

STEP STANDARD PROVISIONS (ENGLAND AND WALES)

2nd Edition

Written by James Kessler QC TEP

With guidance notes by Toby Harris TEP LLB CTA

INTRODUCTION TO THE SECOND EDITION

The STEP Standard Provisions is a publication for practitioners who draft Wills subject to the law of England and Wales. It sets out clear provisions to include in a Will avoiding technical terms that may confuse the lay reader.

Any properly drafted Will or Settlement must contain a large amount of text dealing with routine administration matters. It had been necessary to set this out in full in each Will until STEP condensed this material into its Standard Provisions, which first published in 1992 and is now in its second edition.

Trust law has changed considerably since the first edition and the updated STEP Standard Provisions reflect this. The most significant amendment is that there is now a choice to incorporate either the 'core' provisions or the fuller form when drafting a document. The second edition also attempts to address an issue that concerned the drafters and consultees: the possible misuse of powers conferred by the Provisions.

The STEP Standard Provisions second edition was led and mainly drafted by James Kessler QC, and the accompanying Guidance notes, which are provided for Will-drafting practitioners who know the first edition and want to know what has changed, were drafted by Toby Harris TEP. The Society is grateful to James and to Toby and to all the consultants for their hard work on behalf of the entire profession.

At the time of publication, STEP is applying for a practice direction from the Principal Registry of the Family Division, as was granted for the first edition, permitting Wills incorporating the STEP Standard Provisions second edition by reference to be proved in the normal way, without providing text of the Provisions themselves.

Jennie Pratt TEP, Chair, STEP England and Wales

PROVISIONS OF THE SOCIETY OF TRUST AND ESTATE PRACTITIONERS

2nd Edition

The text of the second edition of the STEP Standard Provisions is as follows:

1 Incorporation of STEP Standard Provisions

1.1 These Provisions (with the exception of the Special Provisions) may be incorporated in a document by the words:

The Standard Provisions of the Society of Trust and Estate Practitioners (2nd Edition) shall apply

or in any manner indicating an intention to incorporate them.

1.2 These Provisions (including all the Special Provisions) may be incorporated in a document by the words:

The Standard Provisions and all of the Special Provisions of the Society of Trust and Estate Practitioners (2nd Edition) shall apply

or in any manner indicating an intention to incorporate them.

1.3 These Provisions (including specified Special Provisions) may be incorporated in a document by the words:

The Standard Provisions and the following Special Provisions of the Society of Trust and Estate Practitioners (2nd Edition) shall apply:

[specify which Special Provisions apply, as appropriate]

or in any manner indicating an intention to incorporate them.

1.4 The Special Provisions shall not be incorporated in a document only by the words:

The Standard Provisions of the Society of Trust and Estate Practitioners (2nd Edition) shall apply

in the absence of the words 'Special Provisions' or some other expression of an intention to incorporate them.

2 Interpretation

2.1 In these Provisions, unless the context otherwise requires:

2.1.1 **'Civil Partner'** has the same meaning as in section 1 *Civil Partnership Act 2004*.

2.1.2 **'Income Beneficiary'**, in relation to Trust Property, means a Person to whom income of the Trust Property is payable (as of right or at the discretion of the Trustees).

2.1.3 **'Person'** includes a person anywhere in the world and includes a Trustee.

2.1.4 **'Principal Document'** means the document in which these Provisions are incorporated.

2.1.5 **'Special Provisions'** means the provisions in clauses 14-23 of these Provisions.

2.1.6 **'Trust'** means any Trust created by the Principal Document and an estate of a deceased Person to which the Principal Document relates.

2.1.7 **'Trustees'** means the personal representatives or Trustees of the Trust for the time being.

2.1.8 **'Trust Fund'** means the property comprised in the Trust for the time being.

2.1.9 **'Trust Property'** means any property comprised in the Trust Fund.

2.2 These Provisions have effect subject to the provisions of the Principal Document.

3 Protection for interest in possession Trusts

If the existence of any powers conferred by these Provisions would be enough (without their exercise) to prevent a Person from being entitled to an interest in possession (within the meaning of the *Inheritance Tax Act 1984*) then those powers shall be restricted so far as necessary to avoid that result.

4 Additional powers

The Trustees shall have the following powers:

4.1 Investment

The Trustees may invest Trust Property in any manner as if they were absolutely entitled to it. In particular, the Trustees may invest in land in any part of the world and unsecured loans.

4.2 Management

The Trustees may effect any transaction relating to the management or disposition of Trust Property as if they were absolutely entitled to it.

In particular:

4.2.1 The Trustees may repair and maintain Trust Property.

4.2.2 The Trustees may develop or improve Trust Property.

4.3 Joint property

The Trustees may acquire property jointly with any Person.

4.4 Income and capital

Income may be set aside and invested to answer any liabilities that, in the opinion of the Trustees, ought to be borne out of income or to meet depreciation of the capital value of any Trust Property. In particular, income may be applied for a leasehold sinking-fund policy.

4.5 Accumulated income

The Trustees may apply accumulated income as if it were income arising in the current year.

4.6 Use of Trust Property

4.6.1 The Trustees may acquire any interest in property anywhere in the world for occupation or use by an Income Beneficiary.

4.6.2 The Trustees may permit an Income Beneficiary to occupy or use Trust Property on such terms as they think fit.

4.6.3 This clause does not restrict any right of Beneficiaries to occupy land under the *Trusts of Land and Appointment of Trustees Act 1996*.

4.7 Application of Trust capital

4.7.1 The Trustees may:

- (i) lend money that is Trust Property to an Income Beneficiary without security, on such terms as they think fit
- (ii) guarantee the debts or obligations of an Income Beneficiary
- (iii) charge Trust Property as security for debts or obligations of an Income Beneficiary, or
- (iv) pay money that is Trust Property to an Income Beneficiary as his/her income, for the purpose of augmenting his/her income.

4.7.2 Clause 4.7.1 applies only if:

- (i) the Trustees have power to transfer that Trust Property to that Income Beneficiary absolutely, or
- (ii) the Trustees have power to do so with the consent of another Person and the Trustees act with the written consent of that Person.

4.8 Trade

The Trustees may carry on a trade, in any part of the world, alone or in partnership.

4.9 Deposit of documents

The Trustees may deposit documents relating to the Trust (including bearer securities) with any Person.

4.10 Nominees

The Trustees may vest Trust Property in any Person as nominee, may authorise the use of sub-nominees, and may place Trust Property in the possession or control of any Person.

4.11 Place of administration

The Trustees may carry on the administration of the Trust anywhere they think fit.

4.12 Payment of tax

The Trustees may pay tax liabilities of the Trust (and interest on such tax) even though such liabilities are not enforceable against the Trustees.

4.13 Indemnities

The Trustees may indemnify any Person for any liability properly chargeable against Trust Property.

4.14 Security

The Trustees may charge Trust Property as security for any liability properly incurred by them as Trustees.

4.15 Appropriation

The Trustees may appropriate Trust Property to any Person or class of Persons in or towards the satisfaction of their interest in the Trust Fund.

4.16 Receipt by charities, etc

4.16.1 Where Trust Property is to be paid or transferred to a charity or non-charitable association or company, the receipt of the treasurer or appropriate officer of the organisation shall be a complete discharge to the Trustees. A Trustee shall not be liable for making a payment or transfer to any Person who appears to be the treasurer or appropriate officer unless at the time of the distribution the Trustee has knowledge of circumstances that call for enquiry.

4.16.2 If any charity ceases to exist, changes its name, or enters into insolvent liquidation, before the time that a gift to the charity takes effect in possession, the gift shall instead be paid to such charity as the Trustees decide having regard to the objects that were intended to benefit.

4.17 Release of powers

The Trustees may by deed release any of their powers wholly or in part so as to bind future Trustees.

4.18 Ancillary powers

The Trustees may do anything that is incidental or conducive to the exercise of their functions.

5 Powers of maintenance and advancement

Sections 31 and 32 *Trustee Act 1925* shall apply with the following modifications.

5.1 The proviso to section 31(1) shall be deleted.

5.2 The words 'one half of' in section 32(1)(a) shall be deleted.

6 Minors and Beneficiaries without capacity: powers over income

6.1 Where the Trustees may apply income for the benefit of a minor, they may do so by paying the income to the minor's parent or guardian on behalf of the minor, or to the minor if he/she has attained the age of 16. A Trustee is under no duty to enquire into the use of the income unless the Trustee has knowledge of circumstances that call for enquiry.

6.2 Where the Trustees may apply income for the benefit of a minor, they may do so by resolving that they hold that income on Trust for the minor absolutely and:

6.2.1 The Trustees may apply that income for the benefit of the minor during his/her minority.

6.2.2 The Trustees shall transfer the residue of that income to the minor on attaining the age of 18.

6.2.3 For investment and other administrative purposes that income shall be treated as Trust Property.

6.3 Where income is payable to a Beneficiary who does not have the mental capacity to appoint an attorney under a lasting power of attorney that relates to the property and affairs of the Beneficiary, the Trustees may (subject to the directions of the Court or a deputy appointed under the *Mental Capacity Act 2005* whose powers include receiving such income) apply that income for the benefit of the Beneficiary.

6.4 Where the Trustees may pay or apply income to or for the benefit of a Beneficiary who does not have the mental capacity to give a receipt, the Trustees may pay the income to the Person having or appearing to the Trustees to have the care and financial responsibility for such Person. A Trustee is under no duty to enquire into the use of the income unless the Trustee has knowledge of circumstances that call for enquiry.

7 Disclaimer

A Person may disclaim his/her interest under the Trust wholly or in part.

8 Apportionment

Income and expenditure shall be treated as arising when

payable, and not from day to day, so that no apportionment shall take place.

9 Conflicts of interest

9.1 In this clause:

9.1.1 '**Fiduciary**' means a Person subject to fiduciary duties under the Trust.

9.1.2 '**Independent Trustee**', in relation to a Person, means a Trustee who is not:

- (i) that Person
- (ii) a brother, sister, ancestor, descendant or dependant of the Person
- (iii) a spouse or Civil Partner of (i) or (ii) above; or
- (iv) a company controlled by one or more Persons within (i) (ii) or (iii) above.

9.2 A Fiduciary may:

9.2.1 enter into a transaction with the Trustees, or

9.2.2 be interested in an arrangement in which the Trustees are or might have been interested, or

9.2.3 act (or not act) in any other circumstances even though his/her fiduciary duty under the Trust conflicts with other duties or with his/her personal interest.

9.3 Clause 9.2 has effect only in relation to administrative and not dispositive matters, and only applies if:

9.3.1 the Fiduciary first discloses to the Trustees the nature and extent of any material interest conflicting with his/her fiduciary duties, and

9.3.2 there is in relation to the Fiduciary an Independent Trustee in respect of whom there is no conflict of interest, and he/she considers that the transaction arrangement or action is not contrary to the general interest of the Trust.

9.4 The powers of the Trustees may be used to benefit a Trustee (to the same extent as if he/she were not a Trustee) provided that:

9.4.1 there is in relation to that Trustee an Independent Trustee in respect of whom there is no conflict of interest, or

9.4.2 The Trustees consist of or include all the Trustees originally appointed under the Principal Document.

10 Trustee remuneration

10.1 A Trustee acting in a professional capacity is entitled to receive reasonable remuneration out of the Trust Fund for any services that he/she provides to or on behalf of the Trust.

10.2 For this purpose, a Trustee acts in a professional capacity if he/she acts in the course of a profession or

business that consists of or includes the provision of services in connection with:

10.2.1 the management or administration of Trusts generally or a particular kind of Trust, or

10.2.2 any particular aspect of the management or administration of Trusts generally or a particular kind of Trust.

10.3 The Trustees may make arrangements to remunerate themselves for work done for a company connected with the Trust Fund.

11 Trust Corporations

11.1 A Trust Corporation appointed by the Principal Document may act as Trustee on the basis of its standard terms as published at the date of the Principal Document.

11.2 On the appointment of a Trust Corporation as Trustee, the parties to the appointment may provide that the Trust Corporation may act as Trustee on the basis of its standard terms as published at the date of the appointment (in which case clause 11.1 shall not apply).

11.3 The Trust Corporation is entitled to receive remuneration and other charges in accordance with those terms.

11.4 In the event of a conflict between those terms and these Provisions, those terms shall prevail.

11.5 In this clause, 'Trust Corporation' has the same meaning as in the *Trustee Act 1925*.

12 Liability of Trustees

12.1 A Trustee shall not be liable for a loss to the Trust Fund unless that loss was caused by his/her own actual fraud or negligence.

12.2 A Trustee shall not be liable for a loss to the Trust Fund unless that loss or damage was caused by his/her own actual fraud, provided that:

12.2.1 the Trustee acts as a lay Trustee (within the meaning of section 28 *Trustee Act 2000*), and

12.2.2 there is another Trustee who does not act as a lay Trustee.

12.3 A Trustee shall not be liable for acting in accordance with the advice of counsel, of at least five years' standing, with respect to the Trust. The Trustees may in particular conduct legal proceedings in accordance with such advice without obtaining a court order. A Trustee may recover from the Trust Fund any expenses where he/she has acted in accordance with such advice.

12.4 Clause 12.3 does not apply:

12.4.1 in relation to a Trustee who knows or has reasonable cause to suspect that the advice was given in ignorance of material facts

12.4.2 if proceedings are pending to obtain the decision of the court on the matter

12.4.3 in relation to a Trustee who has a personal interest in the subject matter of the advice, or

12.4.4 in relation to a Trustee who has committed a breach of Trust relating to the subject matter of the advice.

12.5 Clause 12.3 does not prejudice any right of any Person to follow property or income into the hands of any Person, other than a purchaser, who may have received it.

13 Subsequent editions of STEP Standard Provisions

13.1 Subject to clause 13.2 and 13.3 below, the Trustees may by deed declare that any subsequent edition of the Standard Provisions of the Society of Trust and Estate Practitioners shall apply in place of these Provisions wholly or in part.

13.2 If the Special Provisions are not all incorporated into the Principal Document, the Trustees do not have power under this clause to incorporate:

13.2.1 Special Provisions that are not incorporated into the Principal Document, or substantially similar powers; or

13.2.2 any other Provisions described in the subsequent edition of the Standard Provisions as Special Provisions.

13.3 The new edition of the Standard Provisions shall have effect subject to the Provisions of the Principal Document.

SPECIAL PROVISIONS

14 Borrowing

The Trustees may borrow money for investment or any other purpose. Money borrowed shall be treated as Trust Property.

15 Delegation

A Trustee may delegate in writing any of his/her functions to any Person. None of the restrictions on delegation in sections 12 to 15 *Trustee Act 2000* shall apply. A Trustee shall not be responsible for the default of that Person (even if the delegation was not strictly necessary or expedient) provided that he/she took reasonable care in his/her selection and supervision.

16 Supervision of company

A Trustee is under no duty to enquire into the conduct of a company in which the Trustees are interested, unless the Trustee has knowledge of circumstances that call for enquiry.

17 Powers of maintenance: deferring income entitlement to 21

17.1 For the purposes of section 31 *Trustee Act 1925*, a Person shall be treated as attaining the age of majority at the Specified Age, and the references to the age of 18 years in section 31 shall be treated as references to the Specified Age.

17.2 In this clause the 'Specified Age' means the age of 21 or such earlier age (not being less than 18) as the Trustees may by deed specify.

18 Minors and Beneficiaries without capacity: powers over Trust capital

18.1 Where the Trustees may apply capital for the benefit of a minor, they may do so by paying the capital to the minor's parent or guardian on behalf of the minor, or to the minor if he/she has attained the age of 16. A Trustee is under no duty to enquire into the use of the capital unless the Trustee has knowledge of circumstances that call for enquiry.

18.2 Where capital is payable to a Beneficiary who does not have the mental capacity to appoint an attorney under a lasting power of attorney that relates to the property and affairs of the Beneficiary, the Trustees may (subject to the directions of the Court or a deputy appointed under the *Mental Capacity Act* whose powers include receiving such capital) apply that capital for the benefit of the Beneficiary.

18.3 Where the Trustees may pay or apply capital to or for the benefit of a Beneficiary who does not have the mental capacity to give a receipt, the Trustees may pay the same to the Person having or appearing to the Trustees to have the care and financial responsibility for such Person. A Trustee is under no duty to enquire into the use of the capital unless the Trustee has knowledge of circumstances that call for enquiry.

19 Absolute discretion clause

The Trustees are not under any duty to consult with any Beneficiaries or to give effect to the wishes of any Beneficiaries. The powers of the Trustees may be exercised:

19.1 at their absolute discretion, and

19.2 from time to time as occasion requires.

20 Appointment and retirement of Trustees

20.1 A Person may be appointed Trustee of the Trust even though he/she has no connection with the United Kingdom.

20.2 A Trustee may be discharged even though there is neither a Trust Corporation nor two Persons to act as Trustees provided that there remains at least one Trustee.

21 Powers relating to income and capital

21.1 The Trustees are under no duty to hold a balance between conflicting interests of Persons interested in Trust Property. In particular:

- 21.1.1 The Trustees may acquire
 - (i) wasting assets, and
 - (ii) assets that yield little or no income for investment or any other purpose.

21.1.2 The Trustees are under no duty to procure distributions from a company in which they are interested.

21.2 The Trustees may pay taxes and other expenses out of income although they would otherwise be paid out of capital.

22 Power to appropriate at value at time of death

22.1 Where:

- 22.1.1 these Provisions are incorporated into a Will
- 22.1.2 the Trustees have ascertained the value of Trust Property on the death of the Testator, and
- 22.1.3 the Property is appropriated under clause 4.15 within three years of that death, the Trustees may adopt that valuation so that the value for the purposes of the appropriation shall be the value at the date of the death (instead of the value at the date of the appropriation).

22.2 Where clause 22.1 applies to an appropriation, any other valuation that may be required for the purposes of the same exercise of the power of appropriation shall also be the value at the date of the death.

22.3 Valuations made under this clause shall be binding upon all Persons interested under the Trust if the Trustees have ascertained those values in accordance with the duty of care set out in section 1(1) *Trustee Act 2000*.

23 Relationships unknown to Trustees

23.1 The Trustees may distribute Trust Property or income in accordance with the Trust but without having ascertained that there is no Person who is or may be entitled to any interest therein by virtue of a relationship unknown to the

Trustees. A Trustee shall not be liable to such a Person unless at the time of the distribution the Trustee has knowledge of circumstances that call for enquiry.

23.2 This clause does not prejudice any right of any Person to follow property or income into the hands of any Person, other than a purchaser, who may have received it.

‘The Standard Provisions are quite the most exciting development for private client drafters for several decades’

Professor John Adams on the first edition

The Society of Trust and Estate Practitioners (STEP) is the worldwide professional body for practitioners in the fields of trusts and estates, executorship and related issues. STEP members help families secure their financial future and protect the interests of vulnerable relatives. With members around the world, STEP promotes the highest professional standards through education and training leading to widely respected professional qualifications.

Further copies available from: Artillery House (South)
11–19 Artillery Row
London SW1P 1RT
United Kingdom
Tel: +44 (0)20 7340 0500
www.step.org