section) the words “or (3)” and “or section 30 of the Act of 1925” shall be omitted; and
- (c) after subsection (5) of that section there shall be inserted—

“(6) Where such an application as is mentioned in section 335A 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, in addition to the matters mentioned in subsection (2) of that section the court shall also have regard to the matters mentioned in paragraphs (b) to (d) of subsection (4) of this section.”.

- (4) This section applies whether the trust was created before or after the commencement of this Act and the functions conferred on the court by virtue of this section are exercisable on an application made before or after that time.

Right of beneficiary to occupy trust land

7.—(1) Subject to the provisions of this section, a person with a vested interest in possession under a trust (other than a mere annuitant) shall be entitled to occupy any land subject to the trust if—

Right of beneficiary to occupy trust land.

(a) the purposes of the trust include making the land available for his occupation or the occupation of beneficiaries in general; or

(b) the land has been acquired by the trustees for that purpose, and the land is reasonably available for occupation by him.

(2) Where, apart from this subsection, two or more persons would be entitled to occupy land under subsection (1), then the trustees may—

(a) restrict in any reasonable manner they think fit the right of any of those persons to occupy the land or any part of it;

(b) impose such reasonable conditions on any of those persons in relation to his occupation as they think fit.

(3) In exercising their powers under subsection (2) in relation to any land the trustees shall have regard—

(a) to the intentions of the settlor;

(b) to the purpose for which the land was acquired;

(c) to the circumstances and wishes of each of the persons who are (or apart from any previous exercise by the trustees of those powers would be) entitled to occupy the land; and

(d) to any other relevant matters.

(4) Without prejudice to the generality of subsection (2)(b), the conditions which may be imposed on a person under that subsection may include conditions requiring him—

(a) to make payments to any other person by way of compensation for the restriction of that other person's rights of occupation under this section;

(b) to forego any payment or other benefit to which he would otherwise be entitled under the trust so as to benefit any other person whose rights are so restricted;

(c) to pay any outgoings or expenses in respect of the land;

(d) to assume any other obligation in relation to the land or to any activity which is or is proposed to be conducted there.

(5) The powers conferred on the trustees by subsection (2) may not be exercised—

(a) so as prevent any person in occupation of any land from occupying it, or

(b) in a manner likely to result in any person ceasing to occupy any land,

unless he consents or the court has by order approved that exercise.

(6) The court shall not make an order under subsection (5) unless, having regard to the matters mentioned in subsection (3), they consider it just to do so.

EXPLANATORY NOTES

Clause 7

27. This clause deals with the right of a beneficiary to occupy trust land. It implements the recommendations contained in paragraphs 13.3 and 13.4 of the report.

Subsection (1)

28. This subsection specifies which beneficiaries are entitled to occupy trust land, and the circumstances in which the right to occupy arises.

Subsection (2)

29. This subsection deals with the situation in which two or more beneficiaries are entitled to occupy and empowers trustees (a) to restrict the occupation right of any such beneficiary; (b) to impose conditions of occupation.

Subsection (3)

30. This subsection sets out the factors to which trustees are to have regard in exercising their powers under subsection (2).

Subsection (4)

31. This subsection sets out a (non-exhaustive) list of conditions which may be imposed upon an occupying beneficiary.

Subsections (5) and (6)

32. These subsections provide that trustees may not exercise their powers under subsection (2) so as to upset any present occupation of the land unless the occupier consents or the court approves by order; and the court may not make such an order unless, having regard to the factors set out in subsection (3), it considers it just to do so.

Subsection (7)

33. This subsection applies the section to all trusts, whenever created.

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(7) This section applies whether the trust was created before or after the commencement of this Act.

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Ending of statutory imposition of trusts for sale

Trusts on which mortgaged property held after redemption barred.
1925 c.20.

8.—(1) In section 31 of the Law of Property Act 1925 (trust for sale of mortgaged property where right of redemption barred) for the words from “trust for sale” in subsection (1) to the word “applicable”, in the second place where it occurs, in subsection (2) there shall be substituted the words “on trust—

- (a) to apply the income from the property as if it were interest paid on the mortgage debt; and
- (b) if the property is sold, to apply the net proceeds of sale, after payment of costs and expenses, as if they were a repayment of the mortgage debt”.

(2) Subsections (3) and (4) of that section shall cease to have effect.

(3) Subsection (1) applies whether the right of redemption is discharged before or after the commencement of this Act, but this section has effect without prejudice to any dealings or arrangements before that time.

Land held in personalty settlements.

9. Section 32 of the Law of Property Act 1925 (implied trust for sale of land held in personalty settlements) shall cease to have effect.

Joint ownership of land without trust for sale.

10.—(1) Section 34 of the Law of Property Act 1925 (effect of dispositions to tenants in common) and section 36 of that Act (joint tenancies) shall have effect subject to the following amendments (which provide that land to which those sections apply shall, instead of being held on statutory trusts for sale, be held on the trusts appropriate for giving effect to the rights and claims of interested persons).

(2) In subsection (2) of section 34 (conveyance in undivided shares to operate as conveyance to grantees on statutory trust for sale) and in subsection (3) of that section (devises and bequests in undivided shares) for the words “upon the statutory trusts hereinafter mentioned” there shall be substituted the words “upon such trusts as are appropriate for giving effect to the rights and claims of the persons interested in the land (whether beneficially or otherwise)”.

(3) Subsection (4) of that section (settlement of undivided shares in land to operate only as settlement of share of proceeds of sale and rents and profits) shall be omitted.

(4) In section 36—

- (a) in subsection (1) (trusts applicable to land held for persons as joint tenants) for the words “on trust for sale” there shall be substituted the words “on trust”;
- (b) in the proviso to subsection (2) (severance of beneficial joint tenancy) for the words “under the trust of sale affecting the land, the net proceeds of sale, and the net rents and profits until sale” there shall be substituted the words “under the trust the land”;
- (c) in the second sentence of that subsection (rights of survivor of joint tenants who is solely or beneficially interested not to be

EXPLANATORY NOTES

Clauses 8 to 10

34. These clauses implement, in relation to statutory trusts for sale, the recommendation in paragraph 3.5 of the report that all land which previously would have been held under an implied trust for sale should now be held under the new trust system.

35. *Clause 8* sets out the necessary amendments to section 31 of the Law of Property Act 1925 (trust for sale of mortgaged property where right of redemption barred). Subsection (3) states that the new system is to apply regardless of when the right of redemption is discharged but that dealings or arrangements made prior to commencement are not to be affected.

36. *Clause 9* states that section 32 of the Law of Property Act 1925 (implied trust for sale of land held in personalty settlements) is to cease to have effect.

37. *Clause 10* sets out the necessary amendments to sections 34 (effect of dispositions to tenants in common) and 36 (joint tenancies) of the Law of Property Act 1925. Subsection (5) applies the amendments to all dispositions, whenever made.

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affected by trust for sale) for the words "on trust for sale" there shall be substituted the words "on trust".

(5) This section applies whether the disposition comes into force before or after the commencement of this Act.

Trusts on
intestacy.
1925 c. 23.

11.—(1) Section 33 of the Administration of Estates Act 1925 (trust for sale on intestacy) shall have effect subject to the following amendments.

(2) For subsection (1) there shall be substituted—

“(1) On the death of a person intestate as to any real or personal estate, such estate shall be held by his personal representatives upon trust.”.

(3) In subsection (2) for the words from the beginning to “shall pay” there shall be substituted the words “The personal representatives shall pay out of the ready money of the deceased and any net money arising from the disposal of any other part of his estate (after payment of costs)”.

(4) In subsection (4) for the words from “including” to “retained unsold” there shall be substituted the words “and any part of the estate of the deceased which remains unsold”.

(5) This section applies whether the death occurred before or after the commencement of this Act.

Trusts arising on
reverter of sites.
1987 c.15.

12.—(1) Section 1 of the Reverter of Sites Act 1987 (right of reverter replaced by trust for sale) shall have effect subject to the following amendments.

(2) In subsection (1)—

(a) the words “on the trust arising under this section” shall be omitted; and

(b) at the end there shall be added the words “on trust (subject to the following provisions of this Act) 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”.

(3) Subsection (2) shall be omitted.

(4) In subsection (3) for the words “trustees for sale” there shall be substituted the word “trustees”.

(5) In subsection (4) for the words “trust for sale” there shall be substituted the word “trust”.

(6) Notwithstanding anything in subsection (1) of that section, this section shall not affect the operation of that section as respects any trust which has arisen by virtue of that section before the commencement of this Act.

Phasing out of Settled Land Act 1925

No new settled
land.
1925 c. 18.

13. Land shall not be or be deemed to be settled land for the purposes of the Settled Land Act 1925 by virtue of being or being deemed to be subject to a settlement, unless it was or was deemed to be such land by virtue of being or being deemed to be subject to that settlement immediately before the commencement of this Act and has remained so since.

EXPLANATORY NOTES

Clause 11

38. This clause implements the recommendation contained in paragraph 19.2 of the report that trusts for sale should no longer arise on intestacy (in relation to either real or personal property) and that the personal representatives of the deceased should instead hold the estate on trust under the new system. Subsections (1) to (4) set out the necessary amendments to section 33 of the Administration of Estates Act 1925. Subsection (5) states that the amendments apply whether the death occurred before or after commencement.

Clause 12

39. This clause implements the recommendation contained in paragraph 3.5 of the report in relation to trusts arising on reverter of sites, and sets out the necessary amendments to Section 1 of the Reverter of Sites Act 1987. Subsection (6) stipulates that the operation of trusts which have arisen under that section prior to commencement is not to be affected.

Clause 13

40. This clause implements the recommendations in the report: (a) that it should no longer be possible to create Settled Land Act settlements, although existing such settlements would not be affected (paragraph 4.3); and (b) that there should be no addition to settled land held under existing such settlements (paragraph 8.3).

Trusts of Land

Dispositions
formerly
creating settled
land to operate
as dispositions
on appropriate
trusts.

14.—(1) Where, apart from section 13, land would become settled land by virtue of being—

- (a) held in trust for persons in succession; or
- (b) charged (otherwise than for full consideration in money or money's worth) with the payment of any sums for the benefit of any persons,

it shall be held instead on such trusts as are appropriate for giving effect to the rights and claims of the persons interested in the land (whether beneficially or otherwise).

(2) Where an instrument coming into operation after the commencement of this Act contains an expression which immediately before its commencement would have created—

- (a) a trust of any land for any person in possession—
 - (i) for an estate in fee simple or for a term of years absolute subject to an executory limitation, gift, or disposition over on the happening of any event;
 - (ii) for a base or determinable fee (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; or

- (b) a trust of any land for any person for an estate in fee simple or for a term of years absolute contingently on the happening of any event,

that instrument shall operate instead as a declaration that the grantor or, if the instrument is a will, the personal representatives of the deceased hold the land on such trusts as are appropriate for giving effect to the rights and claims of the persons interested in the land (whether beneficially or otherwise).

(3) In subsection (2) "determinable fee" means a fee determinable either by limitation (including a trust) or condition.

EXPLANATORY NOTES

Clause 14

41. This clause also implements the report's proposals in relation to the phasing out of the Settled Land Act 1925 by implementing its recommendations that: (a) all successive interests; (b) land which is charged with the payment of a rentcharge or family charge; and (c) conditional and determinable fees (other than those to which section 7 of the Law of Property Act 1925 applies), (paragraphs 4.3, 15.1 and 17.1, respectively), should now be held on trust under the new system.

Trusts of Land

Conveyances to minors.

15.—(1) For section 19 of the Law of Property Act 1925 (effect of conveyances of legal estates to infants) there shall be substituted—

1925 c.18.

“Conveyances to minors.

19.—(1) A conveyance of a legal estate in land to a minor alone, or to two or more minors jointly—

(a) shall not be effective to pass any legal estate, but

(b) shall operate as a declaration that the land is held on the appropriate trusts.

(2) A conveyance of a legal estate in land to a minor jointly with one or more other persons of full age shall operate to vest the legal estate in the other person or persons on the appropriate trusts, but not so as to sever any beneficial joint tenancy in the land.

(3) In this section “appropriate trusts” means such trusts as are appropriate for giving effect to the rights and claims of the persons interested in the land (whether beneficially or otherwise).

(4) Subsections (1) and (2) of this section apply—

(a) whether or not the minor or minors are beneficially entitled to the land in question, and

(b) if they are beneficially entitled, whether they are so entitled as joint tenants or as tenants in common.

(5) Nothing in this section prevents an equitable interest in land being conveyed to a minor.”

(2) Where immediately before the commencement of this Act a conveyance to a minor alone or to two or more minors jointly operated by virtue of section 27(1) of the Settled Land Act 1925 (effect of conveying legal estate to infant) as an agreement to execute a settlement in favour of, and meantime to hold the land in trust for, the minor or minors, that conveyance shall operate instead as a declaration that the land is held on such trusts as are appropriate for giving effect to the rights and claims of the persons interested in the land (whether beneficially or otherwise).

(3) Except as provided by subsection (2), this section does not affect any conveyance which came into operation before the commencement of this Act.

EXPLANATORY NOTES

Clause 15

42. This clause deals with conveyances to minors. It implements the recommendation in paragraph 5.1 of the report that minority should remain a disability and that an attempt to convey land to a minor should take effect as a declaration of trust, the land being held by the relevant trustee(s) under the new system.

Subsection (1)

43. Subsection (1) contains a redrafted section, to be substituted for the present section 19 of the Law of Property Act 1925 (effect of conveyances of legal estates to infants). Inter alia, the "new" section 19 specifically refers to a conveyance to minors as tenants in common (thus covering the gap presently existing in section 27(1) of the Settled Land Act 1925). Subsections (3), (4), (5) and (6) of the "old" section 19 (making special provisions for conveyances on trust or by way of mortgage) are otiose, as the new provisions make it clear that any conveyance of any legal interest in land to a minor creates a trust in favour of the minor, and have accordingly been omitted from the "new" section 19.

Subsection (2)

44. Under section 27(1) of the Settled Land Act 1925, the effect of a conveyance of a legal estate to a minor is to create a contract to execute a settlement in favour of the minor. Subsection (2) removes any doubt as to the position if the present Act comes into force between the conveyance and the execution of the settlement by providing that the conveyance will in those circumstances operate as a declaration of trust (thus preventing further Settled Land Act settlements coming into existence and bringing any such conveyances into line with conveyances to minors after the commencement of the Act).

Subsection (3)

45. This stipulates that, save as provided by subsection (2), the section does not affect pre-commencement conveyances.

Trusts of Land

16.—(1) Section 130(1) to (3) of the Law of Property Act 1925 (creation of entailed interests in real and personal property) shall not apply to any instrument taking effect after the commencement of this Act.

Effect of attempts to create entailed interests.
1925 c.20.

(2) Where such an instrument contains an expression showing an intention to create an entailed interest in either real or personal property then, subject to subsection (3)—

(a) if it purports to grant any person a legal interest in tail, it shall operate instead to transfer the property to him absolutely; and

(b) if it purports to grant any person an equitable interest in tail, it shall operate instead as a declaration that the property is held in trust for him absolutely.

(3) Where the person to whom such an instrument purports to grant an interest is a minor, section 19 of the Law of Property Act 1925 (effect of conveyances to infants) shall apply as if the instrument were a conveyance having effect as mentioned in subsection (2).

17.—(1) Without prejudice to the generality of section 13, section 29 of the Settled Land Act 1925 (by virtue of which land vested or to be vested in trustees on charitable or public trusts is deemed settled land for the purposes of that section) shall only apply to land which has continuously been held on or for the same charitable, ecclesiastical or public trusts or purposes since before the commencement of this Act.

Trusts of land for charitable, public or ecclesiastical purposes.
1925 c.18.

(2) Any conveyance of land held on charitable, ecclesiastical or public trusts must state that the land is held on such trusts.

(3) Where land registered under the Land Registration Act 1925 is held on charitable, ecclesiastical or public trusts the trustees shall apply under section 58 of that Act (power to place restrictions on the register) for an entry to be placed on the register of title to prevent any transaction concerning the land being effected without any necessary consents or orders.

1925 c. 21.

(4) Section 26 of the Law of Property Act 1925 (consents of two persons to exercise of trustees' powers sufficient) and subsection (1) of section 28A of that Act (which provides for the protection of purchasers from trustees with limited powers) shall not apply as respects the exercise of any powers by trustees of land held on charitable, ecclesiastical or public trusts, and where a purchaser of such land has notice that the land is held on those trusts he must see that any consents or orders necessary to authorise the purchase have been obtained.

(5) Subsections (2) to (4) do not apply to land to which section 29 of the Settled Land Act applies and none of this section applies to land to which the Universities and College Estates Act 1925 applies.

1925 c.24.

(6) Nothing in this section affects the jurisdiction of the High Court, the Charity Commissioners or any other competent authority in relation to the administration of such trusts.

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Clause 16

46. This clause implements the recommendation in paragraph 16.1 of the report that the creation of new entailed interests should be prevented. It provides that an attempt to grant a legal interest in tail will operate instead as a grant of a fee simple absolute; an attempt to grant an equitable interest in tail will operate instead as a declaration of trust that the land is held on trust for the grantee absolutely.

Clause 17

47. This clause deals with trusts of land for charitable, public or ecclesiastical purposes. It expressly confirms that the recommendation in the report as to the phasing out of the Settled Land Act 1925 extends to land held under charitable trusts (see paragraph 18.1) and implements the recommendations in paragraph 18.2 of the report in relation to special provisions applicable only to charitable, ecclesiastical and public trusts.

Subsection (1)

48. This subsection states that section 29 of the Settled Land Act (land vested or to be vested in trustees on charitable or public trusts to be deemed settled land for the purposes of that section) is not to apply to land unless it applied to it immediately before the commencement of the present Act and has continued to do so since.

Subsection (2)

49. This subsection stipulates that any conveyance of land held on charitable, ecclesiastical or public trusts must state that the land is held on such trusts. (Section 29(1) of the Settled Land Act 1925 contains a similar provision).

Subsection (3)

50. This subsection provides that where registered land is held on charitable, ecclesiastical or public trusts, the trustees are to apply for an entry to be placed on the register of title to prevent any transaction concerning the land being effected without any necessary consents or orders.

Subsection (4)

51. Subsection (4) states that section 26 of the Law of Property Act 1925 (consents of two persons to exercise of trustees' powers sufficient) and section 28A of that Act (protection of purchasers from trustees with limited powers) shall not apply in relation to the exercise of powers by trustees of land held on charitable,

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ecclesiastical or public trusts, and where a purchaser of such land has notice that it is held on such trusts, he must see that any necessary consents or orders have been obtained.

Subsection (5)

52. Subsection (5) states that subsections (2) to (4) do not apply to land to which the Settled Land Act applies and that none of the section applies to land to which the Universities and College Estates Act 1925 applies.

Subsection (6)

53. Subsection (6) confirms that nothing in the section affects the jurisdiction of the High Court, the Charity Commissioners or any other competent authority in relation to the administration of such trusts.

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Miscellaneous provisions

Appointment of
new trustees.
1925 c.19.

18.—(1) Section 36 of the Trustee Act 1925 (subsections (1) and (6) of which provide for the appointment respectively of new or additional trustees by the person nominated by the trust instrument or by the trustees) shall have effect subject to the following amendments.

(2) After subsection (1) there shall be inserted—

“(1A) If—

(a) there is no person falling within paragraph (a) of subsection (1), or no such person who is able and willing to act, and

(b) all the beneficiaries under the trust are sui juris,

then all the beneficiaries acting together may in writing direct the person or persons who are entitled by virtue of subsection (1)(b) to appoint a new trustee to appoint such person or persons as may be specified in the direction, and the appointment shall be made accordingly.

(1B) Where the beneficiaries have power to give such a direction by virtue of a trustee being incapable, by reason of mental disorder within the meaning of the Mental Health Act 1983, of exercising his functions as trustee, they may, instead of giving such a direction, direct the trustee's receiver, or (if no receiver is acting for him) any person authorised for that purpose by the authority having jurisdiction under Part VII of that Act, to appoint such person or persons as may be specified in the direction to be a trustee or trustees in his place (but subject to subsection (9) of this section).

(1C) Where the beneficiaries have power to give a direction under subsection (1A) or, as the case may be, subsection (1B) of this section, the persons mentioned in paragraph (b) of subsection (1) of this section may not make an appointment without receiving a direction unless the beneficiaries are not all willing and able to give a direction.”.

(3) After subsection (6) there shall be inserted—

“(6A) If—

(a) there is no person falling within paragraph (a) of subsection (6) of this section, or no such person who is able and willing to act, and

(b) all the beneficiaries under the trust are sui iuris,

then all the beneficiaries acting together may in writing direct the person or persons who are entitled by virtue of subsection (6)(b) to appoint an additional trustee to appoint such person or persons as may be specified in the direction, and the appointment shall be made accordingly.

(6B) Where the beneficiaries have power to give a direction under subsection (6A) of this section, the persons mentioned in paragraph (b) of subsection (6) of this section may not make an appointment without receiving a direction unless the beneficiaries are not all willing and able to give a direction.”.

1983 c.20.

EXPLANATORY NOTES

Clause 18

54. This clause deals with the appointment of new trustees and implements the recommendation in paragraph 9.1 of the report that section 36 of the Trustee Act 1925 be amended so as to enable beneficiaries who are ascertained, sui juris and unanimous to exercise, by direction, a right of appointment that takes priority over that currently accorded to existing trustees. Subsections (1) to (3) set out the necessary amendments and additions to section 36 of the Trustee Act 1925. Subsection (4) stipulates that the changes do not affect section 36 as it applies by virtue of section 64 of the same Act and is without prejudice to certain transitional provisions contained in Schedule 1 to the Law of Property Act dealing with the replacement of the Public Trustee.

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(4) This section does not affect section 36 of the Trustee Act 1925 as it applies by virtue of section 64 of that Act (Settled Land Act trustees and trustees for the purposes of the management of land during a minority) and is without prejudice to proviso (ii) to paragraph 3 of Part III, proviso (iii) to paragraph 1(3) and proviso (ii) to paragraph 1(4) of Part IV of Schedule 1 to the Law of Property Act 1925 (under which the replacement of the Public Trustee requires his consent).

19.—(1) For subsection (1) of section 25 of the Law of Property Act 1925 (power to postpone sale) there shall be substituted—

“(1) Notwithstanding any provision to the contrary in the instrument creating the trust, a power to postpone sale shall be implied in the case of every trust for sale of land.”.

(2) In subsection (2) of that section the words from the beginning to “sale)” and from “nor” onwards shall be omitted.

(3) In subsection (4) of that section (trust either to retain or sell land to be construed as trust to sell with power to postpone sale) for the words “to sell the land with power to postpone the sale” there shall be substituted the words “with power to sell the land”.

Power to postpone sale to apply to all trusts for sale despite contrary intention. 1925 c.20.

EXPLANATORY NOTES

Clause 19

55. This clause implements the recommendation in paragraph 3.7 of the report that in an express trust for sale of land, a power to retain should be implied, contrary intention notwithstanding. Subsections (1) to (3) set out the necessary amendments to section 25 of the Law of Property Act 1925 (power to postpone sale).

Powers etc. of trustees of land to apply to personal representatives.
1925 c.20.

20.—(1) In section 33 of the Law of Property Act 1925 (provisions of Part I of that Act relating to trustees for sale to apply to personal representatives holding on trust for sale) for the words “trustees for sale” and “holding on trust for sale” there shall be substituted respectively the words “trustees of land” and “holding land on trust”.

1925 c.23.

(2) In subsection (1) of section 39 of the Administration of Estates Act 1925 (powers of management of personal representatives)—

(a) in paragraph (i) (powers available before the commencement of that Act)—

(i) at the beginning there shall be inserted the words “as respects the personal estate,”; and

(ii) the words from “and such power” onwards shall be omitted;

(b) for paragraph (ii) there shall be substituted—

“(ii) as respects the real estate, all the functions conferred as respects land subject to a trust by section 28 of the Law of Property Act 1925 (taking the reference in subsection (3) to the persons interested in the land as a reference to the persons interested in the due administration of the estate and disregarding subsection (10) (contrary intention))”;

(c) in paragraph (iii) for the words “conferred by statute on trustees for sale and” there shall be substituted the word “necessary”.

(3) This section applies whether the testator or intestate died before or after the commencement of this Act.

Abolition of doctrine of conversion as respects trust property.

21.—(1) In determining for any purpose whether property subject to a trust or held by personal representatives should be treated as personalty or realty, any duty of the trustees or the personal representatives to deal with that property so as to alter its nature in that respect shall be disregarded.

(2) Subsection (1) applies whether the trust was created or the testator or intestate died before or after the commencement of this Act.

EXPLANATORY NOTES

Clause 20

56. This clause implements the recommendation in paragraph 19.3 of the report that personal representatives should be provided with the powers conferred on trustees of land under section 28 of the Law of Property Act 1925 (as amended). Subsections (1) and (2) set out the necessary amendments to section 33 of the Law of Property Act 1925 (application of Part I of that Act to personal representatives) and subsection (1) of section 39 of the Administration of Estates Act 1925 (powers of management of personal representatives), respectively. Subsection (3) makes it clear that the changes apply whenever the testator's or intestate's death occurred.

Clause 21

57. This clause implements the recommendation in paragraph 3.6 of the report that the doctrine of conversion should be abolished in relation to all property subject to a trust or held by personal representatives.

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Supplementary provisions

Interpretation.
1925 c. 20.

22. Except where the context otherwise requires, section 205(1) of the Law of Property Act 1925 applies for the interpretation of this Act as it applies for the interpretation of that Act.

Minor and consequential amendments and repeals.

23.—(1) The enactments mentioned in Schedule 1 have effect subject to the amendments mentioned in that Schedule (which extend certain provisions applying to trusts for sale or trustees for sale to all trusts of land or, as the case may be, all trustees of land, or are otherwise consequential on or incidental to this Act).

(2) Subject to paragraph 23 of that Schedule, those amendments apply to trusts created before or after the commencement of this Act.

(3) The Lord Chancellor may by order made by statutory instrument make such modifications of any existing statutory provision as appear to him to be appropriate in consequence of the provisions of this Act.

(4) A statutory instrument made in the exercise of the power conferred by subsection (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) In subsection (3) “existing statutory provision” means any enactment contained in a public general or local Act and passed before, or in the same Session as, this Act.

(6) The enactments mentioned in Schedule 2 are repealed to the extent specified in the third column but subject to subsection (7).

(7) The repeals in sections 7(3) and 130 of the Law of Property Act 1925 do not affect the validity of any interest created before the commencement of this Act.

Short title, commencement and extent.

24.—(1) This Act may be cited as the Trusts of Land Act 1989.

(2) This Act shall come into force on such day as the Lord Chancellor may by order made by statutory instrument appoint.

(3) The provisions of this Act do not extend to Scotland or Northern Ireland except so far as it affects other enactments so extending.

EXPLANATORY NOTES

Clause 22

58. This clause deals with interpretation (except where context otherwise requires, section 205(1) of the Law of Property Act 1925 to apply for the interpretation of this Act).

Clause 23

59. This clause deals with minor and consequential amendments, and repeals (set out in Schedules 1 and 2, respectively).

Clause 24

60. This clause deals with the short title, commencement and extent.

SCHEDULES

SCHEDULE 1

MINOR AND CONSEQUENTIAL AMENDMENTS

1. Section 32 of the Wills Act 1837 shall cease to have effect.

1922 c.16.

2. In paragraph 17(3) and (4) of Schedule 15 to the Law of Property Act 1922 for the words "on trust for sale" there shall be substituted the words "under a trust of land within the meaning of the Trusts of Land Act 1989".

1925 c. 18.

3.—(1) The Settled Land Act 1925 shall have effect subject to the following amendments.

(2) In section 17—

(a) in the proviso to subsection (1) for the words "settlement, trust for sale" and the words "settlement, or trust for sale" there shall be substituted the word "trust";

(b) for the words "trust for sale" in the second place where they occur in the second sentence of subsection (1) and in subsections (2)(c) and (3) there shall be substituted the word "trust";

(c) in subsection (2)(b) for the word "settlement" there shall be substituted the word "trust";

(d) there shall be omitted—

(i) in paragraph (a) to the proviso to subsection (1), the words "a vesting instrument or";

(ii) in the second sentence of subsection (1) the words from "is settled land" to "or" and "as the case may require".

(3) In section 36—

(a) for the words "upon the statutory trusts" in subsection (2) and the words "on the statutory trusts" in subsection (3) there shall be substituted the words "on such trusts as are appropriate for giving effect to the rights and claims of the persons interested in the land (whether beneficially or otherwise)";

(b) in subsection (4), for the words "trust for sale" there shall be substituted the words "trust of land (within the meaning of that Act)";

(c) subsection (6) shall be omitted.

1925 c.19.

4.—(1) The Trustee Act 1925 shall have effect subject to the following amendments.

(2) In section 10(2), in the first sentence the words "by trustees or" and "the trustees or" and in the second sentence the words from the beginning to "mortgage; and" shall be omitted.

(3) In section 14(2) for the words "the proceeds" and "trust for sale" there shall be substituted respectively the words "proceeds" and "trust".

(4) In section 24—

- (a) after the words “undivided share” there shall be inserted the words “in land or”; and
- (b) for the words “trust for sale” and “trustees for sale” there shall be substituted respectively the words “trust” and “trustees”.

(5) In section 27(1) for the words “or of a disposition on trust for sale” there shall be inserted the words “trustees of land (within the meaning of the Trusts of Land Act 1989)”.

(6) For section 32(2) there shall be substituted—

“(2) This section applies only where the trust property consists of money, securities or land subject to a trust of land (within the meaning of the Trusts of Land Act 1989) and is not treated as land or applicable as capital money for the purposes of the Settled Land Act 1925.”

(7) In section 34(2) for the words “on trust for sale of land” there shall be substituted the words “creating trusts of land within the meaning of the Trusts of Land Act 1989”.

(8) In section 35 after subsection (3) there shall be inserted—

“(3A) Subsections (1) and (3) of this section shall apply in the case of a conveyance of land on trusts not including a trust for sale, where there are for the time being trustees of a settlement of the proceeds of the land if it is sold, as they apply in the case of a conveyance of land on trust for sale, taking the reference in subsection (3) to trustees for sale as a reference to the trustees of the conveyance.”.

5.—(1) The Law of Property Act 1925 shall have effect subject to the following amendments. 1925 c. 20.

(2) In section 2—

- (a) in subsection (1)(ii) for the words “trustees for sale” and the words “the statutory requirements respecting the payment of money arising under a disposition upon trust for sale” there shall be substituted respectively the words “trustees of land” and “the requirements of section 27 of this Act respecting the payment of capital money arising on such a conveyance”;
- (b) in subsection (2) for the words “a trust for sale”, the words “the trust for sale”, in both places where they occur, and the words “trustees for sale” there shall be substituted respectively the words “a trust of land”, “the trust” and “trustees”.

(3) In section 3—

- (a) paragraph (b) of subsection (1) shall be omitted;
- (b) in paragraph (c) of that subsection for the words from the beginning to “sale” there shall be substituted the words “in any other case”;
- (c) subsection (2) shall be omitted;
- (d) in subsection (5) for the words from the beginning to “owners” there shall be substituted the words “If the estate owners”.

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- (4) In section 16—
- (a) in subsection (2) for the words “pursuant to a trust for sale” there shall be substituted the words “by a trustee of land”;
 - (b) in subsection (6) for the words “trustee for sale” there shall be substituted the words “trustee of land”.
- (5) In section 18—
- (a) in subsection (1) for the words “the proceeds of sale of land, being land held on trust for sale” and “trustee for sale” there shall be substituted respectively the words “land or the proceeds of sale of land subject to a trust of land” and “trustee of land”;
 - (b) in subsection (2) for the words “trustees for sale”, in both places where they occur, there shall be substituted the words “trustees of land”.
- (6) In section 22(2) for the words “land held on trust for sale”, “trust for sale” and “trustees for sale” there shall be substituted respectively the words “land subject to a trust of land”, “trust” and “trustees”.
- (7) After subsection (1) of section 24 there shall be inserted—
- “(1A) Subsection (1) of this section shall apply in the case of a conveyance of land on trusts not including a trust for sale, where there are for the time being trustees of a trust of the proceeds of sale of the land if it is sold, as it applies in the case of a conveyance of land on trust for sale”.
- (8) In section 27—
- (a) for subsection (1) there shall be substituted—
- “(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 by which the trust is created.”;
- (b) in subsection (2) for the words “trust for sale”, “the settlement of the net proceeds” and “trustees for sale” there shall be substituted respectively the words “trust”, “any trust affecting the net proceeds of sale of the land if it is sold” and “trustees”.
- (9) In section 39(4) for the words “trusts for sale” there shall be substituted the words “trusts of land”.
- (10) In section 42—
- (a) subsection (1)(a) shall be omitted; and
 - (b) in subsection (2) for the words “trust for sale” in both places where they occur there shall be substituted the words “trust”.
- (11) In section 66(2) for the word “trustee for sale” there shall be substituted the words “trustee of land”.
- (12) In section 102(1) for the words “trustees for sale” there shall be substituted the words “trustees”.

(13) In section 131 after the words “but for this section” there shall be inserted the words “and section 16 of the Trusts of Land Act 1989”.

(14) In section 137—

(a) in subsection (2)(ii) after the words “proceeds of sale of land” there shall be inserted the words “subject to a trust of land”;
and

(b) in subsection (5) for the words “held on trust for sale” there shall be substituted the words “subject to a trust of land”.

(15) In section 153(6) for the words “in trust for sale” there shall be substituted the words “as a trustee of land”.

(16) In paragraph 2 of Part III of Schedule 1 for the words from “on the statutory trusts” to “until sale” there shall be substituted the words “on the appropriate trusts (within the meaning of section 19 of this Act), but not so as to sever any beneficial joint tenancy in the land”.

(17) In paragraph 1 of Part IV of that Schedule for the words “upon the statutory trusts”, in the first place they occur, there shall be substituted the words “on such trusts as are appropriate for giving effect to the rights and claims of the persons interested in the land whether beneficially or otherwise (in this Part of this Schedule referred to as “the appropriate trusts)” and for those words in the second and subsequent places where they occur there shall be substituted the words “on the appropriate trusts”.

(16) In paragraph 1(9) of that Part for the words “The trust for sale” and “on trust for sale” there shall be substituted respectively the words “The power of sale” and “on trust”.

(17) In paragraph 2 of that Part for the words “on the statutory trusts” there shall be substituted the words “on such trusts as are appropriate for giving effect to the rights and claims of the persons interested in the land (whether beneficially or otherwise)”.

(18) In paragraph 2 of Part V of that Schedule for the words from “on the statutory trusts” to “court” there shall be substituted the words “on such trusts as are appropriate for giving effect to the rights and claims of the persons interested in the land whether beneficially or otherwise (the power to sell the land being exercisable only with the leave of the court)”.

6.—(1) The Land Registration Act 1925 shall have effect subject to the following amendments. 1925 c.21

(2) In section 3(xv)(a) for the words “land held on trust for sale” and “trustees for sale” there shall be substituted respectively the words “land subject to a trust of land” and “trustees of land”.

(3) For section 3(xxviii) and (xxix) there shall be substituted—

“(xxviii) “trust of land” has the same meaning as in the Trusts of Land Act 1989;

(xxix) “trustee of land” has the same meaning as in the Trusts of Land Act 1989;”.

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(4) In sections 4 and 8(1) for the words "trustee for sale" there shall be substituted the words "trustee of land".

(5) In section 49(1)(d) for the words "in the proceeds of sale of land held on trust for sale" and "disposition on trust for sale" there shall be substituted respectively the words "in or in the proceeds of sale of land subject to a trust of land" and "trust disposition".

(6) In section 49(2) for the words "trust for sale" in the first place where they occur and the words "trustees of a disposition on trust for sale" there shall be substituted respectively the words "trust of land" and "trustees of land".

(7) In section 49(3) for the words "trust for sale" there shall be substituted the words "trust".

(8) In section 83(11)(b) for the words "land held on trust for sale" there shall be substituted the words "land held subject to a trust of land".

(9) In section 94—

(a) for subsection (1) there shall be substituted—

"(1) Where registered land is subject to a trust of land, the land shall be registered in the names of the trustees."; and

(b) in subsection (3) for the words "trust for sale, the trustees for sale" there shall be substituted the words "trust of land, the trustees".

(10) In section 95 for the words "land on trust for sale" there shall be substituted the words "land subject to a trust of land".

(11) In paragraph (b) of the proviso to section 103(1) for the words "on trust for sale" and "on the execution of the trust for sale" there shall be substituted the words "subject to a trust of land" and "on a sale of the land by the trustees".

(12) In section 111(1) for the words "trustees for sale" there shall be substituted the words "trustees of land".

1925 c.23.

7. In the Administration of Estates Act 1925—

(a) in the definition of "real estate" in section 3(1)—

(i) in paragraph (i) for the words "every interest" there shall be substituted the words "subject to paragraph (ii) below, every interest"; and

(ii) in paragraph (ii) for the words "trust for sale" there shall be substituted the word "trust";

(b) in section 41(6) for the words "trusts for sale there shall be substituted the words "trusts";

(c) in section 51(3) after the word "married" there shall be inserted the words "and without issue" and for the words "an entailed interest" there shall be substituted the words "a life interest".

1938 c.xciii.

8. In section 19(1)(b) of the Green Belt (London and the Home Counties) Act 1938 for the words "trustee for sale within the meaning of the Law of Property Act 1925" in the first place where they occur there shall be substituted the words "trustee of land within the

- meaning of the Trusts of Land Act 1989” and for those words in the second place where they occur there shall be substituted the words “trustee of land”. SCH. 1
9. In section 1 of the Settled Land and Trustee Acts (Courts’ General Powers) Act 1943— 1943 c.25.
- (a) in subsection (1) for the words “trustees for sale of land” and “land held on trust for sale” there shall be substituted respectively the words “trustees of land within the meaning of the Trusts of Land Act 1989” and “land subject to such a trust of land”; and
- (b) in subsections (2) and (3) for the words “trust for sale” there shall be substituted the words “trust of land”.
10. In section 5(2) of the House of Commons Members’ Fund Act 1948 after the word “money” there shall be inserted the word “land”. 1948 c.36.
11. In sections 8(3), 8A(3) and 8B(3) of the Historic Buildings and Ancient Monuments Act 1953 for the words from “in the case” to “thereof” there shall be substituted the words “are conferred by law on trustees of land within the meaning of the Trusts of Land Act 1989”. 1953 c. 49.
12. In section 16(2) of the Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967 for the words “trustee for sale” in both places where it occurs there shall be substituted the words “trustee of land”. 1967 c.xxix.
13. In the Leasehold Reform Act 1967— 1967 c.88.
- (a) in section 6(1) for the words “statutory trusts” there shall be substituted the word “trusts”;
- (b) in section 24(1)(a) and in paragraph 7(1) and (3) of Schedule 2 for the words “on trust for sale” there shall be substituted the words “under a trust of land within the meaning of the Trusts of Land Act 1989”.
14. In section 33(2) of the Agriculture Act 1970 after the words “trust for sale” and “trustees for sale” there shall be inserted respectively the words “or trust of land within the meaning of the Trusts of Land Act 1989” and “the trustees of land”. 1970 c. 40.
15. In the Land Charges Act 1972— 1972 c.61.
- (a) in section 2(4)(iii)(b) for the words “trust for sale” there shall be substituted the words “trust of land”;
- (b) in section 17 for the words “trust for sale” there shall be substituted the words “trust of land”.
16. In section 10(2) of the Land Compensation Act 1973 for the words “on trust for sale” there shall be substituted the words “under a trust of land within the meaning of the Trusts of Land Act 1989”. 1973 c.26.
17. In section 11(2) of the Local Land Charges Act 1975 for the words “trust for sale” there shall be substituted the words “under a trust of land within the meaning of the Trusts of Land Act 1989”. 1975 c. 76.

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1977 c. 30.
- 18.—(1) In section 2(3) of the Rentcharges Act 1977—
- (a) in paragraph (a) for the words from “making” onwards there shall be substituted the words “causing the land to fall within section 14(1) of the Trusts of Land Act 1989”; and
 - (b) in paragraph (b) for the words from “already” onwards there shall be substituted the words “already falls within that section or is settled land”.
- (2) In section 10(2) for the words “trust for sale” there shall be substituted the words “trust of land within the meaning of the Trusts of Land Act 1989”.
- (3) Nothing in sub-paragraph (1) affects the validity of any instrument made before the commencement of this Act.
- 1979 c.46.
19. In the Ancient Monuments and Archaeological Areas Act 1979—
- (a) in section 12(3) for the words “trust for sale” there shall be substituted the words “trust of land within the meaning of the Trusts of Land Act 1989”;
 - (b) in section 18(4)(b) for the words “trustees for sale within the meaning of the Law of Property Act 1925” there shall be substituted the words “trustees of land within the meaning of the Trusts of Land Act 1989”.
- 1980 c.58.
20. In paragraph 9 of Schedule 1 to the Limitation Act 1980—
- (a) for the words “land held on trust for sale” there shall be substituted the words “land subject to a trust of land within the meaning of the Trusts of Land Act 1989”;
 - (b) for the words “proceeds of sale” in both places where they occur there shall be substituted the words “proceeds of its sale”.
- 1980 c.66.
21. In section 87(4)(b), of the Highways Act 1980 the words from “and section” to “sale)” shall cease to have effect.
- 1981 c.54.
22. In the definition of “estate” in section 128 of the Supreme Court Act 1981—
- (a) in paragraph (a) for the words “every interest” there shall be substituted the words “subject to paragraph (b) below, every interest”; and
 - (b) in paragraph (b) for the words “money to arise” there shall be substituted the words “the interest of a beneficiary”.
- 1983 c.41.
- 23.—(1) In section 22 of the Health and Social Services and Social Security Adjudications Act 1983—
- (a) in subsection (3) for the words “trust for sale” there shall be substituted the word “trust”;
 - (b) in subsection (5) for the words “a joint tenant in the proceeds of sale of land held upon trust for sale” and “those proceeds” there shall be substituted respectively the words “an equitable joint tenant in land held on trust” and “the land”;
 - (c) in subsection (6) for the words “a joint tenant in the proceeds of sale of land held upon trust for sale”, “the proceeds is” and “interests in the proceeds” there shall be substituted

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respectively the words “an equitable joint tenant in land held on trust”, “the land is” and “interests in the land”;

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(d) in subsection (8) for the words “an interest in the proceeds of sale of land” there shall be substituted the words “the interest of an equitable joint tenant in land held on trust”.

(2) This paragraph does not affect the operation of that section as respects any charge created under it before the commencement of this Act.

24. In the County Courts Act 1984, in section 24(2)(c) for “30(2)” there shall be substituted “30(7)”. 1984 c. 28.

25. In section 19(2) of the Family Law Reform Act 1987 for the words “which is used to create” there shall be substituted the words “showing an intention to create”. 1987 c.42.

SCHEDULE 2

REPEALS

Chapter	Short title	Extent of repeal
7 Will. 4 and 1 Vict. c.26. 1922 c.16.	The Wills Act 1837.	Section 32.
1925 c.18.	The Law of Property Act 1922.	Section 188(30).
1925 c.19	The Settled Land Act 1925.	In section 17, in paragraph (a) to the proviso to subsection (1), the words “a vesting instrument or” and in the second sentence of subsection (1) the words from “is settled land” to “or” and “as the case may require”. Section 27. Section 36(6).
1925 c.19	The Trustee Act 1925.	In section 10(2), in the first sentence the words “by trustees or” and “the trustees or” and in the second sentence the words from the beginning to “mortgage; and”. In section 68(19) the words “and with or without power at discretion to postpone the sale”.

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Chapter	Short title	Extent of repeal
1925 c.20.	The Law of Property Act 1925.	<p>Section 3(1)(b) and (2). In section 7(3), the words from "This section" onwards. In section 25(2), the words from the beginning to "sale)" and from "nor" onwards. Section 31(3) and (4). Section 32. In section 34(2), the words from "and so" to "shares". Section 34(4). Section 35. Section 42(1)(a). Section 130(6). In section 205(1)(xxix) the words "and with or without a power at discretion to postpone the sale".</p>
1925 c.23.	The Administration of Estates Act 1925.	<p>In paragraph (i) of section 39(1) the words from "and such power" onwards. In section 55(1)(xxvii), the words "and with or without a power at discretion to postpone the sale".</p>
1927 c.36.	The Landlord and Tenant Act 1927.	<p>In section 13, in subsection (1) the words from "(either" to 1925)", in subsection (2) the words "trustee for sale or personal representative" and in the second sentence of subsection (3) the words from "and" onwards.</p>
1932 c.27.	The Law of Property (Entailed Interests) Act 1932.	<p>Section 1(1).</p>
1939 c.72.	The Landlord and Tenant (War Damage) Act 1939.	<p>Section 3(c).</p>

Chapter	Short title	Extent of repeal
1946 c.73.	The Hill Farming Act 1946.	Section 11(2).
1949 c.74.	The Coast Protection Act 1949.	In section 11(2)(a), the words from "by", in the second place it occurs, to "sale" and the words "by that section as applied as aforesaid".
1954 c.56.	The Landlord and Tenant Act 1954.	In paragraph 6 of Schedule 2, the words from "by", in the second place it occurs, to "sale" and the words "by that section as applied as aforesaid".
1957 c.59.	The Coal Mining (Subsidence) Act 1957.	In section 11(7)(a), the words from "and by" in the first place they occur to "sale" and the words "by that section as applied as aforesaid".
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), the words from "or", in the first place it occurs, to "sale", in the first place it occurs, the words "or by that section as applied as aforesaid" and the words "or by trustees for sale". In Schedule 2, in paragraph 9(1), the words from "or", in the first place it occurs, to "sale" and the words "or by that section as applied as aforesaid".
1969 c.10.	The Mines and Quarries (Tips) Act 1969.	In section 32(2)(a) and (b), the words from "by that" to "sale".
1970 c.40.	The Agriculture Act 1970.	In section 30(1), the words from "(including" to "1925)".
1971 c.78.	The Town and Country Planning Act 1971.	In section 275(1)(a), the words from "and by" to "sale" and the words "by that section as so applied".
1977 c.42.	The Rent Act 1977.	In Schedule 2, in paragraph 2(b) the words from "or if" to "sale".

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Chapter	Short title	Extent of repeal
1980 c.58.	The Limitation Act 1980.	In section 18(1)(a) the words from "including" to "sale". In the definition of "land" in section 38(1) the words from "including" to "sale".
1980 c.66.	The Highways Act 1980.	In section 87(4)(b), the words from "and" to "sale)".
1984 c.28.	The County Courts Act 1984.	In Part II of Schedule 2, in paragraph 2, in sub-paragraph (1) the words from "section 30" to "powers)", sub-paragraph (2) and in sub-paragraph (3) the word "30(2)".
1985 c.68.	The Housing Act 1985.	In section 507(3), the words from "that section" to "sale".
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, subsection (3) and in subsection (4), the words "or (3)" and "or section 30 of the Act of 1925".
1987 c. 15.	The Reverter of Sites Act 1987.	Section 1(2).

APPENDIX B

List of individuals and associations who commented on Working Paper No. 94

The Association of Corporate Trustees
The Association of Land Owning Charities
J. D. Bolton
British Legal Association
Chancery Bar Association
J. H. Chapman FRICS, PPRVA
The Charity Commission
Trustees of the Chatsworth Settlement
The Committee of London and Scottish Bankers
Country Landowners Association
Professor S. M. Cretney MA, DCL, FBA
B. Denyer-Green LL.M., FRICS
P. E. D. Dunning
Farrer and Co.
Gloucestershire and Wiltshire Incorporated Law Society
Solicitors and Surveyor to the Grosvenor Estate
Halifax Building Society
Professor B. W. Harvey MA, LL.M.
H.M. Land Registry
Holborn Law Society
Institute of Legal Executives
Jaques and Lewis
Justice
The Law Society Standing Committee on Land Law and Conveyancing
S. D. Leney
Linklaters and Paines
The Lord Chancellor's Department
Macfarlanes
May, May and Merrimans
National Consumer Council
Royal Institution of Chartered Surveyors
R. N. Sexton LL.M.
Southport and Ormskirk Law Society
W. J. Swadling BA, LL.M.
P. W. E. Taylor QC
M. P. Thompson
R. P. Towns
West Surrey Law Society
West Wales Law Society

APPENDIX C

Amendments effected by Trusts of Land Bill

Trustee Act 1925

Law of Property Act 1925

Administration of Estates Act 1925

as amended by the Trusts of Land Bill 1989.

**THE TRUSTEE ACT 1925 AS AMENDED BY THE TRUSTS
OF LAND BILL 1989**

Inserted or substituted words are in bold type, words omitted are enclosed in square brackets and struck out.

10. (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 every half-yearly or other day on which 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 or for a term having at least five hundred years to run [~~by trustees or~~] by a tenant for life or statutory owner, [~~the trustees or~~] the tenant for life or statutory owner on behalf of the trustees of the settlement, 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 legal mortgage or a mortgage by way of demise or sub-demise for a term of at least five hundred years (less a nominal reversion when by sub-demise), 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 inefficient at the date of the charge or mortgage; and~~] the trustees of the settlement shall be bound to give effect to such contract made by the tenant for life or statutory owner.

(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;
- (bb) for the acquisition of the securities of the company, or of control thereof by another company;
- (c) for the amalgamation of the company with any other company;
- (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 or 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 such securities, either exercise such right and apply capital money subject to the trust in payment of the consideration, or 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), of this section is made under the order of the court, the powers conferred by those subsections respectively shall apply only if and as far as the court may by order direct.

14. (1) The receipt in writing of a trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to him under any trust or power shall be a sufficient discharge to the person paying, transferring, or delivering the same and shall effectually exonerate him from seeing to the application or being answerable for any loss or misapplication thereof.

(2) This section does not, except where the trustee is a trust corporation, enable a sole trustee to give a valid receipt for—

- (a) **proceeds** [~~the proceeds~~] of sale or other capital money arising under a **trust** [~~trust for sale~~] of land;
- (b) capital money arising under the Settled Land Act 1925.

(3) This section applies notwithstanding anything to the contrary in the instrument, if any, creating the trust.

24. Where an undivided share **in land** or 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 representatives may (without prejudice to the **trust** [~~trust for sale~~] affecting the entirety of the land and the powers of the **trustees** [~~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 his or their own right or in a fiduciary capacity.

27. (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, **trustees of land (within the meaning of the Trusts of Land Act 1989)** [~~or of a disposition on trust for sale~~] or personal representatives, may give notice by advertisement in the Gazette, and in a newspaper circulating in the district in which the land is situated and such other like notices, including notices elsewhere than in England and Wales, as would, in any special case, have been directed by a court of competent jurisdiction 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 two months, fixed in the notice or, where more than one notice is given, in the last of the notices, particulars of his 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—

- (a) prejudices the right of any person to follow the property, or any property representing the same, into the hands of any person, other than a purchaser, who may have received it; or
- (b) frees the trustees or personal representatives from any obligation to make searches or obtain official certificates of search similar to those which an intending purchaser would be advised to make or obtain.

(3) This section applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.

32. (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 his attaining any specified age or

on the occurrence of any other event, or subject to a gift over on his 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 he 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; and
- (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) This section applies only where the trust property consists of money, securities or land subject to a trust of land (within the meaning of the Trusts of Land Act 1989) and is not treated as land or applicable as capital money for the purposes of the Settled Land Act 1925.

~~[(2) This section 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 statute or in equity considered as land, or applicable as capital money for the purposes of the Settled Land Act 1925.]~~

(3) This section does not apply to trusts constituted or created before the commencement of this Act.

34. (1) Where, at the commencement of this Act, 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 **creating trusts of land within the meaning of the Trusts of Land Act 1989** ~~[on trust for sale of land]~~ made or coming into operation after the commencement of this Act—

- (a) the number of trustees thereof shall not in any case exceed four, and where more than four persons are named as such trustees, the first four 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;
- (b) the number of the trustees shall not be increased beyond four.

(3) This section only applies 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; or
- (c) to the trustees of a term of years absolute limited by a settlement on trusts for raising money, or of a like term created under the statutory remedies relating to annual sums charged on land.

35. (1) Appointments of new trustees of conveyances on trust for sale on the one hand and of the settlement of the proceeds of sale on the other hand, shall, subject to any order of the court, be effected by separate instruments, but in such manner as to secure that the same persons shall become the trustees of the conveyance on trust for sale as become the trustees of the settlement of the proceeds of sale.

(2) Where new trustees of a settlement are appointed, a memorandum of the names and addresses of the persons who are for the time being the trustees thereof for the purposes of the Settled Land Act 1925, shall be endorsed on or annexed to the last or only principal vesting instrument by or on behalf of the trustees of the settlement, and such vesting instrument shall, for that purpose, be produced by the person having the possession thereof to the trustees of the settlement when so required.

(3) Where new trustees of a conveyance on trust for sale relating to a legal estate are appointed, a memorandum of the persons who are for the time being the trustees for sale shall be endorsed on or annexed thereto by or on behalf of the trustees of the settlement of the proceeds of sale, and the conveyance shall, for that purpose, be produced by the person having the possession thereof to the last-mentioned trustees when so required.

(3A) Subsections (1) and (3) of this section shall apply in the case of a conveyance of land on trusts not including a trust for sale, where there are for the time being trustees of a settlement of the proceeds of the land if it is sold, as they apply in the case of a conveyance of land on trust for sale, taking the reference in subsection (3) to trustees for sale as a reference to the trustees of the conveyance.

(4) This section applies only to settlements and dispositions of land.

36. (1) Where a trustee, either original or substituted, and whether appointed by a court or otherwise, is dead, or remains out of the United Kingdom for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or 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 trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee;

may, by writing, 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, remaining out of the United Kingdom, desiring to be discharged, refusing, or being unfit or being incapable, or being an infant, as aforesaid.

(1A) If—

- (a) there is no person falling within paragraph (a) of subsection (1), or no such person who is able and willing to act, and**
- (b) all the beneficiaries under the trust are sui juris,**

then all the beneficiaries acting together may in writing direct the person or persons who are entitled by virtue of subsection (1)(b) to appoint a new trustee to appoint such person or persons as may be specified in the direction, and the appointment shall be made accordingly.

(1B) Where the beneficiaries have power to give such a direction by virtue of a trustee being incapable, by reason of mental disorder within the meaning of the Mental Health Act 1983, of exercising his functions as trustee, they may, instead of giving such a direction, direct the trustee's receiver, or (if no receiver is acting for him) any person authorised for that purpose by the authority having jurisdiction under Part VII of that Act, to appoint such person or persons as may be specified in the direction to be a trustee or trustees in his place (but subject to subsection (9) of this section).

(1C) Where the beneficiaries have power to give a direction under subsection (1A) or, as the case may be, subsection (1B) of this section, the persons mentioned in paragraph (b) of subsection (1) of this section may not make an appointment without receiving a direction unless the beneficiaries are not all willing and able to give a direction.

(2) Where a trustee has been removed under a power contained in the instrument creating the trust, a new trustee or new trustees may be appointed in place of the trustee who is removed, as if he were dead, or, in the case of a corporation, as if the corporation desired to be discharged from the trust, and the provisions of this section shall apply

accordingly, but subject to the restrictions imposed by this Act on the number of trustees.

(3) Where a corporation being a trustee is or has been dissolved, either before or after the commencement of this Act, then, for the purposes of this section and of any enactment replaced thereby, 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) of this section 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) But a sole or last surviving executor intending to renounce, or all the executors where they all intend to renounce, shall have and shall be deemed always to have had power, at any time before renouncing probate, to exercise the power of appointment given by this section, or by any similar previous enactment, if willing to act for that purpose and without thereby accepting the office of executor.

(6) 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 and in any such case—

(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 writing, appoint another person or other persons to be an additional trustee or additional trustees, but it shall not be obligatory to appoint any additional trustee, unless the instrument, if any, creating the trust, or any statutory enactment provides to the contrary, nor shall the number of trustees be increased beyond four by virtue of any such appointment.

(6A) If—

(a) there is no person falling within paragraph (a) of subsection (6) of this section, or no such person who is able and willing to act, and

(b) all the beneficiaries under the trust are sui juris,

then all the beneficiaries acting together may in writing direct the person or persons who are entitled by virtue of subsection (6)(b) to appoint an additional trustee to appoint such person or persons as may be specified in the direction, and the appointment shall be made accordingly.

(6B) Where the beneficiaries have power to give a direction under subsection (6A) of this section, the persons mentioned in paragraph (b) of subsection (6) of this section may not make an appointment without receiving a direction unless the beneficiaries are not all willing and able to give a direction.

(7) Every new trustee appointed under this section as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities, and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(8) 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 relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

(9) Where a trustee is incapable, by reason of mental disorder within the meaning of the Mental Health Act 1983, of exercising his functions as trustee and is also entitled in

possession to some beneficial interest in the trust property, no appointment of a new trustee in his place shall be made by virtue of paragraph (b) of subsection (1) of this section unless leave to make the appointment has been given by the authority having jurisdiction under Part VII of the Mental Health Act 1983.

68. (1) (19) "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;

THE LAW OF PROPERTY ACT 1925 AS AMENDED

BY TRUSTS OF LAND BILL

Inserted or substituted words are in bold type, words omitted are enclosed in square brackets and struck out.

2. (1) A conveyance to a purchaser of a legal estate in land shall overreach any equitable interest or power affecting that estate, whether or not he has notice thereof, if—

- (i) the conveyance is made under the powers conferred by the Settled Land Act 1925 or any additional powers conferred by a settlement, and the equitable interest or power is capable of being overreached thereby, and the statutory requirements respecting the payment of capital moneys arising under the settlement are complied with;
- (ii) the conveyance is made by **trustees of land** [~~trustees for sale~~] and the equitable interest or power is at the date of the conveyance capable of being overreached by such trustees under the provisions of subsection (2) of this section or independently of that subsection, and **the requirements of section 27 of this Act respecting the payment of capital money arising on such a conveyance** [~~the statutory requirements respecting the payment of money arising under a disposition upon trust for sale~~] are complied with;

(2) Where the legal estate affected is subject to a **trust of land** [~~trust for sale~~], then if at the date of a conveyance made after the commencement of this Act under **the trust** [~~the trust for sale~~] or the powers conferred on **the trustees** [~~trustees for sale~~], the trustees (whether original or substituted) are either—

- (a) two or more individuals approved or appointed by the court or the successors in office of the individuals so approved or appointed; or
- (b) a trust corporation,

any equitable interest or power having priority to the **trust** [~~trust for sale~~] shall, notwithstanding any stipulation to the contrary, be overreached by the conveyance, and shall, according to its priority, take effect as if created or arising by means of a primary trust affecting the proceeds of sale and the income of the land until sale.

(3) The following equitable interests and powers are excepted from the operation of subsection (2) of this section, namely—

- (i) Any equitable interest protected by a deposit of documents relating to the legal estate affected;
- (ii) The benefit of any covenant or agreement restrictive of the user of land;
- (iii) Any easement, liberty or privilege over or affecting land and being merely an equitable interest (in this Act referred to as an “equitable easement”);
- (iv) The benefit of any contract (in this Act referred to as an “estate contract”) to convey or create a legal estate, including a contract conferring either expressly or by statutory implication a valid option to purchase, a right of preemption, or any other like right;
- (v) Any equitable interest protected by registration under the Land Charges Act 1925 other than—
 - (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.

(4) Subject to the protection afforded by this section to the purchaser of a legal estate, nothing contained in this section shall deprive a person entitled to an equitable charge of any of his rights or remedies for enforcing the same.

(5) So far as regards the following interests, created before the commencement of this Act (which accordingly are not within the provisions of the Land Charges Act 1925), namely—

- (a) the benefit of any covenant or agreement restrictive of the user of the land;
- (b) any equitable easement;

- (c) the interest under a puisne mortgage within the meaning of the Land Charges Act 1925, unless and until the same is acquired under a conveyance made after the commencement of this Act;

a purchaser of a legal estate shall only take subject thereto if he has notice thereof, and the same are not overreached under the provisions contained or in the manner referred to in this section.

3. (1) All equitable interests and powers in or over land shall be enforceable against the estate owner of the legal estate affected in manner following (that is to say):-

- (a) Where the legal estate affected as settled land, the tenant for life or statutory owner shall be bound to give effect to the equitable interests and powers in manner provided by the Settled Land Act 1925;

- (b) ~~Where the legal estate affected is vested in trustees for sale~~

~~(i) The trustee shall stand possessed of the net proceeds of sale after payment of costs and the net rents and profits of the land until sale after payment of rates, taxes, costs of insurance, repairs, and other outgoings, 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 same respectively, of which they have notice, and whether created before or after the disposition on trust for sale, according to their respective priorities;~~

~~(ii) Where, by reason of the exercise of any equitable power or under any trust affecting the proceeds of sale, any principal sum is required to be raised, or any person of full age becomes entitled to require a legal estate in the land to become vested in him in priority to the trust for sale, then, unless the claim is satisfied out of the proceeds of sale, the trustees for sale shall (if so requested in writing) be bound to transfer or create such legal estates, to take effect in priority to the trust for sale, as may be required for raising the money by way of legal mortgage or for giving legal effect to the rights of the person so entitled;~~

~~Provided that, if the proceeds of sale are held in trust for persons of full age in undivided shares absolutely free from incumbrances affecting undivided shares, those persons cannot require the land to be conveyed to them in undivided shares but may (subject to effect being given by way of legal mortgage to incumbrances affecting the entirety) require the same to be vested in any of them (not exceeding four) as joint tenants on trust for sale, and if the conveyance purports to transfer the land to any of them in undivided shares or to more than four such persons, it shall operate only as a transfer to them or (if more than four) to the four first named therein as joint tenants on trust for sale.]~~

- (c) ~~In any other case, [Where the legal estate affected is neither settled land nor vested in trustees for sale]~~ the estate owner shall be bound to give effect to the equitable interests and powers affecting his estate of which he has notice according to their respective priorities. This provision does not affect the priority or powers of a legal mortgagee, or the powers for personal representatives for the purposes of administration.

~~(2) [Effect may be given by means of a legal mortgage to an agreement for a mortgage, charge or lien (whether or not arising by operation of law) if the agreement, charge or lien ought to have priority over the trust for sale.]~~

(3) Where, by reason of a statutory or other right of reverter, or of an equitable right of entry taking effect, or for any other reason, a person becomes entitled to require a legal estate to be vested in him, then and in any such case the estate owner whose estate is affected shall be bound to convey or create such legal estate as the case may require.

(4) If any question arises whether any and what legal estate ought to be transferred or created as aforesaid, any person interested may apply to the court for directions in the manner provided by this Act.

(5) ~~If the estate owners [If the trustees for sale or other estate owners]~~ refuse or neglect for one month after demand to transfer or create any such legal estate, or by

reason of their being out of 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 a legal estate in the manner provided by this Act.

(6) This section does not affect a purchaser of a legal estate taking free from an equitable interest or power.

(7) The county court has jurisdiction under this section where the land which is to be dealt with in the court does not exceed the county court limit in capital value or net annual value for rating.

7. (1) A fee simple which by virtue of the Lands Clauses Acts or any similar statute, is liable to be divested, is for the purposes of this Act a fee simple absolute, and remains liable to be divested as if this Act had not been passed and a fee simple subject to a legal or equitable right of entry or reentry is for the purposes of this Act a fee simple absolute.

(2) A fee simple vested in a corporation which is liable to determine by reason of the dissolution of the corporation is, for the purposes of this Act, a fee simple absolute.

(3) The provisions of—

(a) . . .;

(b) the Friendly Societies Act 1896, in regard to land to which that Act applies;

(c) any other statutes conferring special facilities or prescribing special modes (whether by way of registered memorial or otherwise) for disposing of or acquiring land, or providing for the vesting (by conveyance or otherwise) of the land in trustees or any person, or the holder for the time being of any office or any corporation sole or aggregate including the Crown);

shall remain in force.

~~[This subsection does not authorise an entailed interest to take effect otherwise than as an equitable interest.]~~

(4) Where any such power for disposing of or creating a legal estate is exercisable by a person who is not the estate owner, the power shall, when practicable, be exercised in the name and on behalf of the estate owner.

16. (1) A personal representative shall be accountable for all death duties which may become leviable or payable on the death of the deceased in respect of land (including settled land) which devolves on him by virtue of any statute or otherwise.

(2) In every other case the estate owner (other than a purchaser who acquires a legal estate after the charge for death duties has attached and free from such charge), shall be accountable for all the duties aforesaid which become leviable or payable in respect of his estate in the land or any interest therein capable of being overreached by his conveyance, being a conveyance to a purchaser made under the Settled Land Act 1925, **or by a trustee of land** ~~[pursuant to a trust for sale]~~.

(3) For the purpose of raising the duty, and the costs of raising the same, the personal representative or other person accountable as aforesaid shall have all the powers which are by any statute conferred for raising the duty.

(4) Nothing in this Act shall alter any duty payable in respect of land or impose any new duty thereon, or affect the remedies of the Commissioners of Inland Revenue against any person other than a purchaser or a person deriving title under him.

(5) Notwithstanding that any duties are by this section made payable by the personal representative or other person aforesaid, nothing in this Part of this Act shall affect the liability of the persons beneficially interested or their respective interests in respect of any duty and they shall accordingly account for or repay the same and any interest and costs attributable thereto to the said Commissioners or to the personal representative or other person accountable as aforesaid, as the case may require.

(6) Nothing in this Part of this Act shall impose on a personal representative, tenant for life, statutory owner, **trustee of land** [~~trustee for sale~~], or other person in a fiduciary position, as such, any liability for payment of duty, in excess of the assets (including land) vested in him or in the trustees of the settlement which may for the time being be available in his hands or in the hands of such trustees for the payment of the duty or which would have been so available but for his or their own neglect or default or impose a charge for duties on leasehold land, or render a mortgagee liable in respect of any charge for duties which is not paramount to his mortgage.

(7) The said Commissioners, on being satisfied that a personal representative or other person accountable has paid or commuted or will pay or commute all death duties for which he is accountable in respect of the land or any part thereof, shall, if required by him, give a certificate to that effect, which shall discharge from any further claim for such duty the land to which the certificate extends, and the production of such certificate to the land registrar or other proper officer shall be a sufficient authority to enable him to cancel any land charge registered in respect of the duty so far as it affects the land to which the certificate extends.

18. (1) Capital money liable to be laid out in the purchase of land to be settled in the same manner as the land in respect of which any death duties may have become payable, and personal estate held on the same trusts as land or the proceeds of sale of land subject to a trust of land [~~the proceeds of sale of land being land held on trust for sale~~] in respect of which any such duties may have become payable, may, by the direction of the tenant for life, statutory owner, **trustee of land** [~~trustee for sale~~] who is accountable and although the duty is only payable in respect of an interest which is or is capable of being overreached by a conveyance to a purchaser, be applied in discharging all or any of the duties aforesaid and the costs of discharging the same.

(2) Where the duties would not, except by virtue of the last subsection, be payable out of the capital money or personal estate aforesaid—

- (a) the amount so paid shall be repaid by the person liable for the duty to the trustees of the settlement or the **trustees of land** [~~trustees for sale~~] by the like instalments and at the like rate of interest by and at which the unpaid duty and the interest thereon might have been paid, or, where the land has been conveyed to a purchaser, would have been paid if the land had not been so conveyed;
- (b) the interest of the person so liable, remaining subject to the settlement of the land or of the proceeds of sale, shall stand charged with the repayment of the instalments and the interest aforesaid;
- (c) the trustees of the settlement or the **trustees of land** [~~trustees for sale~~] shall be entitled to recover and receive any excess of duty which may become repayable by the said Commissioners.

19. [1] (1) A conveyance of a legal estate in land to a minor alone, or to two or more minors jointly—

- (a) shall not be effective to pass any legal estate but
- (b) shall operate as a declaration that the land is held on the appropriate trusts.

(2) A conveyance of a legal estate in land to a minor jointly with one or more other persons of full age shall operate to vest the legal estate in the other person or persons on the appropriate trusts, but not so as to sever any beneficial joint tenancy in the land.

(3) In this section “appropriate trusts” means such trusts as are appropriate for giving effect to the rights and claims of the persons interested in the land (whether beneficially or otherwise).

(4) Subsections (1) to (2) of this section apply—

- (a) Whether or not the minor or minors are beneficially entitled to the land in question, and
- (b) if they are beneficially entitled whether they are so entitled as joint tenants or as tenants in common.

(5) Nothing in this section prevents an equitable interest in land being conveyed to a minor.

~~[19. (1) A conveyance of a legal estate in land to an infant alone or to two or more persons jointly both or all of whom are infants, shall have such operation as is provided for in the Settled Land Act 1925.]~~

~~[(2) A conveyance of a legal estate in land to an infant, jointly with one or more other persons of full age, shall operate to vest the legal estate in the other person or persons on the statutory trusts, but not so as to sever any joint tenancy in the net proceeds of sale or in the rents and profits until sale, or affect the right of a tenant for life or a statutory owner to have settled land vested in him.]~~

~~[(3) The foregoing provisions of this section do not apply to conveyances on trust or by way of mortgage.]~~

~~[(4) A conveyance of a legal estate to an infant alone or to two or more persons jointly, both or all of whom are infants, on any trusts, shall operate as a declaration of trust and shall not be effectual to pass any legal estate.]~~

~~[(5) A conveyance of a legal estate in land to an infant jointly with one or more other persons of full age on any trusts shall operate as if the infant had not been named therein, but without prejudice to any beneficial interest in the land intended to be thereby provided for the infant.]~~

~~[(6) A grant or transfer of a legal mortgage of land to an infant shall operate only as an agreement for valuable consideration to execute a proper conveyance when the infant attains full age, and in the meantime to hold any beneficial interest in the mortgage debt in trust for the persons for whose benefit the conveyance was intended to be made:~~

~~Provided that, if the conveyance is made to the infant and another person or other persons of full age, it shall operate as if the infant had not been named therein, but without prejudice to any beneficial interest in the mortgage debt intended to be thereby provided for the infant.]~~

22. (1) Where a legal estate in land (whether settled or not) is vested in a person suffering from a mental disorder, either solely or jointly with any other person or persons, his receiver or (if no receiver is acting for him) any person authorised in that behalf shall, under an order of the authority having jurisdiction under Part VII of the Mental Health Act 1983 or of the court or under any statutory power, make or concur in making all requisite dispositions for conveying or creating a legal estate in his name and on his behalf.

(2) If land subject to a trust of land [land held on trust for sale] is vested, either solely or jointly with any other person or persons, in a person who is incapable, by reason of mental disorder, of exercising his functions as trustee, a new trustee shall be appointed in the place of that person, or he shall be otherwise discharged from the trust, before the legal estate is dealt with under the trust [trust for sale] or under the powers vested in the trustees [trustees for sale].

23. (1) Subject to subsection (2) of this section, a trust of land shall, so far as the position of any purchaser of the land is concerned, be deemed to continue until the land has been conveyed to or under the direction of a person who is sui juris and for whom the land is held absolutely under the trust (whether or not he is beneficially entitled to it).

(2) Where trustees of land hold the land on trust absolutely for a person who is sui juris (whether or not he is beneficially entitled to it)–

- (a) they may convey the land to him absolutely, notwithstanding that they have not been required to do so; and**
- (b) if they execute such a conveyance (whether or not they have been so required), they shall execute a deed declaring that they are discharged from the trust so far as that land is concerned.**

(3) A purchaser of land in respect of which a deed has been executed in pursuance of subsection (2)(b) is entitled to assume that the land has ceased to be subject to the trust.

~~[23. Where land has, either before or after the commencement of this Act, become subject to an express or implied trust for sale, such trust shall, so far as regards the safety and protection of any purchaser thereunder, be deemed to be subsisting until the land has been conveyed to or under the direction of the persons interested in the proceeds of sale.]~~

~~This section applies to sales whether made before or after the commencement of this Act, but operates without prejudice to an order of any court restraining a sale.]~~

24. (1) The persons having power to appoint new trustees of a conveyance of land on trust for sale shall be bound to appoint the same persons (if any) who are for the time being trustees of the settlement of the proceeds of sale, but a purchaser shall not be concerned to see whether the proper persons are appointed to be trustees of the conveyance of the land.

(1A) Subsection (1) of this section shall apply in the case of a conveyance of land on trusts not including a trust for sale, where there are for the time being trustees of a trust of the proceeds of sale of the land if it is sold, as it applies in the case of a conveyance of land on trust for sale.

(2) This section applies whether the settlement of the proceeds of sale or the conveyance on trust for sale comes into operation before or after the commencement of this Act.

25. (1) Notwithstanding any provision to the contrary in the instrument creating the trust, a power to postpone sale shall be implied in the case of every trust for sale of land.

~~[(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) The foregoing provisions of this section apply whether the trust for sale was created before or after the commencement or by virtue of this Act.

(4) Where a disposition or settlement coming into operation after the commencement of this Act contains a trust either to retain or sell land the same shall be construed as a trust **with power to sell the land** ~~[to sell the land with power to postpone the sale].~~

26. (1) If the consent of more than two persons is by the disposition made requisite to the exercise of any function by any trustees of land [execution of a trust for sale of land], then, in favour of a purchaser, the consent of any two of such persons to the exercise by them of that function [execution of the trust or to the exercise of any statutory or other powers vested in the trustees for sale] shall be deemed sufficient.

(2) Where the person whose consent to the **exercise of any such function** ~~[execution of any such trust or power]~~ is expressed to be required in a disposition is not sui juris or becomes subject to disability, his consent shall not, in favour of a purchaser, be deemed to be requisite to the **exercise of that function** ~~[execution of the trust or the exercise of the power]~~; but the trustees shall in any such case, obtain the separate consent of the parent or testamentary or other guardian of an infant or of the receiver (if any) of a person suffering from mental disorder.

(3) **Trustees of land** ~~[trustees for sale]~~ shall so far as practicable consult the persons of full age for the time being beneficially interested in possession in **the land** ~~[the rents and profits of the land until sale]~~ and shall, so far as consistent with the general interest of the trust, give effect to the wishes of such persons, or, in the case of a dispute, of the majority (according to the value of their combined interests) of such persons, but a

purchaser shall not be concerned to see that the provisions of this subsection have been complied with.

This subsection shall apply except in so far as provision to the contrary is made by the disposition creating the trust. [~~In the case of a trust for sale, not being a trust for sale created by or in pursuance of the powers conferred by this or any other Act, this subsection shall not apply unless the contrary intention appears in the disposition creating the trust.~~]

(4) This section applies whether the trust [~~trust for sale~~] is created before or after the commencement or by virtue of this Act.

27. (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 by which the trust is created.

~~[(1) A purchaser of a legal estate from trustees for sale shall not be concerned with the trusts affecting the proceeds of sale of land subject to a trust for sale (whether made to attach to such proceeds by virtue of this Act or otherwise); or affecting the rents and profits of the land until sale whether or not those trusts are declared by the same instrument by which the trust for sale is created.]~~

(2) Notwithstanding anything to the contrary in the instrument (if any) creating a trust [~~trust for sale~~] of land or in any trust affecting the net proceeds of sale of the land if it is sold [~~the settlement of the net proceeds~~], the proceeds of sale or other capital money shall not be paid to or applied by the direction of fewer than two persons as trustees [~~trustees for sale~~] except where the trustee is a trust corporation, but this subsection does not affect the right of a sole personal representative as such to give valid receipts for, or direct the application of, proceeds of sale or other capital money, nor except where capital money arises on the transaction, render it necessary to have more than one trustee.

28. (1) Subject to the provisions of this section and to any restrictions imposed by any enactment on the exercise by trustees of land of any particular power, such trustees shall have all the powers of an absolute owner in relation to the land subject to the trust.

(2) Without prejudice to the powers conferred on them by the Trustee Investments Act 1961 or otherwise, trustees of land may purchase—

(a) An estate in fee simple absolute in possession in any land in England or Wales;

or

(b) a term of years absolute in any such land,

for any purpose they think fit.

(3) In exercising their powers under subsection (1) or (2) of this section trustees of land shall have regard to the rights and claims of all the persons interested in the land (whether beneficially or otherwise.)

(4) In subsections (2) and (3) “trustees of land” includes the trustees of the proceeds of sale of land which immediately before its sale was subject to a trust of land or was or was deemed to be settled land for the purposes of the Settled Land Act 1925; and the reference in subsection (3) to “land” shall be construed accordingly.

(5) Where under a trust of land the land subject to the trust becomes vested absolutely in persons of full age in undivided shares (whether beneficially or not), the trustees may, subject to the following provisions of this section, partition the land or any part of it and provide by way of mortgage or otherwise for the payment of any equality money.

(6) The trustees shall give effect to any such partition by conveying the land partitioned in severalty (whether or not subject to any legal mortgage created for raising equality money) to persons of full age either absolutely or on trust according to the rights of the persons interested under the partition.

(7) Before exercising their powers under subsection (5) the trustees shall obtain the

consent of the persons, if any, of full age who are interested in possession in the land (other than as mere annuitants) or, in the case of a person suffering from mental disorder, of his receiver or authorised attorney; but a purchaser may assume that all such consents which are necessary have been obtained.

(8) 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.

(9) If a share in the land is absolutely vested in a minor, subsections (5) to (8) of this section shall 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 on trust for him.

(10) This section shall not apply if or to the extent that provision to the contrary is made by the disposition creating the trust and, in particular, if that disposition requires any consent to be obtained to the exercise of any power, the power may not (subject to section 26 of this Act) be exercised without that consent.

(11) In subsection (8) "authorised attorney" means an attorney acting under the authority of a power of attorney which is registered under section 6 of the Enduring Powers of Attorney Act 1985.

~~[28. (1) Trustees for sale shall, in relation to land or to manorial incidents and to the proceeds of sale, have all the powers of a tenant for life and the trustees of a settlement under the Settled Land Act 1925 including in relation to the land the powers of management conferred by that Act during a minority; and where by statute settled land is or becomes vested in the trustees of the settlement upon the statutory trusts, such trustees and their successors in office shall also have all the additional or larger powers (if any) conferred by the settlement on the tenant for life, statutory owner, or trustees of the settlement, and (subject to any express trust to the contrary) all capital money arising under the said powers shall, unless paid or applied for any purpose authorised by the Settled Land Act 1925 be applicable in the same manner as if the money represented proceeds of sale arising under the trust for sale.~~

~~All land acquired under this subsection shall be conveyed to the trustees on trust for sale.~~

~~The powers conferred by this subsection shall be exercised with such consents (if any) as would have been required on a sale under the trust for sale, and when exercised shall operate to overreach any equitable interests or powers which are by virtue of this Act or otherwise made to attach to the net proceeds of sale as if created by a trust affecting those proceeds.]~~

~~[(2) Subject to any direction to the contrary in the disposition on trust for sale or in the settlement of the proceeds of sale, the net rents and profits of the land until sale, after keeping down costs of repairs and insurance and other outgoings shall be paid or applied, except so far as any part thereof may be liable to be set aside as capital money under the Settled Land Act 1925 in like manner as the income of investments representing the purchase money would be payable or applicable if a sale had been made and the proceeds had been duly invested.]~~

~~[(3) Where the net proceeds of sale have under the trusts affecting the same become absolutely vested in persons of full age in undivided shares (whether or not such shares may be subject to a derivative trust) the trustees for sale may, with the consent of the persons, if any, of full age, not being annuitants, interested in possession in the net rents and profits of the land until sale:—~~

~~(a) partition the land remaining unsold or any part thereof; and~~

~~(b) provide (by way of mortgage or otherwise) for the payment of any equality money; and, upon such partition being arranged, the trustees for sale shall give effect thereto by conveying the land so partitioned in severalty (subject or not to any legal mortgage created for raising equality money) to persons of full age and either absolutely or on trust for sale or, where any part of the land becomes settled land, by a vesting deed, or partly in one way and partly in another in accordance with the rights of the persons interested under the partition, but a~~

purchaser shall not be concerned to see or inquire whether any such consent as aforesaid has been given:

~~Provided that—~~

- ~~(i) If a share in the net proceeds belongs to a person suffering from mental disorder the consent of his receiver shall be sufficient to protect the trustees for sale;~~
- ~~(ii) If a share in the net proceeds is affected by an incumbrance the trustees for sale may either give effect thereto or provide for the discharge thereof by means of the property allotted in respect of such share, as they may consider expedient.]~~

~~[(4) If a share in the net proceeds is absolutely vested in an infant, the trustees for sale may act on his behalf and retain land (to be held on trust for sale) or other property to represent his share, but in other respects the foregoing power shall apply as if the infant had been of full age.]~~

~~[(5) This section applies to dispositions on trust for sale coming into operation either before or after the commencement or by virtue of this Act.]~~

28A. (1) Where the powers of trustees of land are limited by virtue of section 28 (10) of this Act—

- (a) if the land is registered under the Land Registration Act 1925, the trustees shall apply under section 58 of that Act (power to place restrictions on the register) for an entry to be placed on the register of title to prevent any transaction concerning the land being effected otherwise than in conformity with that limitation; and**
- (b) if the land is not so registered, the trustees shall take all reasonable steps to bring the limitation to the notice of any purchaser of the land.**

(2) Where land subject to a trust is not so registered—

- (a) a purchaser of the land is entitled to assume that the powers of the trustees are not limited by virtue of section 28(10) of this Act unless he has actual notice to the contrary; and**
- (b) in favour of a purchaser without such notice such a limitation shall not invalidate any exercise of those powers.**

29. The power conferred by section 25(1) of the Trustee Act 1925 (delegation by trustees by power of attorney for period not exceeding 12 months) may be exercised by a trustee of land so as to delegate any functions as respects land subject to the trust for an indefinite period if every donee of the power of attorney is a person of full age with a vested interest in possession in the land (other than a mere annuitant).

~~[29. (1) The powers of and incidental to leasing, accepting surrenders of leases and management, conferred on trustees for sale whether by this Act or otherwise, may, until sale of the land, be revocably delegated from time to time, by writing, signed by them, to any person of full age (not being merely an annuitant) for the time being beneficially entitled in possession to the net rents and profits of the land during his life or any less period: and in favour of a lessee such writing shall, unless the contrary appears, be sufficient evidence that the delegation has not been revoked.]~~

~~[(2) Any power so delegated shall be exercised only in the names and on behalf of the trustees delegating the power.]~~

~~[(3) The persons delegating any power under this section shall not, in relation to the exercise or purported exercise of the power, be liable for the acts or defaults of the person to whom the power is delegated, but that person shall, in relation to the exercise of the power by him, be deemed to be in the position and to have the duties and liabilities of a trustee.]~~

~~[(4) Where, at the commencement of this Act, an order made under section seven of the Settled Land Act 1884 is in force, the person to whom any power is thereby conferred shall, while the order remains in force, exercise such power in the names and~~

~~on behalf of the trustees for sale in like manner as if the power had been delegated to him under this section.]~~

30. (1) Any person who is a trustee of land or is interested (whether beneficially or otherwise) in the land may apply to the court for an order under this section.

- (2) On an application under this section the court may make such order as it thinks fit—**
- (a) as to the exercise by the trustees of any of their functions; or**
 - (b) for the settlement of any dispute which has arisen concerning the trust or the land subject to it.**

(3) In considering on such an application whether to order that land subject to a trust be sold, the court shall, subject to subsection (5) of this section, have regard—

- (a) to the intentions of the settlor;**
- (b) to the purpose for which the land was acquired;**
- (c) if the land includes any dwelling, to the welfare of any minor who occupies or might reasonably be expected to occupy it as his home;**
- (d) to the wishes of any persons of full age who are entitled to interests in possession in the land or, in the case of a dispute between them, of the majority (according to the value of their combined interests) of those persons;**
- (e) to the interests of any creditor who has obtained a charging order under the Charging Orders Act 1979 against any person for whose benefit any land subject to the trust is or may be held; and**
- (f) to any other matters appearing to the court to be relevant.**

(4) Where an application under this section relates to the exercise by trustees of their powers under section 7 of the Trusts of Land Act 1989, the court shall have regard also to the matters mentioned in subsection (3)(c) of that section.

(5) Subsection (3) does not apply in the case of an application to which section 335A of the Insolvency Act 1986 applies (applications by the trustee of a bankrupt for the sale of land).

(6) In subsections (1) and (2) of this section “land” includes the proceeds of sale of land which was immediately before its sale subject to the trust in question.

(7) The county court has jurisdiction under this section where the land which is to be dealt with in the court does not exceed the county court limit in capital value or net annual value for rating.

~~[30. (1) If the trustees for sale refuse to sell or to exercise any of the powers conferred by either of the last two sections, or any requisite consent cannot be obtained, any person interested may apply to the court for a vesting or other order for giving effect to the proposed transaction or for an order directing the trustees for sale to give effect thereto, and the court may make such order as it thinks fit.]~~

~~[(2) The county court has jurisdiction under this section where the land which is to be dealt with in the court does not exceed the county court limit in capital value or net annual value for rating.]~~

31. (1) Where any property, vested in the trustees by way of security, becomes, by virtue of the statutes of limitation, or of an order for foreclosure or otherwise, discharged from the right of redemption, it shall be held by them on trust— [trust for sale]

- (a) to apply the income from the property as if it were interest paid on the mortgage debt; and**
- (b) if the property is sold, to apply the net proceeds of sale, after payment of costs and expenses, as if they were a repayment of the mortgage debt.**

~~[(2) The net proceeds of sale after payment of costs and expenses shall be applied in the 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 him or in accordance with his directions.]~~

~~(4) [Where the mortgage money is capital money for the purposes of the Settled Land Act 1925, the trustees shall if the tenant for life so requires, instead of selling any land forming the whole or part of such property execute such subsidiary vesting deed with respect thereto as would have been required if the land had been acquired on a purchase with capital money].~~

(5) This section applies whether the right of redemption was discharged before or after the first day of January, nineteen hundred and twelve, but has effect without prejudice to any dealings or arrangements made before that date.

~~[32. (1) Where a settlement of personal property or of land held upon trust for sale contains a power to invest money in the purchase of land, such land shall, unless the settlement otherwise provides, be held by the trustees on trust for sale; and the net rents and profits until sale, after keeping down costs of repairs and insurance and other outgoings, shall be paid or applied in like manner as the income of the investments representing the purchase money would be payable or applicable if a sale had been made and the proceeds had been duly invested in personal estate.]~~

~~[(2) This section applies to settlements (including wills) coming into operation after the thirty-first day of December, nineteen hundred and eleven, and does not apply to capital money arising under the Settled Land Act 1925 or money liable to be treated as such.]~~

33. The provisions of this Part of this Act relating to **trustees of land** ~~[trustees for sale]~~ apply to personal representatives **holding land on trust** ~~[holding on trust for sale]~~, but without prejudice to their rights and powers for purposes of administration.

34. (1) An undivided share in land shall not be capable of being created except as provided by the Settled Land Act 1925 or as hereinafter mentioned.

(2) Where after the commencement of this Act, land is expressed to be conveyed to any persons in undivided shares and those persons are of full age, the conveyance shall (notwithstanding anything to the contrary in this Act), operate as if the land had been expressed to be conveyed to the grantees, or, if there are more than four grantees, to the first four named in the conveyance, as joint tenants **upon such trusts as are appropriate for giving effect to the rights and claims of the persons interested in the land (whether beneficially or otherwise)** ~~[upon the statutory trusts hereinafter mentioned and so as to give effect to the rights of the persons who would have been entitled to the shares had the conveyance operated to create those shares]:~~

Provided that, where the conveyance is made by way of mortgage the land shall vest in the grantees or such four of them as aforesaid for a term of years absolute (as provided by this Act) as joint tenants subject to cesser on redemption in like manner as if the mortgage money had belonged to them on a joint account, but without prejudice to the beneficial interests in the mortgage money and interest.

(3) A devise bequest or testamentary appointment, coming into operation after the commencement of this Act, of land to two or more persons in undivided shares shall operate as a devise bequest or appointment of the land to the trustees (if any) of the will for the purposes of the Settled Land Act 1925 or, if there are no such trustees, then to the personal representatives of the testator, and in each case (but without prejudice to the rights and powers of the personal representatives for the purposes of administration) **upon such trusts as are appropriate for giving effect to the rights and claims of the persons interested in the land (whether beneficially or otherwise)** ~~[upon the statutory trusts hereinafter mentioned.]~~

(4) ~~[Any disposition purporting to make a settlement of an undivided share in land shall only operate as a settlement of a corresponding share of the net proceeds of sale and of the rents and profits until sale of the entirety of the land.]~~

~~[35. For the purposes of this Act land held upon the "statutory trusts" shall be held upon the trusts and subject to the provisions following, namely, upon trust to sell the same and to stand possessed of the net proceeds of sale, after payment of costs, and of the net rents and profits until sale after payment of rates, taxes, costs of insurance, repairs, and other outgoings, upon such trusts, and subject to such powers and provisions, as may be requisite for giving effect to the rights of the persons (including an incumbrancer of a former undivided share or whose incumbrance is not secured by a legal mortgage) interested in the land and the right of a person who, if the land had not been made subject to a trust for sale by virtue of this Act, would have been entitled to an entailed interest in an undivided share in the land, shall be deemed to be a right to a corresponding entailed interest in the net proceeds of sale attributable to that share.]~~

~~Where~~

- ~~(a) an undivided share was subject to a settlement, and~~
- ~~(b) the settlement remains subsisting in respect of other property, and~~
- ~~(c) the trustees thereof are not the same persons as the trustees for sale,~~

~~then the statutory trusts include a trust for the trustees for sale to pay the proper proportion of the net proceeds of sale or other capital money attributable to the share to the trustees of the settlement to be held by them as capital money arising under the Settled Land Act 1925.]~~

36. (1) Where a legal estate (not being settled land) is beneficially limited to or held in trust for any persons as joint tenants, the same shall be held **on trust** ~~[on trust for sale]~~, in like manner as if the persons beneficially entitled were tenants in common, but not so as to sever their joint tenancy in equity.

(2) No severance of a joint tenancy of a legal estate, so as to create a tenancy in common in land, shall be permissible, whether by operation of law or otherwise, but this subsection does not affect the right of a joint tenant to release his interest to the other joint tenants, or the right to sever a joint tenancy in an equitable interest whether or not the legal estate is vested in the joint tenants:

Provided that, where a legal estate (not being settled land) is vested in joint tenants beneficially, and any tenant desires to sever the joint tenancy in equity, he shall give to the other joint tenants a notice in writing of such desire to do such other acts or things, as would in the case of personal estate, have been effectual to sever the tenancy in equity, and thereupon **under the trust the land** ~~[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 which would have been requisite for giving effect to the beneficial interests if there had been an actual severance.

Nothing in this Act affects the right of a survivor of joint tenants, who is solely and beneficially entitled, to deal with his legal estate as if it were not held **on trust** ~~[on trust for sale]~~.

(3) Without prejudice to the right of a joint tenant to release his interest to the other joint tenants no severance of a mortgage term or trust estate, so as to create a tenancy in common, shall be permissible.

39. For the purpose of affecting the transition from the law existing prior to the commencement of the Law of Property Act, 1922, to the law enacted by that Act (as amended), the provisions set out in the First schedule to this Act shall have effect—

- (1) for converting existing legal estates, interests and charges not capable under the said Act of taking effect as legal interests into equitable interests;
- (2) for discharging, getting in or vesting outstanding legal estates;
- (3) for making provision with respect to legal estates vested in infants;
- (4) for subjecting land held in undivided shares to **trusts of land** ~~[trusts for sale]~~;
- (5) for dealing with party structures and open spaces held in common;

- (6) for converting tenancies by entireties into joint tenancies;
- (7) for converting existing freehold mortgages into mortgages by demise;
- (8) for converting existing leasehold mortgages into mortgages by sub-demise.

42. (1) A stipulation that a purchaser of a legal estate in land shall accept a title made with the concurrence of any person entitled to an equitable interest shall be void, if a title can be made discharged from the equitable interest without such concurrence

- (a) ~~under a trust for sale~~
- (b) under this Act, or the Settled Land Act 1925, or any other statute.

(2) A stipulation that a purchaser of a legal estate in land shall pay or contribute towards the costs of or incidental to—

- (a) obtaining a vesting order, or the appointment of trustees to a settlement, or the appointment of trustees of a conveyance on trust ~~[trust for sale]~~; or
- (b) the preparation stamping or execution of a conveyance on trust ~~[trust for sale]~~, or of a vesting instrument for bringing into force the provisions of the Settled Land Act 1925;

shall be void.

(3) A stipulation contained in any contract for the sale or exchange of land made after the commencement of this Act, to the effect that an outstanding legal estate is to be traced or got in by or at the expense of a purchaser or that no objection is to be taken on account of an outstanding legal estate, shall be void.

(4) If the subject matter of any contract for the sale or exchange of land—

- (i) is a mortgage term and the vendor has power to convey the fee simple in the land, or, in the case of a mortgage of a term of years absolute, the leasehold reversion affected by the mortgage, the contract shall be deemed to extend to the fee simple in the land or such leasehold reversion;
- (ii) is an equitable interest capable of subsisting as a legal estate, and the vendor has power to vest such legal estate in himself or in the purchaser or to require the same to be so vested, the contract shall be deemed to extend to such legal estate;
- (iii) is an entailed interest in possession and the vendor has power to vest in himself or in the purchaser the fee simple in the land, (or, if the entailed interest is an interest in a term of years absolute, such term) or to require the same to be so vested, the contract shall be deemed to extend to the fee simple in the land or the term of years absolute.

(5) This section does not affect the right of a mortgagee of leasehold land to sell his mortgage term only if he is unable to convey or vest the leasehold reversion expectant thereon.

(6) Any contract to convey an undivided share in land made before or after the commencement of this Act, shall be deemed to be sufficiently complied with by the conveyance in the corresponding share in the proceeds of sale of the land in like manner as if the contract had been to convey that corresponding share.

(7) Where a purchaser has power to acquire land compulsorily, and a contract, whether by virtue of a notice to treat or otherwise, is subsisting under which title can be made without payment of the compensation money into court, title shall be made in that way unless the purchaser, to avoid expense or delay for any special reason, considers it expedient that the money should be paid into court.

(8) A vendor shall not have any power to rescind a contract by reason only of the enforcement of any right under this section.

(9) This section only applies in favour of a purchaser for money or money's worth.

66. (1) A deed containing a declaration by the estate owner that his estate shall go and devolve in such a manner as may be requisite for confirming any interests intended to affect his estate and capable under this Act of subsisting as legal estates which, at

some prior date, were expressed to have been transferred or created, and any dealings therewith which would have been legal if those interests had been legally and validly transferred or created, shall to the extent of the estate of the estate owner, but without prejudice to the restrictions imposed by this Act in the case of mortgages, operate to give legal effect to the interests so expressed to have been transferred or created and to the subsequent dealings aforesaid.

(2) The powers conferred by this section may be exercised by a tenant for life or statutory owner, **trustee of land** [~~trustee for sale~~], or a personal representative (being in each case an estate owner) as well as by an absolute owner, but if exercised by any person, other than an absolute owner, only with the leave of the court.

(3) This section applies only to deeds containing such a declaration as aforesaid if executed after the commencement of this Act.

(4) The county court has jurisdiction under this section where the land which is to be dealt with in the court does not exceed the county court limit in capital value or net annual value for rating.

102. (1) A person who was before the commencement of this Act a mortgagee of an undivided share in land shall have the same power to sell his share in the proceeds of sale of the land and in the rents and profits thereof until sale, as, independently of this Act, he would have had in regard to the share in the land; and shall also have a right to require the **trustees** [~~trustees for sale~~] in whom the land is vested to account to him for the income attributable to that share or to appoint a receiver to receive the same from such trustees corresponding to the right which, independently of this Act, he would have had to take possession or to appoint a receiver of the rents and profits attributable to the same share.

(2) The powers conferred by this section are exercisable by the persons deriving title under such mortgagee.

130. [~~(1) An interest in tail or in tail male or in tail female or in tail special (in this Act referred to as "an entailed interest") may be created by way of trust in any property, real or personal, but only by the right expressions as those by which before the commencement of this Act a similar estate tail could have been created by deed (not being an executory instrument) in freehold land, and with the like results, including the right to bar the entail either absolutely or so as to create an interest equivalent to a base fee, and accordingly all statutory provisions relating to estates tail in real property shall apply to entailed interests in personal property.~~

~~Personal estate so entailed (not being chattels settled as heirlooms) may be invested, applied, and otherwise dealt with as if the same were capital money or securities representing capital money arising under the Settled Land Act 1925 from land settled on the like trusts.]~~

~~[(2) Expressions contained in an instrument coming into operation after the commencement of this Act, which, in a Will or executory instrument coming into operation before such commencement, would have created an entailed interest in freehold land, but would not have been effectual for that purpose in a deed not being an executory instrument, shall (save as provided by the next succeeding section) operate in equity, in regard to property real or personal to create absolute, fee simple or other interests corresponding to those which, if the property affected had been personal estate, would have been created therein by similar expressions before the commencement of this Act.]~~

~~[(3) Where personal estate (including the proceeds of sale of land directed to be sold and chattels directed to be held as heirlooms) is, after the commencement of this Act, directed to be enjoyed or held with, or upon trusts corresponding to trusts affecting, land in which, either before or after the commencement of this Act an entailed interest has been created, and is subsisting, such direction shall be deemed sufficient to create a corresponding entailed interest in such personal estate.]~~

(4) In default of and subject to the execution of a disentailing assurance or the exercise of the testamentary power conferred by this Act, an entailed interest (to the extent of the property affected) shall devolve as an equitable interest, from time to time,

upon the persons who would have been successively entitled thereto as the heirs of the body (either generally or of a particular class) of the tenant in tail or other person, or as tenant by the curtesy, if the entailed interest had, before the commencement of this Act, been limited in respect of freehold land governed by the general law in force immediately before such commencement, and such law had remained unaffected.

(5) Where personal chattels are settled without reference to settled land on trusts creating entailed interests therein, the trustees, without the consent of the usufructuary for the time being if of full age, may sell the chattels or any of them, and the net proceeds of any such sale shall be held in trust for and shall go to the same persons successively, in the same manner and for the same interests, as the chattels sold would have been held and gone if they had not been sold, and the income of investments representing such proceeds of sale shall be applied accordingly.

~~[(6) An entailed interest shall only be capable of being created by a settlement of real or personal property or the proceeds of sale thereof (including the will of person dying after the commencement of this Act), or by an agreement for a settlement in which the trusts to affect property are sufficiently declared.]~~

(7) In this Act where the context so admits “entailed interest” includes an estate tail (now made to take effect as an equitable interest) created before the commencement of this Act.

131. Where by any instrument coming into operation after the commencement of this Act an interest in any property is expressed to be given to the heir or heirs or issue or any particular heir or any class of the heirs or issue of any person in words which, but for this section **and section 16 of the Trusts of Land Act 1989** would, under the rule known as the rule in Shelley’s case, have operated to give to that person an interest in fee simple or an entailed interest, such words shall operate in equity as words of purchase and not of limitation, and shall be construed and have effect accordingly, and in the case of an interest in any property expressed to be given to an heir or heirs or any particular heir or class of heirs, the same person or persons shall take as would in the case of freehold land have answered that description under the general law in force before the commencement of this Act.

137. (1) The law applicable to dealings with equitable things in action which regulates the priority of competing interests therein, shall, as respects dealings with equitable interests in land, capital money, and securities representing capital money effected after the commencement of this Act, apply to and regulate the priority of competing interests therein.

This subsection applies whether or not the money or securities are in court.

(2)(i) In the case of a dealing with an equitable interest in settled land, capital money or securities representing capital money, the persons to be served with notice of the dealing shall be the trustees of the settlement; and where the equitable interest is created by a derivative or subsidiary settlement, the persons to be served with notice shall be the trustees of that settlement.

(ii) In the case of a dealing with an equitable interest in the proceeds of sale of land **subject to a trust of land** or in the rents and profits until sale the persons to be served with notice shall, as heretofore, be the trustees for sale.

(3) A notice, otherwise than in writing, given to, or received by, a trustee after the commencement of this Act as respects any dealing with an equitable interest in real or personal property, shall not affect the priority of competing claims of purchasers in that equitable interest.

(4) Where, as respects any dealing with an equitable interest in real or personal property—

- (a) the trustees are not persons to whom a valid notice of the dealing can be given; or
- (b) there are no trustees to whom a notice can be given; or

- (c) for any other reason a valid notice cannot be served, or cannot be served without unreasonable cost or delay;

a purchaser may at his own cost require that—

- (i) a memorandum of the dealing be endorsed, written on or permanently annexed to the instrument creating the trust;
- (ii) the instrument be produced to him by the person having the possession or custody thereof

to prove that a sufficient memorandum has been placed thereon or annexed thereto.

Such memorandum shall, as respects priorities, operate in like manner as if notice in writing of the dealing had been given to trustees duly qualified to receive the notice at the time when the memorandum is placed on or annexed to the instrument creating the trust.

(5) Where the property affected is settled land, the memorandum shall be placed on or annexed to the trust instrument and not the vesting instrument.

Where the property affected is land **subject to a trust of land**, [~~held on trust for sale~~] the memorandum shall be placed on or annexed to the instrument whereby the equitable interest is created.

(6) Where the trust is created by statute or by operation of law, or in any other case where there is no instrument whereby the trusts are declared, the instrument under which the equitable interest is acquired or which is evidence of the devolution thereof shall, for the purposes of this section, be deemed the instrument creating the trust.

In particular, where the trust arises by reason of an intestacy, the letters of administration or probate in force when the dealing was effected shall be deemed such instrument.

(7) Nothing in this section affects any priority acquired before the commencement of this Act.

(8) Where a notice in writing of a dealing with an equitable interest in real or personal property has been served on a trustee under this section, the trustees from time to time of the property affected shall be entitled to the custody of the notice, and the notice shall be delivered to them by any person who for the time being may have the custody thereof; and subject to the payment of costs, any person interested in the equitable interest may require production of the notice.

(9) The liability of the estate owner of the legal estate affected to produce documents and furnish information to persons entitled to equitable interests therein shall correspond to the liability of a trustee for sale to produce documents and furnish information to persons entitled to equitable interests in the proceeds of sale of the land.

(10) This section does not apply until a trust has been created, and in this section “dealing” includes a disposition by operation of law.

153. (1) Where a residue unexpired of not less than two hundred years of a term, which, as originally created, was for not less than three hundred years, is subsisting in land, whether being the whole land originally comprised in the term, or only part thereof,—

- (a) without any trust or right of redemption affecting the term in favour of the freeholder, or other person entitled in reversion expectant on the term; and
- (b) without any rent, or with merely a peppercorn rent or other rent having no money value, originally so incident, which subsequently has been released or has become barred by lapse of time, or has in any other way ceased to be payable;

the term may be enlarged into a fee simple in the manner and subject to the restrictions in this section provided.

(2) This section applies to and includes every such term as aforesaid, whenever created, whether or not having the freehold as the immediate reversion thereon; but does not apply to—

- (i) Any term liable to be determined by re-entry for condition broken; or
- (ii) Any term created by subdemise out of a superior term, itself capable of being enlarged into a fee simple.

(3) This section extends to mortgage terms, where the right of redemption is barred.

(4) A rent not exceeding the yearly sum of one pound which has not been collected or paid for a continuous period of twenty years or upwards shall, for the purposes of this section, be deemed to have ceased to be payable:

Provided that, of the said period, at least five years must have elapsed after the commencement of this Act.

(5) Where a rent incident to a reversion expectant on a term to which this section applies is deemed to have ceased to be payable for the purposes as aforesaid, no claim for such rent or for any arrears thereof shall be capable of being enforced.

(6) Each of the following persons, namely—

- (i) Any person beneficially entitled in right of the term, whether subject to any incumbrance or not, to possession of any land comprised in the term, and, in the case of a married woman without the concurrence of her husband, whether or not she is entitled for her separate use or as her separate property;
- (ii) Any person being in receipt of income as trustee, in right of the term, or having the term vested in him as a trustee of land [~~on trust for sale~~], whether subject to any incumbrance or not;
- (iii) Any person in whom, as personal representative of any deceased person, the term is vested, whether subject to any incumbrance or not;

shall, so far as regards the land to which he is entitled, or in which he is interested in right of the term, in any such character as aforesaid, have power by deed to declare to the effect that, from and after the execution of the deed, the term shall be enlarged into a fee simple.

(7) Thereupon, by virtue of the deed and of this Act, the term shall become and be enlarged accordingly, and the person in whom the term was previously vested shall acquire and have in the land a fee simple instead of the term.

(8) The estate in fee simple so acquired by enlargement shall be subject to all the same trusts, powers, executory limitations over, rights and equities, and to all the same covenants and provisions relating to user and enjoyment, and to all the same obligations of every kind, as the term would have been subject to if it had not been so enlarged.

(9) But where—

- (a) any land so held for the residue of a term has been settled in trust by reference to other land, being freehold land so as to go along with that other land, or, in the case of settlements coming into operation before the commencement of this Act, so as to go along with that other land as far as the law permits; and
- (b) at the time of enlargement, the ultimate beneficial interest in the term, whether subject to any subsisting particular estate or not, has not become absolutely and indefeasibly vested in any person, free from charges or powers of charging created by a settlement;

the estate in fee simple acquired as aforesaid shall, without prejudice to any conveyance for value previously made by a person having a contingent or defeasible interest in the term, be liable to be, and shall be, conveyed by means of a subsidiary vesting instrument and settled in like manner as the other land, being freehold land aforesaid, and until so conveyed and settled shall devolve beneficially as if it had been so conveyed and settled.

(10) The estate in fee simple so acquired shall, whether the term was originally created without impeachment of waste or not, include the fee simple in all mines and

minerals which at the time of enlargement have not been severed in right or in fact, or have not been severed or reserved by an inclosure Act or award.

205. (1) (xxix) “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 a power at discretion to postpone the sale;]~~ “trustees for sale” mean the persons (including a personal representative) holding on trust for sale; and “power to postpone a sale” means power to postpone in the exercise of a discretion;

(xxixa) “trust of land” and “trustees of land” have the same meanings as in the Trusts of Land Act 1989.

Schedule One Part III Para. 2. Where immediately before the commencement of this Act a legal estate in land is vested in an infant jointly with one or more other persons of full age beneficially, the legal estate shall by virtue of this Act vest in that other person or those other persons on the **appropriate trusts (within the meaning of section 19 of this Act), but not so as to sever any beneficial joint tenancy in the land** ~~[statutory trusts, but not so as to sever any joint tenancy in the net proceeds of sale or in the rents and profits until sale];~~

Provided that, if by virtue of this paragraph the legal estate becomes vested in one person as trustee, then, if no other person becomes able and willing to do so, the parents or parent testamentary or other guardian of the infant, if respectively able and willing to act, (in the order named) may and at the request of any interested person shall (subject to the costs being provided for) by writing appoint an additional trustee and thereupon by virtue of this Act the legal estate shall vest in the additional trustee and existing trustee as joint tenants.

Schedule One Part IV Paras 1 and 2

1. Where immediately before the commencement of this Act, land is held at law or in equity in undivided shares vested in possession, the following provisions shall have effect:-

(1) If the entirety of the land is vested in trustees or personal representatives (whether subject or not to incumbrances affecting the entirety or an undivided share) in trust for persons entitled in undivided shares then-

(a) if the land is subject to incumbrances affecting undivided shares or to incumbrances affecting the entirety which under this Act or otherwise are not secured by legal terms of years absolute, the entirety of the land shall vest free from such incumbrances in such trustees or personal representatives and be held by them **on such trusts as are appropriate for giving effect to the rights and claims of the persons interested in the land whether beneficially or otherwise (in this Part of this Schedule referred to as “the appropriate trusts”)** ~~[upon the statutory trusts];~~ and

(b) in any other case, the land shall be held by such trustees or personal representatives **on the appropriate trusts** ~~[upon the statutory trusts]~~

subject in the case of personal representatives, to their rights and powers for the purposes of administration.

(2) If the entirety of the land (not being settled land) is vested absolutely and beneficially in not more than four persons of full age entitled thereto in undivided shares free from incumbrances affecting undivided shares, but subject or not to incumbrances affecting the entirety, it shall, by virtue of this Act, vest in them as joint tenants **on the appropriate trusts** ~~[upon the statutory trusts].~~

(3) If the entirety of the land is settled land (whether subject or not to incumbrances affecting the entirety or an undivided share) held under one and the same settlement, it shall, by virtue of this Act, vest, free from incumbrances affecting undivided shares, and from incumbrances affecting the entirety, which under this Act or otherwise are not secured by a legal mortgage, and free from any interests, powers and charges subsisting under the settlement which have priority to the interests of the persons entitled to the

undivided shares, in the trustees (if any) of the settlement as joint tenants **on the appropriate trusts** [~~upon the statutory trusts~~].

Provided that if there are no such trustees then

- (i) pending their appointment, the land shall, by virtue of this Act, vest (free as aforesaid) in the Public Trustee **on the appropriate trusts** [~~upon the statutory trusts~~];
- (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 by or on behalf of persons interested in more than an undivided half of the land or the income thereof;
- (iii) after the Public Trustee has been so requested to act, and has accepted the trust, no trustee shall (except by an order of the court) be appointed in the place of the Public Trustee except with his consent;
- (iv) if, before the Public Trustee has accepted the trust, trustees of the settlement are appointed, the land shall, by virtue of this Act, vest (free as aforesaid) in them as joint tenants **on the appropriate trusts** [~~upon the statutory trusts~~].
- (v) if, before the Public Trustee has accepted the trust, the persons having power to appoint new trustees are unable or unwilling to make an appointment, or if the tenant for life having power to apply to the court for the appointment of trustees of the settlement neglects to make the application for at least three months after being requested by any person interested in writing so to do, or if the tenants for life of the undivided shares are unable to agree, any person interested under the settlement may apply to the court for the appointment of such trustees.

(3A) The County Court has jurisdiction under proviso (v) to sub-paragraph (3) of this paragraph where the land to be dealt with in the court does not exceed the county court limit in capital value or in net annual value for rating.

(4) In any case to which the foregoing provisions of this Part of this Schedule do not apply the entirety of the land shall vest (free as aforesaid) in the Public Trustee **on the appropriate trusts** [~~upon the statutory trusts~~]:

Provided that—

- (i) 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 by or on behalf of the persons interested in more than an undivided half of the land or the income thereof;
- (ii) After the Public Trustee has been so requested to act, and has accepted the trust, no trustee shall (except by an order of the court) be appointed in the place of the Public Trustee without his consent;
- (iii) Subject as aforesaid any persons interested in more than an undivided half of the land or the income thereof may appoint new trustees in the place of the Public Trustee without the consent of any incumbrancers of undivided shares (but so that a purchaser shall not be concerned to see whether any such consent has been given) and thereupon the land shall by virtue of this Act vest in the persons so appointed (free as aforesaid) **on the appropriate trusts** [~~upon the statutory trusts~~]; or such persons may (without such consent as aforesaid), at any time, whether or not the Public Trustee has accepted the trust, apply to the court for the appointment of trustees of the land, and the court may make such order as it thinks fit, and if thereby trustees of the land are appointed, the same shall by virtue of this Act, vest, (free as aforesaid) in the trustees as joint tenants **upon the appropriate trusts** [~~upon the statutory trusts~~];
- (iv) if the persons interested in more than an undivided half of the land or the income thereof do not either request the Public Trustee to act, or, (whether he refuses to act or has not been requested to act) apply to the court for the appointment of trustees in his place, within three months from the time when they have been requested in writing by any person interested so to do, then and in any such case, any person interested may apply to the court for the appointment of trustees in the place of the Public Trustee, and the court may make such order as it thinks fit, and if thereby trustees of the land are

appointed the same shall by virtue of this Act vest (free as aforesaid) in the trustees **on the appropriate trusts** [~~upon the statutory trusts~~].

(4A) The County Court has jurisdiction under provisos (iii) and (iv) to subparagraph (4) of this paragraph where the land to be dealt with in the court does not exceed the County court limit in capital value or in net annual value for rating.

(5) The vesting in the Public Trustee of land by virtue of this Part of this Schedule shall not affect any directions previously given as to the payment of income or of interest on any mortgage money, but such instructions may, until he accepts the trust, continue to be acted on as if no such vesting had been effected.

(6) The court or the Public Trustee may act on evidence given by affidavit or by statutory declaration as respects the undivided shares without investigating the title to the land.

(7) Where all the undivided shares in the land are vested in the same mortgagees for securing the same mortgage money and the rights of redemption affecting the land are the same as might have been subsisting if the entirety had been mortgaged by an owner before the undivided shares were created, the land shall, by virtue of this Act, vest, in the mortgagees as joint tenants for a legal term of years absolute (in accordance with this Act) subject to cesser on redemption by the trustees for sale in whom the right of redemption is vested by this Act, and for the purposes of this part of this Schedule the mortgage shall be deemed an incumbrance affecting the entirety.

(8) This Part of this Schedule does not (except where otherwise expressly provided) prejudice incumbrancers whose incumbrances affect the entirety of the land at the commencement of this Act, but (if the nature of the incumbrance admits) the land shall vest in them for legal terms of years absolute in accordance with this Act but not so as to affect subsisting priorities.

(9) **The power of sale** [~~The trust for sale~~] and powers of management vested in persons who hold the entirety of the land **on trust** [~~on trust for sale~~] shall, save as hereinafter mentioned, not be exercisable without the consent of any incumbrancer, being of full age, affected whose incumbrance is divested by this Part of this Schedule, but a purchaser shall not be concerned to see or inquire whether any such consent has been given, nor, where the incumbrancer is not in possession, shall any such consent be required if, independently of this Part of this Schedule or any enactment replaced thereby the transaction would have been binding on him, had the same been effected by the mortgagor.

(10) This Part of this Schedule does not apply to land in respect of which a subsisting contract for sale (whether made under an order in a partition action by or on behalf of all the tenants in common or coparceners) is in force at the commencement of this Act if the contract is completed in due course (in which case title may be made in like manner as if this Act, and any enactment thereby replaced, had not been passed), nor to the land in respect of which a partition action is pending at such commencement if an order for a partition sale is subsequently made in such action within eighteen months from the commencement of this Act.

(11) The repeal of the enactments relating to partition shall operate without prejudice to any proceedings thereunder commenced before the commencement of this Act, and to the jurisdiction of the court to make any orders in reference thereto, and subject to the following provisions, namely—

- (i) In any such proceedings, and at any stage thereof, any person or persons interested individually or collectively in one half or upwards of the land to which the proceedings relate, may apply to the court for an order staying such proceedings;
- (ii) The court may upon such application make an order staying the proceedings as regards the whole or any part, not being an undivided share, of the land;
- (iii) As from the date of such order the said enactments shall cease to apply to the land affected by the order and the provisions of this Part of this Schedule shall apply thereto;

- (iv) The court may by such order appoint trustees of the land and the same shall by virtue of this Act vest (free as aforesaid) in the trustees as joint tenants **on the appropriate trusts** [~~upon the statutory trusts~~];
- (v) The court may order that the costs of the proceedings and of the application shall be raised by the trustees, by legal mortgage of the land or any part thereof, and paid either wholly or partially into court or to the trustees;
- (vi) The court may act on such evidence as appears to be sufficient, without investigating the title to the land.

(12) In this Part of this Schedule “incumbrance” does not include a legal rentcharge affecting the entirety, land tax, tithe rentcharge, or any similar charge on the land not created by an instrument.

2. Where undivided shares in land, created before the commencement of this Act, fall into possession after such commencement, and the land is not settled land when the shares fall into possession, the personal representatives (subject to their rights and powers for purposes of administration) or other estate owners in whom the entirety of the land is vested shall, by an assent or a conveyance, give effect to the foregoing provisions of this Part of this Schedule in like manner as if the shares had fallen into possession immediately before the commencement of this Act, and in the meantime the land shall be held **on such trusts as are appropriate for giving effect to the rights and claims of the persons interested in the land, (whether beneficially or otherwise).** [~~on the statutory trusts~~].

Schedule One Part Five Paras 1, 2 and 3

1. Where immediately before the commencement of this Act a party wall or other party structure is held in undivided shares, the ownership thereof shall be deemed to be severed vertically as between the respective owners, and the owner of each part shall have such rights as support and of user over the rest of the structure as may be requisite for conferring rights corresponding to those subsisting at the commencement of the Act.

2. Where, immediately before the commencement of this Act, an open space of land (with or without any building used in common for the purposes of any adjoining land) is held in undivided shares, in right whereof each owner has rights of access and user over the open space, the ownership thereof shall vest in the Public Trustee **on such trusts as are appropriate for giving effect to the rights and claims of the persons interested in the land whether beneficially or otherwise (the power to sell the land being exercisable only with the leave of the court)** [~~on the statutory trusts which shall be executed only with the leave of the court~~], and, subject to any order of the court to be contrary, each person who would have been a tenant in common shall, until the open space is conveyed to a purchaser, have rights of access and user over the open space corresponding to those which would have subsisted if the tenancy in common had remained subsisting.

3. Any person interested may apply to the court for an order declaring the rights and interests under this Part of this Schedule, of the persons interested in any such party structure or open space, or generally may apply in relation to the provisions of this Part of this Schedule, and the court may make such order as it thinks fit.

**THE ADMINISTRATION OF ESTATES ACT 1925 AS AMENDED BY THE
TRUSTS OF LAND ACT 1989**

Inserted or substituted words are in bold type, words omitted are enclosed in square brackets and struck out.

3. (1) In this part of this Act "real estate" includes—
- (i) Chattels real, and land in possession, remainder, or reversion and **subject to paragraph (ii) below, every interest** [~~every interest~~] in or over land to which a deceased person was entitled at the time of his death; and
 - (ii) Real estate held on trust (including settled land) or by way of mortgage or security, but not money to arise under a **trust** [~~trust for sale~~] of land, nor money secured or charged on land.

(2) A testator shall be deemed to have been entitled at his death to any interest in real estate passing under any gift contained in his will which operates as an appointment under a general power to appoint by will, or operates under the testamentary power conferred by statute to dispose of an entailed interest.

(3) An entailed interest of a deceased person shall (unless disposed of under the testamentary power conferred by statute) be deemed an interest ceasing on his death, but any further or other interest of the deceased in the same property in remainder or reversion which is capable of being disposed of by his will shall not be deemed to be an interest so ceasing.

(4) The interest of a deceased person under a joint tenancy where another tenant survives the deceased is an interest ceasing on his death.

(5) On the death of a corporator sole his interest in the corporation's real and personal estate shall be deemed to be an interest ceasing on his death and shall devolve to his successor.

This subsection applies on the demise of the Crown as respects all property, real and personal, vested in the Crown as a corporation sole.

33. (1) On the death of a person intestate as to any real or personal estate, such estate shall be held by his personal representatives upon trust.

~~[(1) On the death of a person intestate as to any real or personal estate, such estate shall be held by his personal representatives—~~

~~(a) as to the real estate upon trust to sell the same; and~~

~~(b) as to the personal estate upon trust to call in and convert into money such part thereof as may not consist of money;~~

~~with power to postpone such sale and conversion for such a period as the personal representatives, without being liable to account, may think proper, and so that any reversionary interest be not sold until it falls into possession, unless the personal representatives see special reason for sale, and also that, unless required for purposes of administration owing to want of other assets, personal chattels be not sold except for special reason.]~~

(2) **The personal representatives shall pay out of the ready money of the deceased and any net money arising from the disposal of any other part of his estate (after payment of costs) [Out of the net money to arise from the sale and conversion of such real and personal estate (after payment of costs), and out of the ready money of the deceased (so far as not disposed of by his will, if any), the personal representative shall pay] all such funeral, testamentary and administration expenses, debts and other liabilities as are properly payable thereout having regard to the rules of administration contained in this Part of this Act, and out of the residue of the said money the personal representative shall set aside a fund sufficient to provide for any pecuniary legacies bequeathed by the will (if any) of the deceased.**

(3) During the minority of any beneficiary or the subsistence of any life interest and pending the distribution of the whole or any part of the estate of the deceased, the personal representatives may invest the residue of the said money, or so much thereof as may not have been distributed, in any investments for the time being authorised by statute for the investment of trust money, with power, at the discretion of the personal representatives, to change such investments for others of a like nature.

(4) The residue of the said money and any investments for the time being representing the same, **and any part of the estate of the deceased which remains unsold** [~~including (but without prejudice to the trust for sale) any part of the estate of the deceased which may be retained unsold~~] and is not required for the administration purposes aforesaid, is in this Act referred to as “the residuary estate of the intestate”.

(5) The income (including net rents and profits of real estate and chattels real after payment of rates, taxes, rent, costs of insurance, repairs and other outgoings properly attributable to income) of so much of the real and personal estate of the deceased as may not be disposed of by his will, if any, or may not be required for the administration purposes aforesaid, may, however such estate is invested, as from the death of the deceased, be treated and applied as income, and for that purpose any necessary apportionment may be made between tenant for life and remainderman.

(6) Nothing in this section affects the rights of any creditor of the deceased or the rights of the Crown in respect of death duties.

(7) Where the deceased leaves a will, this section has effect subject to the provisions contained in the will.

39. (1) In dealing with the real and personal estate of the deceased his personal representatives shall, for the purposes of administration, or during a minority of any beneficiary or the subsistence of any life interest, or until the period of distribution arrives, have—

(i) **as respects the personal estate**, the same powers and discretions, including power to raise money by mortgage or charge (whether or not by deposit of documents), as a personal representative had before the commencement of this Act, with respect to personal estate vested in him, [~~and such power of raising money by mortgage may in the case of land be exercised by way of legal mortgage; and~~]

(ii) **As respects the real estate**, all the functions conferred as respects land subject to a trust by section 28 of the Law of Property Act 1925 (taking the reference in subsection (3) to the persons interested in the land as a reference to the persons interested in the due administration of the estate and disregarding subsection (10) (contrary intention).

~~[(ii) all the powers, discretions and duties conferred or imposed by law on trustees holding land upon an effectual trust for sale (including power to overreach equitable interests and powers as if the same affected the proceeds of sale); and]~~

(iii) all the powers **necessary** [~~conferred by statute on trustees for sale, and~~] so that every contract entered into by a personal representative shall be binding on and be enforceable against and by the personal representative for the time being of the deceased, and may be carried into effect, or be varied or rescinded by him, and, in the case of a contract entered into by a predecessor, as if it had been entered into by himself.

(2) Nothing in this section shall affect the right of any person to require an assent or conveyance to be made.

(3) This section applies whether the testator or intestate died before or after the commencement of this Act.

41. (1) The personal representative may appropriate any part of the real or personal estate, including things in action, of the deceased in the actual condition or state of investment thereof at the time of appropriation in or towards satisfaction of any legacy bequeathed by the deceased, or of any other interest or share in his property, whether

settled or not, as to the personal representative may seem just and reasonable, according to the respective rights of the persons interested in the property of the deceased:

Provided that—

- (i) an appropriation shall not be made under this section so as to affect prejudicially any specific devise or bequest;
- (ii) an appropriation of property, whether or not being an investment authorised by law or by the will, if any, of the deceased for the investment of money subject to the trust and shall not, (save as hereinafter mentioned) be made under this section except with the following consents—
 - (a) when made for the benefit of any person absolutely and beneficially entitled in possession, the consent of that person;
 - (b) when made in respect of any settled legacy share or interest, the consent of either the trustee thereof, if any (not being also the personal representative), or the person who may for the time being be entitled to the income:
If the person whose consent is so required as aforesaid is an infant or is incapable by reason of mental disorder within the meaning of the Mental Health Act 1983, of managing and administering his property and affairs the consent shall be given on his behalf by his parents or parent, testamentary or other guardian or receiver, or if, in the case of an infant, there is no such parent or guardian, by the court on the application of his next friend;
- (iii) no consent (save of such trustee as aforesaid) shall be required on behalf of a person who may come into existence after the time of appropriation, or who cannot be found or ascertained at that time;
- (iv) if no receiver is acting for a person suffering from a mental disorder then, if the appropriation is of an investment authorised by law or by the will, if any, of the deceased for the investment of money subject to the trust, no consent shall be required of the said person;
- (v) if, independently of the personal representative, there is no trustee of a settled legacy share or interest, and no person of full age and capacity entitled to the income thereof, no consent shall be required to an appropriation in respect of such legacy share or interest, provided that the appropriation is of an investment authorised as aforesaid.

(1A) The county court has jurisdiction under proviso (ii) to subsection (1) of this section where the estate in respect of which the application is made does not exceed in amount or value the county court limit.

(2) Any property duly appropriated under the powers conferred by this section shall thereafter be treated as an authorised investment, and may be retained or dealt with accordingly.

(3) For the purposes of such appropriation, the personal representative may ascertain and fix the value of the respective parts of the real and personal estate and the liabilities of the deceased as he may think fit, and shall for that purpose employ a duly qualified valuer in any case where such employment may be necessary; and may make any conveyance (including an assent) which may be requisite for giving effect to the appropriation.

(4) An appropriation made pursuant to this section shall bind all persons interested in the property of the deceased whose consent is not hereby made requisite.

(5) The personal representative shall, in making the appropriation, have regard to the rights of any person who may thereafter come into existence, or who cannot be found or ascertained at the time of the appropriation, and of any other person whose consent is not required by this section.

(6) This section does not prejudice any other power of appropriation conferred by law or by the will (if any) of the deceased, and takes effect with any extended powers conferred by the will (if any) of the deceased, and where an appropriation is made under this section, in respect of a settled legacy, share or interest, the property appropriated

shall remain subject to all trusts [~~trusts for sale~~] and powers of leasing, disposition, and management or varying investments which would have been applicable thereto or to the legacy, share or interest in respect of which the appropriation is made, if no such appropriation had been made.

(7) If after any real estate has been appropriated in purported exercise of the powers conferred by this section, the person to whom it was conveyed disposes of it or any interest therein, then, in favour of a purchaser, the appropriation shall be deemed to have been made in accordance with the requirements of this section and after all requisite consents, if any, had been given.

(8) In this section, a settled legacy, share or interest includes any legacy, share or interest to which a person is not absolutely entitled in possession at the date of the appropriation, also an annuity, and “purchaser” means a purchaser for money or money’s worth.

(9) This section applies whether the deceased died intestate or not, and whether before or after the commencement of this Act, and extends to property over which a testator exercises a general power of appointment, including the statutory power to dispose of entailed interests, and authorises the setting apart of a fund to answer an annuity by means of the income of that fund or otherwise.

51. (1) Nothing in this Part of this Act affects the right of any person to take beneficially, by purchase, as heir either general or special.

(2) The foregoing provisions of this Part of this Act do not apply to any beneficial interest in real estate (not including chattels real) to which a person of unsound mind or defective living and of full age at the commencement of this Act, and unable, by reason of his incapacity, to make a will who thereafter dies intestate in respect of such interest without having recovered his testamentary capacity, was entitled at his death, and any such beneficial interest (not being an interest ceasing on his death) shall, without prejudice to any will of the deceased, devolve in accordance with the general law in force before the commencement of this Act applicable to freehold land, and that law shall, notwithstanding any repeal, apply to the case.

For the purposes of this subsection a person of unsound mind or defective who dies intestate as respects any beneficial interest in real estate shall not be deemed to have recovered his testamentary capacity unless his receiver has been discharged.

(3) Where an infant dies after the commencement of this Act without having been married **and without issue** and independently of this subsection he would, at his death, have been equitably entitled under a settlement (including a will) to a vested estate in fee simple or absolute interest in freehold land, or in any property settled to devolve therewith or as freehold land, such infant shall be deemed to have had **a life interest** [~~an entailed interest~~] and the settlement shall be construed accordingly.

(4) this Part of this Act does not affect the devolution of an entailed interest as an equitable interest.

55. (1) (xxvii) “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 a power at discretion to postpone the sale~~] and “power to postpone a sale” means power to postpone in the exercise of a discretion.

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