

4.2. Trusts (Amendment) Bill 2014 – Clauses considered

The Speaker: We turn now to the Trusts (Amendment) Bill. I call on the mover, Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

Hon. Members will remember from the previous reading that the purpose of this Bill was to address three small areas of trust law.

Trusts originated in the Middle Ages, dating to the time of the Crusades. They are a common law concept that, not surprisingly, relies on trust. A trust is created when one party disposes of property, transferring it to the care or possession of another. This person is known as 'the settlor'. The property is transferred on the understanding that it will be available for and put to the use for which it was intended. It is not an outright gift. The person to whom the property has been transferred is the trustee and has legal title to the property. The rights to use the property lie with the beneficiaries of the trust.

Relatively recently, in this context at least, some matters have been addressed by legislation. This Bill seeks to make amendments to three small areas of the Island's trust law. These three small areas will have a big impact. They will bring the Island's legislation in line with that of its near neighbours and competitors. The Bill will ensure that the Isle of Man remains competitive. It should be noted that great care has been taken to ensure that this is not at the expense of good practice and the Island's good reputation.

The three areas that are considered by the Bill are the abolition of the two trustees rule, the abolition of the perpetuity period in respect of future dispositions of trusts, and the matter of... *[Inaudible]* governing law when a trust is settled subject to the law of the Isle of Man. I will provide a brief explanation of what each of these is intended to achieve.

The first amendment is to the two trustees rule, which requires, at 3, that there must be two individual corporate trustees or a trust corporation in place to give valid receipt for capital money and the sale of settled land. Current law already makes provision for one individual trustee to act in these circumstances where the trust instrument permits this; therefore, there appears to be no reason not to change this in all cases. Current law sits across several Acts. In order to abolish the two trustees rule, two Acts will need to be amended; these are the Settled Land Act 1891 and the Trustee Act 1961.

The second area to be amended considers the abolition of the perpetuity period in respect of future dispositions of trusts. The courts developed what is known as the rule against perpetuities during the 17th century. This common law rule restricts the person's power to control the ownership and possession of his or her property in perpetuity. When trusts are created, it is likely that the settlor wishes the trust to last indefinitely. The reality is that the trust will survive into a second and possibly third generation, often not past then. Beneficiaries have their own reasons for... *[Inaudible]* that a trust vests.

This Bill contains seven clauses. Should the branches of Tynwald support this Bill, the Bill will come into operation by order made by the Treasury.

Vainstyr Loayreyder, turning to the Bill, clause 1 provides the short title of the Bill. I beg to move that this clause stand part of the Bill.

The Speaker: Mr Teare.

Mr Teare: Thank you, Mr Speaker.
I beg to second, sir.

The Speaker: I put the question. Clause 1: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 2.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

Clause 2 provides for the Bill to come into operation on one or more days appointed by the Treasury. Provision is made to allow the Treasury to make saving and transitional provisions by order.

I beg to move, sir, that clause 2 stand part of the Bill.

The Speaker: Mr Teare.

Mr Teare: Thank you, Mr Speaker.

I beg to second and to reserve my remarks, sir.

The Speaker: I put the question. Clause 2: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 3.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

Clause 3 amends the Settled Land Act 1891. In this clause, new sections 34 and 34A replace the existing section 34 of the Settled Land Act 1891.

New section 34 expressly considers that any reference to the trustees of a settlement will include the remaining trustee or trustees. The effect of this is that any references to trustees in the plural can be read as applying equally to the sole trustee.

New section 34A considers the subject of the payment of capital money to trustees. The current law ordinarily requires that there are two trustees in place to give valid receipt for capital money on sale of settled land. The exception to this rule is where the trustee is a trust corporation or the trust instrument expressly authorises a sole trustee to act. The effect of this new section will be to widen the scope of application of the definition of trustees of the settlement to include sole trustees.

I would remind Hon. Members that the provision of trustee services by way of business is an activity that is licensable by the Financial Supervision Commission. Those licensed by the Financial Supervision Commission who act as trustees may, in most instances, and despite their licence, not act as sole trustees. The effect of this clause will be to address this anomaly. This anomaly sees the trust corporations and trust service providers, both being holders of class 5 licences, not being afforded equal treatment under the law.

Clause 3(3) repeals section 40(2) of the Settled Land Act 1891. The effect of this is to remove a further reference to a requirement that there are either two trustees in place or a trust corporation, unless the trust instrument expressly provides for a sole trustee.

Vainstyr Loayreyder, I beg to move clause 3 stand part of the Bill.

The Speaker: Mr Teare.

Mr Teare: Thank you, Mr Speaker.

I beg to second and to reserve my remarks, sir.

The Speaker: I put the question. Clause 3: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 4.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

Clause 4 amends the Trustee Act 1961.

Clause 4(2) repeals existing section 12(2) of the Trustee Act 1961. This removes an additional reference to a sole trustee other than a trust corporation being unable to give valid receipts for capital money under the Settled Land Act. Hon. Members will remember that the previous clause dealt with two trustees under the Settled Land Act.

Clause 4(3) amends section 36 of the Trustee Act 1961. A new subsection (1)(c) makes express provision for a sole trustee to act. It also removes the requirement to replace trustees that are no longer in office for any reason. Finally, it expressly permits a sole trustee to act alone in circumstances which previously would not have been permitted. New subsection (2) proposes that subsection (1) will not apply if the terms of the trust instrument required two trustees to be in place.

Clause 4(4) amends subsection (1) of section 38. The reference to two trustees of a trust corporation are removed. The amendments reflect the changes to consider that there may indeed be a sole trustee in place. Hon. Members, this introduces an element of flexibility and choice.

Vainstyr Loayreyder, I beg to move that clause 4 stand part of the Bill.

The Speaker: Mr Teare.

Mr Teare: Thank you, Mr Speaker.

I beg to second and reserve my remarks, sir.

The Speaker: I put the question. Clause 4: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 5.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

Clause 5 amends the Perpetuities and Accumulations Act 1968.

Subsection (2) of clause 5 makes consequential amendments that will be needed after the insertion of new section 1A.

New section 1A is inserted by subsection (3) of clause 5. This abolishes the rule against perpetuities for future dispositions. I would remind Hon. Members that at the previous reading of the Bill I gave an explanation of what the perpetuity period is and you will be pleased to note that I will only read briefly here. **(A Member:** Hear, hear.)

The perpetuity period is the maximum amount of time for which assets can be owned and held in trust. On expiry of this period, the trust and trust property must be distributed. The rule was put in place to prevent property, particularly settled land, being held in trust in perpetuity. This rule is the common law rule against perpetuities. Perpetuity periods used to be set for the period of life in being. This is roughly 80 years. More recently, perpetuity periods have been enshrined in statute and have been lengthened. This is currently set at 150 years in the Isle of Man. The abolition of this rule does create the potential for land to be held in trust indefinitely. However, there is good evidence to suggest that trusts which are settled with the intention of lasting are usually broken up by the second or third generations of beneficiaries. The realities of life today are different to those in the 17th century **(Mr Anderson:** Hear, hear.) when this rule was created.

This clause makes it clear that property that does not belong to the settlor, and is therefore not his to settle into trust, will remain so. In other words, if certain property is not his to put into trust, this amendment will not change the position. No change has been made to anything other than the potential maximum time for which property can be held in trust.

Members should also note that perpetuity periods in respect of existing trusts will be unaffected by this amendment. It is only new dispositions of property that can be put in trust for an indefinite period. This may well result in some property in trust being subject to a perpetuity period and other property not.

Hon. Members may have noted that I said 'can' and not 'must' be put in trust for an indefinite period. This is because subsection (7) of new section 1A considers that a trust may still be settled

subject to a defined perpetuity period. The effect of this is to build flexibility into the legislation. There is a choice of whether to apply the new provision or not.

Vainstyr Loayreyder, I beg to move that clause 5 stand part of the Bill.

The Speaker: Mr Teare.

Mr Teare: Thank you, Mr Speaker.

I beg to second and reserve my remarks, sir.

The Speaker: I put the question that clause 5 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 6.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

Clause 6. The Trusts Act 1995 contains what are known as the firewall provisions. These provisions shield trusts that are validly settled under Isle of Man trust law from attack or the impact of foreign laws and judgments. The changes proposed are relatively modest and have been undertaken to ensure that the Island's law contains provisions equivalent to those in competitive jurisdictions. In keeping with our inherently conservative approach to matters that engage with the laws of other jurisdictions, it is not proposed that the law goes as far as it does in some other places.

Clause 6(2) amends section 5 of the 1995 Act. It does this by making a logical extension to the protections under Manx law. Section 5 provides that a validly constituted trust must be recognised, even if the law of another jurisdiction does not recognise trusts. In a nutshell, a jurisdiction that does not recognise trusts will not be able to regard a properly created Manx trust as invalid, regardless of what is in that jurisdiction's legislation. For these purposes, it is what is in *our* legislation that is important. The foreign jurisdiction will have to knock on the door of the Isle of Man courts and wait to be invited to enter the Isle of Man.

Section 5 currently only expressly protects the settlor from attack on grounds that a validly settled trust is not recognised by the law of his jurisdiction. This overlooks the other parties to trusts. These are the trustees, beneficiaries and protectors of trusts. The amendment in new subsection (1) of section 5 extends the protections to these parties.

New subsection (2) of section 5 deals with the perceived problem of the automatic application of foreign court orders to trusts that are governed by Manx law. The amendment expressly requires that, in order for a foreign court judgment to be recognised in the Isle of Man, application must be made to the High Court of the Isle of Man. This does not enable parties to shirk their responsibilities by hiding behind the trust. It does, however, mean that parties to a validly constituted trust will have the certainty that the trust is recognised and protected by Manx law.

Vainstyr Loayreyder, I beg to move that clause 6 stand part of the Bill.

The Speaker: Mr Teare.

Mr Teare: Thank you, Mr Speaker.

I beg to second and to reserve my remarks, sir.

The Speaker: I put the question: those in favour of clause 6 forming part of the Bill, say aye; against no. The ayes have it. The ayes have it.

Clause 7.

The Speaker: Gura mie eu, Vainstyr Loayreyder.

Clause 7 makes provision for the automatic expiry of the resultant Act on either the day following its day of promulgation or the day after the last of the amendments have taken effect. This will not affect any amendments that have been made by the Bill. This is simply a matter of housekeeping.

Vainstyr Loayreyder and Hon. Members, this Bill of modest size will ensure that the Island's trust practitioners are given the tools that they require to permit them to compete on a level playing field.

Vainstyr Loayreyder, I beg to move that clause 7 do stand part of the Bill.

The Speaker: Mr Teare.

Mr Teare: Thank you, Mr Speaker.

I beg to second, sir.

The Speaker: I put the question that clause 7 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Thank you, Hon. Members. That concludes the Trusts (Amendment) Bill clauses stage.