



**Isle of Man**  
Government

*Reiltys Ellan Vannin*



# The Trusts and Trustees Bill 2022

## Consultation Response Document

*Yn Tashtey*

Treasury

June 2022

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# 1. Consultation overview

## Introduction

1.1 The main aim of the Trusts and Trustees Bill 2022 (“the Bill”) is to provide greater clarity, certainty and convenience to users of Manx trusts and local trust practitioners. It further aims to provide greater competitiveness for the Island’s trusts sector. The Bill will do this through amendments to existing trusts legislation as well as a range of new additions to the Island’s law of trusts.

## Background

1.2 The modern trust, being a historically English creation with its roots dating back to the Crusades, is a regular feature across common-law jurisdictions. In addition to its traditional testamentary usage in wills and family wealth planning, the trust also plays an integral role in the finance sector.

1.3 Trusts law in the Isle of Man has for well over a century remained close to that of England and Wales. This stands in contrast with Jersey, Guernsey and various other International Finance Centres further afield, which have witnessed – and ultimately benefited from – regular and proactive developments in their own trusts legislation to accommodate for the modern demands made of a trust.

1.4 Whilst the persuasive application of England’s voluminous and well-respected precedent has been of benefit to Manx practitioners, there is a growing consensus that the Island’s trust legislation needs updating to provide a landscape which is clearer, more competitive and more reflective of common practice in the sector.

1.5 The Bill comprises of a set of proposals, the majority of which were originally put forward in 2015 by the Society of Trust and Estate Practitioners (“STEP”) to the Regulatory and Legislative Innovation Working Group.

1.6 The draft Bill was prepared taking into account extensive input from private sector stakeholders and this enabled a short four week public consultation on the final draft Bill to be undertaken in April 2022.

## Consultation Summary

1.7 The consultation included 25 specific questions and also included an opportunity for respondents to provide additional feedback that had not otherwise been covered by the specified questions.

1.8 In total 13 people responded to the consultation via the consultation hub, the majority of which were submitting their comments based upon an organisation.

1.9 A further eight responses to the consultation were received outside of the consultation hub structure, again, with the majority of these submitting their comments on behalf of an organisation.

- 1.10 15 respondents gave permission for their responses to be published in full or anonymously as part of this consultation response document.
- 1.11 Substantive feedback received in relation to each clause in the draft Bill is discussed in parts 2 to 5 of this response document. Minor typographical or formatting issues with the draft Bill, the amendment of which will have no material impact on the effect of the legislation, are not discussed in detail.

### **Next Steps**

- 1.12 In light of the feedback received through this consultation, and Treasury's consideration of such, the Treasury has now finalised the Trusts and Trustees Bill 2022 for introduction into the Branches of Tynwald. The Bill is due to be introduced for a First Reading in the House of Keys on 28 June 2022.

## **2. Introductory Provisions**

### **Clauses 1 & 2. Introductory provisions**

- 2.1 Part 1 of the draft Bill comprises clauses 1 and 2 which provide the short title of the Act and arrangements for its introduction.
- 2.2 Summary of responses:
  - Qu1. All 14 respondents who answered this question commented that they supported part 1 of the Bill as drafted.
  - Qu2. Three respondents provided further comments on clauses 1 and 2 of the draft Bill.
- 2.3 The comments received in relation to the provisions found in part 1 of the draft Bill did not indicate that any amendments were required to this part of the draft Bill.
- 2.4 Taking into account all feedback received on clauses 1 and 2 of the draft Bill, no changes are considered necessary.

### **3. Amendment of the Trustee Act 2001**

#### **Clause 3. General**

- 3.1 Clause 3 provides that Part 2 of the Bill amends the Trustee Act 2001.
- 3.2 No comments were sought on this clause of the draft Bill and no changes are considered to be required to this clause of the draft Bill.

#### **Clause 4. Disclosure of trust information**

- 3.3 Clause 4 provides arrangements concerned with the disclosure of trust information.
- 3.4 Summary of responses
- Qu3. All 14 respondents who answered this question commented that they supported the proposals provided in clause 4 of the draft Bill.
- Qu4. Five respondents put forward views on the temporal provisions drafted, one of which did not provide permission for their response to be published.
- Qu5. Six respondents provided further comments on clause 4 of the draft Bill.
- 3.5 Respondents generally supported the outcome that clause 4 of the draft Bill seeks to achieve.
- 3.6 The comments received were largely supportive of the provisions, as drafted, with some key stakeholders providing feedback on the drafting of the clause, which has been considered.
- 3.7 Taking into account all feedback received on clause 4 of the draft Bill, it is considered necessary to insert a further provision into new section 2A of the Trustees Act 2001. This new provision will seek to make it clear that despite the provisions relating to the disclosure of trust information in new section 2A; a trustee must continue to provide trust information as is required to persons undertaking supervisory, regulatory or enforcement functions.

#### **Clause 5. Power of trustee to contract with himself**

- 3.8 Clause 5 provides arrangements concerned with the power of a trustee to contract with himself.
- 3.9 Summary of responses:
- Qu6. 11 respondents commented that they supported the proposals provided in clause 5 of the draft Bill. 3 respondents reported that they did not support the proposals.
- Qu7. Four respondents put forward views on the temporal provisions drafted, one of which did not provide permission for their response to be published.
- Qu8. Three respondents provided further comments on clause 5 of the draft Bill.
- 3.10 The comments received through the consultation process were largely supportive, although three respondents suggested that the provisions regarding the disclosure of conflicts of interest, as drafted, could be problematic. One respondent suggested that in Clause 10A (4) of new Part 3A of the Trustee Act 2001, as drafted, "the wording "T shall not disclose..." does not appear to be appropriate as it does not consider any obligations the trustee may have to

disclose and is likely to cause issues with the trustee's other duties." Another respondent commented that "there should at least be a disclosure/governance mechanism to ensure that those needing to know are aware of the arrangement."

- 3.11 Taking into account all feedback received on clause 5 of the draft Bill, it is considered necessary to slightly amend the wording of Clause 10A (4) of new Part 3A of the Trustee Act 2001, such that a Trustee is not prevented from disclosing to a co-trustee of one trust of which he is a Trustee an interest in which he has in another Trust of which he is also a Trustee, should he wish or have an obligation to do so.

### **Clause 6 - Liability of trustees to third parties**

- 3.12 Clause 6 provides arrangements concerned with the liability of trustees to third parties.

- 3.13 Summary of responses:

Qu9. All 14 respondents who answered this question commented that they supported the proposals provided in clause 6 of the draft Bill.

Qu10. Four respondents put forward views on the temporal provisions drafted, one of which did not provide permission for their response to be published.

Qu11. Four respondents provided further comments on clause 6 of the draft Bill, one of which did not provide permission for their response to be published.

- 3.14 Respondents generally supported the outcome that clause 6 of the draft Bill seeks to achieve.

- 3.15 Two respondents made comments regarding "Beddoe orders. This avenue to indemnity for Trustees who commence or defend a legal action will continue to be available to Trustees.

- 3.16 Taking into account all feedback received on clause 6 of the draft Bill, no changes were considered necessary.

### **Clause 7. Validation of appointments where objects are excluded or take illusory shares**

- 3.17 Clause 7 provides arrangements concerned with the validation of appointments where objects are excluded or take illusory shares.

- 3.18 Summary of responses:

Qu12. All 14 respondents who answered this question commented that they supported the proposals provided in clause 7 of the draft Bill.

Qu13. Two respondents put forward views on the temporal provisions drafted, one of which did not provide permission for their response to be published.

Qu14. One respondent provided further comments on clause 7 of the draft Bill.

- 3.19 Few comments were received through the consultation process. One respondent made the observation that the term 'objects' does not have a natural meaning and suggested that further definition might be needed.

3.20 Taking into account the comment proposing a clearer definition of 'objects' in clause 7 of the draft Bill, it is considered necessary to slightly amend the wording of Clause 1 of the proposed new Section 37A of the Trustee Act 2001 accordingly.

### **Clauses 8 & 9. Consequential amendments**

3.21 Clause 8 of the draft Bill provides for the amendment of section 39(1) (interpretation) of the Trustee Act 2001 and clause 9 amends Schedule 1 to the Trustee Act 2001.

3.22 Summary of responses:

Qu15. All 14 respondents who answered this question commented that they supported the proposals provided in clauses 8 and 9 of the draft Bill.

Qu16. One respondent provided further comments on the clauses.

3.23 Taking into account all feedback received on clauses 8 and 9 of the draft Bill, no changes are considered necessary.



## **4. Amendment of the Trustee Act 1961**

### **Clause 10. General**

4.1 Clause 10 provides that Part 3 of the Bill (clauses 11 to 13) amends the Trustee Act 1961.

4.2 No comments were sought on this clause of the draft Bill.

### **Clauses 11, 12 & 13. Power to declare exercise of a power voidable**

4.3 Clause 11 provides for the amendment of section 55 of the Trustee Act 1961. Clause 12 provides for the insertion of new section 55A to the Trustee Act 1961. Clause 13 provides for the amendment of section 61 of the Trustee Act 1961.

4.4 Summary of responses:

Qu17. 13 respondents commented that they supported the proposals provided in clauses 11 to 13 of the draft Bill. One respondent did not support the proposals.

Qu18. Four respondents put forward views on the temporal provisions drafted, one of which did not provide permission for their response to be published.

Qu19. Two respondents provided further comments on clauses 11 to 13 the draft Bill.

4.5 Two respondents commented that in the proposed new Section 55A of the Trustee Act 1961, "A" is not defined.

4.6 Taking these comments into account, new subsection (6) of the new Section 55A has been inserted to give a definition of "A".

## 5. Other Amendments

### Clause 14. Amendment of the Limitation Act 1984

5.1 Clause 14 provides for the amendment of the Limitation Act 1984.

5.2 Summary of responses:

Qu20. All 14 respondents who answered this question commented that they supported the proposals provided in clause 14 of the draft Bill.

Qu21. Three respondents put forward views that the provisions in the clause will apply prospectively, one of which did not provide permission for their response to be published.

Qu22. Two respondents provided further comments on clause 14 the draft Bill.

5.3 One respondent suggested that a definition of the term "enforcer" might be required.

5.4 Another respondent pointed out that section 21(3), as drafted, did not fully translate the proposals as outlined in the consultation, regarding safeguarding provisions for minors and those under a legal disability.

5.5 Taking into account all feedback received on clause 14 of the draft Bill, a new subsection (7) of the substituted Section 21 of the Limitation Act 1984 has been inserted, providing a definition of the term "enforcer" and a change has been made to subsection (3), relating to specific safeguards for situations involving beneficiaries who are minors or are under a legal disability

### Clause 15. Amendment of the Apportionment Act 1982

5.6 Clause 15 provides for the amendment of the Apportionment Act 1982.

5.7 Summary of responses:

Qu23. 13 respondents commented that they supported the proposals provided in clause 15 of the draft Bill. One respondent did not comment.

Qu24. Four respondents put forward views that the provisions in the clause will apply prospectively, one of which did not provide permission for their response to be published.

Qu25. Three respondents provided further comments on clause 15 the draft Bill.

5.8 Some comments in relation to the drafting of clause 15 were received.

5.9 Taking into account all feedback received on clause 5 of the draft Bill, it is considered necessary to slightly amend this clause.

## **6. Additional comments and questions**

- 6.1 Treasury sought further views or questions on the proposals in the draft Bill from respondents.
- 6.2 Six respondents provided additional views or questions, two of which did not provide permission for their response to be published.
- 6.3 Some respondents expressed their support of the Bill, but commented that they would like to see further developments in future in order to enhance the ability of the Island's trusts sector to better compete with other jurisdictions.
- 6.4 One respondent noted that the consultation and draft Bill did not appear to address the Purpose Trust Act 1996 and made some specific suggestions regarding possible changes to that Act.
- 6.5 Several respondents commented that they would like to see ESG (Ethical, Social and Governance) provisions, with some expressing disappointment that such provisions had not been included in the draft Bill.
- 6.6 Treasury will take all of these comments into consideration when further reviewing the effectiveness of the operation of our trust law.

## APPENDIX

### Clauses 1 & 2: Introductory Provisions

| <b>Qu.2 Please provide any further comments you may have on clauses 1 and 2 of the Bill</b> |   |
|---|---|
| Anonymous   | The IOM is looking to set itself apart in a number of areas in the financial services space. Bringing our trust legislation to a more modern level which is more fit for purpose for practitioners makes a great deal of sense. |
| Anonymous   | I would only suggest that sub-section 6 is widen to allow for the trustees to refuse request for information which they feel could be miss-used or fishing for information requests.  |
| Neil Chadwick,<br>International Finance<br>Group Limited                                    | Fully supportive of the bill.   |

### Clause 4: Disclosure of Trust Information

| <b>Qu.4 Do you have any views on the temporal provisions, as drafted?</b> |  |
|---|--|
| Anonymous   | I think this is excellent and important so that the conflict with the GDP requirements can be addressed  |
| Anonymous   | We welcome the proposal as it enables the Settlor to remove a potential uncertainty with regard to access to trust information. We agree that this should not be a compulsory requirement. |
| Neil Chadwick,<br>International Finance<br>Group Limited                  | Fully supportive.  |
| Appleby (Isle of Man)<br>LLC  | Support  |

| <b>Qu.5 Please provide any further comments you may have on clause 4 (insertion of new Part 1A to the Trustee Act 2001) of the Bill</b> |   |
|---|---|
| Anonymous   | It would be beneficial if the Trustee Act 2001 could be repealed and instead absorbed into the new proposed Act - there is a lot of trust legislation   |
| Anonymous   | from an administration point of view the clearer the statue in this regard the better   |
| Anonymous   | New trust documents can contain specific wording in relation to this amendment, however existing Trust Deeds cannot be amended. If the Settlor is still alive it may be possible to Trustees to obtain a memorandum from the Settlor stating their wishes in relation to access to Trust information. In this scenario, would such a document be given appropriate legal standing? If the Settlor is deceased, can the Trustees make such an amendment? Have you considered how existing Trusts can adopt these provisions? |

|                           |  |
|---------------------------|--|
| Appleby (Isle of Man) LLC | <p>2A (3) Reference to "subject to the terms of the trust deed and any order of the court" - should this be "and/or"?</p> <p>2A (5) (c) who would be considered a "potential beneficiary" in this context?</p> <p>2A (8) What is the reasoning behind not using consistent wording with the other proposed amendments? the wording "the day on which this section comes into force" is clearer</p> |
|---------------------------|--|

## Clause 5: Power of trustee to contract with himself

| <b>Qu.7 Do you have any views on the temporal provisions, as drafted?</b> |  |
|---|--|
| Anonymous   | Another good point to bring into statue as many CSP use the same corporate or personal trustee.  |
| Anonymous   | The drafting in 10 A (4) specifically states that the 'Trustee shall not disclose' which thereby prohibits the Trustee from making a disclosure. We would prefer the drafting be amended to state 'is not obliged to' equivalent so that a Trustee retains the option to disclose which we consider to be best practice. |
| Appleby (Isle of Man) LLC   | Support  |

| <b>Qu.8 Please provide any further comments you may have on clause 5 (insertion of new Part 3A to the Trustee Act 2001) of the draft Bill.</b> |   |
|--|---|
| Anonymous  | We would always expect safeguards to be in place for Trustees acting on different Trusts in a common transaction e.g. different Directors of a corporate trustee acting for each trust. The drafting of this clause could be problematic and open to abuse where the Trustees are not professionals e.g. family trustees. A Director of a Company is required to disclose their interests in a transaction so we are unsure why a Trustee should not be held to the same standard. The IOMFSA has always had strict requirement on disclosing conflicts of interest in transactions and this proposal would appear to conflict with the spirit of transparent trust governance. |
| Appleby (Isle of Man) LLC  | <p>10A (2) "...T may in the capacity" should this read "...T may in his capacity"</p> <p>10A (3) is the intention that the trustee is to ignore any actual knowledge he has?</p> <p>10A (4) The wording "T shall not disclose..." does not appear to be appropriate as it does not consider any obligations the trustee may have to disclose and is likely to cause issues with the trustee's other duties. What was the reasoning behind including this? I could potentially lead to secret profits being made by trustees without any recourse from the beneficiaries in respect of the same?</p>   |

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| The Hon. Juan Watterson, Speaker of the House of Keys, MHK for Rushen | Whilst the provisions under Clause 5 appear reasonable, there should at least be an appropriate disclosure/governance mechanism to ensure that those needing to know are aware of the arrangement. The schedules apply the duty of care, but that is about acting competently. I am talking about needing a provision requiring disclosures. |
|---|--|

### Clause 6: Liability of trustees to third parties

| <b>Qu.10 Do you have any views on the temporal provisions, as drafted?</b> |  |
|--|--|
| Anonymous  | Insurance taken by the Trustees to increase this amount should be allowed.   |
| Anonymous  | Having been involved with obtaining Beddoe orders on several occasions - I found it can be very expensive (when you consider the legal fees) and occasionally long winded (as it covers the skeleton argument for the actual case). Therefore for smaller trusts this is not an avenue that they would often be able to take, this therefore provides the perfect other option for responsible trustees. |
| Appleby (Isle of Man) LLC  | Support  |

| <b>Qu.11 Please provide any further comments you may have on clause 6 (insertion of new Part 4A to the Trustee Act 2001) of the draft Bill.</b> |  |
|---|--|
| Anonymous   | I do feel that the clause should reiterate the trustees duty and usual aspects such  |
| Anonymous   | We are supportive of this proposal which provides sensible, commercial, protection to the position of Trustee.   |
| Appleby (Isle of Man) LLC   | 27A (3) in what circumstance would the trustee have a claim against the "trust"<br>27A (7) is "acting on behalf of the trust" the correct terminology?<br>Would it be more appropriate to state "acting in its capacity as trustee of the trust"?<br>12.27(A) should the definition of "Third Party" include a trustee acting in its capacity as trustee of another trust? |

### Clause 7: Validation of appointments where objects are excluded or take illusory shares

| <b>Qu.13 Do you have any views on the temporal provisions, as drafted?</b> |  |
|--|--|
| Anonymous  | no comments - seems a sensible additional to cover historic issues |

| <b>Qu.14 Please provide any further comments you may have on clause 7 (insertion of new Part 37A to the Trustee Act 2001) of the draft Bill.</b> |  |
|--|--|
| Anonymous  | This is an amendment for our industry's lawyers to consider. |

|   |   |
|---|---|
| The Hon. Juan Watterson, Speaker of the House of Keys, MHK for Rushen | In clause 7, the term 'objects' doesn't have a natural meaning, or sit within the legislative context of the act which it amends. I appreciate it will probably be understood by practitioners, but may bear definition in the Act. |
|---|---|

### **Clauses 8 & 9: Consequential amendments**

|   |  |
|---|--|
| <b>Qu.16 Please provide any further comments you may have on the amendments to the Trustee Act 2001 as provided for in clauses 8 and 9 of the draft Bill.</b> |  |
| Anonymous   | I question if we need to define the Protector duties further as these are being used more often in my experience and when professional trustees are used the Protectors are often family friends who do not fully understand trust law and obligations |

### **Clauses 11, 12 & 13: Power to declare exercise of a power voidable**

|  |   |
|--|---|
| <b>Qu.18 Do you have any views on the temporal provisions, as drafted?</b> |   |
| Anonymous  | An eye will need to be kept as to development of this doctrine in the UK and elsewhere as it seems to be a fairly fast moving topic at present. |
| Anonymous  | I think that clarification of this point within statute is vital for the IOM Trust law and that this has been carefully considered and drafted  |
| Appleby (Isle of Man) LLC  | Support   |

|   |  |
|---|--|
| <b>Qu.19 Please provide any further comments you may have on clause 11 to 13 of the draft Bill.</b> |  |
| Anonymous   | We are supportive of this proposal as drafted.   |
| Appleby (Isle of Man) LLC   | 55A (2) It is not clear who "A" would be in this context<br>55A (4) (a) should this read "on the part of the trustee"<br>Amendment to section 61- The suggested amendment to this section is not clear. We do not support the removal of the wording "or direction" from section 61. |
| The Hon. Juan Watterson, Speaker of the House of Keys, MHK for Rushen                               | In clause 12, "A" is not clearly defined. If its purpose is solely to identify the applicant, then surely it should be drafted more clearly.   |

### **Clause 14: Amendment of the Limitation Act 1984**

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|---|
| <b>Qu.21 It is intended that these provisions will apply prospectively only. Do you have any views on this?</b> |
|---|

|           |   |
|-----------|---|
| Anonymous | of course not to apply this retrospectively may mean that trustees are still exposed to some vexatious claims, however it is sensible to change the legislation of such matters regarding time lines prospectively  |
| Anonymous | This will create a two tier system which will cause administrative problems from a GDPR perspective if some Trust have a six year limited and others have a three year limitation, depending on when they are closed.<br>The provisions should apply to all trusts retrospectively. |

|   |  |
|---|--|
| <b>Qu.22 Please provide any further comments you may have on clause 14 of the draft Bill.</b> |  |
| Appleby (Isle of Man) LLC   | 21 (4) Does a definition for "enforcer" need to be included (presumably to be adopted from the Purpose Trust Act 1996? |

### **Clause 15: Amendment of the Apportionment Act 1982**

|   |   |
|---|---|
| <b>Qu.24 It is intended that these provisions will apply prospectively only. Do you have any views on this?</b> |   |
| Anonymous   | I do feel that for this particular change that it should be retrospectively - this means existing trusts, which are the trust most likely to suffer issues in this regard, can benefit from the changes.  |
| Anonymous   | The provisions should apply prospectively however they should also apply to existing trusts (not just new trusts) from the date of implementation, otherwise Trustees will have inconsistent accounting between existing and new trusts which is administratively burdensome and open to error. |
| Appleby (Isle of Man) LLC   | Support   |

|   |  |
|---|--|
| <b>Qu.25 Please provide any further comments you may have on clause 15 of the draft Bill.</b> |  |
| Anonymous   | taking into account my thoughts above about applying the change retrospectively - I think that this should be optional for the trustees so they can consider how best to benefit all of the beneficiaries  |
| Anonymous   | We are not aware of the apportionment requirements causing any real problems on a regular basis. We note that consideration has not been given to the apportionment of expenses. Some expenses should be matched against income that has arisen so as to be fair to all beneficiaries. It is not therefore appropriate to assume all expenses should be treated on an arising basis. |



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| Appleby (Isle of Man) LLC | What was the reasoning for referencing English case law in Isle of Man legislation? Perhaps it would be appropriate to make it clear that these are not Isle of Man judgements. |
|---------------------------|---|

### Additional comments

| <b>Please give us any additional comments or any questions you have.</b> |   |
|--|---|
| Anonymous  | In order to remain current with other jurisdictions such as Jersey and Guernsey it is important the trust legislation be updated sooner rather than later. It is encouraging that the Government are taking this requirement seriously and releasing the consultation   |
| Anonymous  | I am pleased we are making changes and considering the future of the trust law in the Isle of Man in its own right  |
| Anonymous  | <p>Noted in the consultation overview are other proposals regarding trust law for future consideration, specifically Ethical, Social and (Corporate) Governance matters. We would like to express our disappointment that this very important issue has not been included within the current draft. Increased interest from clients, increased political and social pressure and indeed impending regulatory pressure for corporate entities and individuals to have regard to social, ethical and environmental matters is a very relevant issue in our industry.</p> <p>The consultation overview highlights the background to the development of the Bill. Inclusions for the current draft were originally put forward in 2015. Giving consideration to the length of time it has taken to develop the Bill to date, there is concern that this opportunity for the Isle of Man to carve out protection for Trustees on an issue that can only continue to become increasingly relevant, will be missed. This could also provide the Island with a competitive advantage during what is likely to be a narrow window.</p> |
| Appleby (Isle of Man) LLC  | <p>We would support further amendments that would allow the trust industry to be more competitive when compared to other off shore jurisdictions.</p> <p>This bill, whilst helpful, appears to codify the pre-existing case law in most instances rather than making new law. Whilst it could go further we are largely supportive of the provisions of this Bill subject to our earlier comments.</p>  |
| The Hon. Juan Watterson, Speaker of the House of Keys, MHK for Rushen    | I am surprised that the opportunity has not been taken to consolidate the Trusts Acts into a single piece of legislation.   |
| Anonymous  | The Bill does not appear to address the Purpose Trusts Act 1996. Section 1(1) of that Act sets the perpetuity period as 80 years, which is now out of synch with the Perpetuities and Accumulations Act 1968 (under which the perpetuity period has for most purposes been  |

abolished). It is therefore suggested that consideration be given to repealing the 80 year limit.

Section 5 of the Act reads:

*5 Land in the Island*

*No land or any interest in any land in the Island shall be held, directly or indirectly, in a purpose trust.*

It is suggested that this was likely to have been a cut and paste from the legislation from which our Act was copied (non-charitable purpose trusts are now globally available), but that it now seems to serve no purpose in an island of our size and should be repealed.

One ambiguity that has existed since the Act was introduced is in section 1(1)(a) which provides as follows:

*(a) the purpose or purposes of the trust — (i) are certain, reasonable and possible; (ii) are not unlawful, contrary to public policy or immoral;*

Some commentators regard this as meaning that the purpose can be simply the holding of specific assets, such as the shares in a company in cases where the purpose trust is used in off balance sheet planning. Others say that the purpose must exist independently of the assets held, and this has given rise to the inclusion of fictitious or fanciful purposes, appended to which is the holding of assets.

It has therefore been suggested that in order to address this, section 1(1)(a) be amended as follows:

- a. *the purpose or purposes of the trust — (i) are certain, reasonable and possible; (ii) are not unlawful, contrary to public policy or immoral; (iii) may include the holding of assets identified in the instrument which created or evidenced the trust*



Jo Coole  
Policy Officer  
The Treasury  
Isle of Man Government  
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Isle of Man, IM1 3PX

6 May 2022

Dear Jo

We welcome the opportunity to give our response to the consultation in relation to the Trusts and Trustees Bill 2022 and have set out our comments below.

We are in support of modernising trust law in the Isle of Man and changes to introduce greater clarity, certainty and convenience for trustees in addition to providing greater competitiveness for our sector.

#### **Clauses 1 and 2 Introductory Provisions**

1. This Part of the Bill as currently drafted is supported.
2. There are no comments on clauses 1 and 2 of the Bill.

#### **Clause 3 General**

#### **Clause 4 Disclosure of Trust Information**

3. The proposal as drafted is supported. Ability for the Settlor to validly restrict a beneficiary's access to trust information in the trust deed and for this to be recognised in statute is welcomed. There is support for the court retaining ultimate power regarding disclosure and that the court can overrule a trustee's decision on disclosure and the terms of the trust on disclosure but only in certain circumstances (otherwise it appears to negate the provision that allows Settlers to validly restrict access to trust information).

4. Temporal provisions are supported
5. Changes to clarify the rights to trust information and the ability to include such terms in the trust deed are welcomed

#### **Clause 5 Power of Trustee to contract with himself**

6. No comments against the proposal as drafted.

## Clause 15 Amendment of Apportionment Act

23. No comments against the proposal as drafted.
24. One member stated that the prospective seems reasonable in this context.
25. No further comments.

One member whilst in support of the seven proposed changes, namely:

1. Disclosure of trust information
2. Power of trustee to contract with himself
3. Liability of trustees to third parties
4. Validation of appointments where objects are excluded or take illusory shares
5. Power to declare exercise of power voidable
6. Amendment of the Limitation Act 1984, shortening the current six-year limitation period in which a beneficiary can bring a claim for breach of trust to three years
7. Amendment of the Apportionment Act 1982

Noted in the consultation overview are other proposals regarding trust law for future consideration, specifically Ethical, Social and (Corporate) Governance matters.

This member would like to express their disappointment that this very important issue has not been included within the current draft.

Increased interest from clients, increased political and social pressure and indeed impending regulatory pressure for corporate entities and individuals to have regard to social, ethical and environmental matters is a very relevant issue in our industry.

The consultation overview highlights the background to the development of the Bill. Inclusions for the current draft were originally put forward in 2015. Considering the length of time, it has taken to develop the Bill to date, there is concern that this opportunity for the Isle of Man to carve out protection for Trustees on an issue that will continue to become increasingly relevant, will be missed.

This would provide the Island with a competitive advantage for what is likely to be a narrow window.

Another member stated;

### Ethical, Social & Governance

"We would welcome legislation for Trustees in relation to ESG investments. It is our view that this should be widely drafted so that there is a positive obligation to consider ESG and beneficiary views with protection for Trustees against minors at a later date (after adulthood). The changes should consider the tension that would exist due to investment performance which could be affected by taking an ESG approach to investments. The Isle of Man has an opportunity to be at the forefront of the ESG landscape, and it fits well with the Island's status as a UNESCO biosphere, provided care is taken to avoid the inherent dangers (greenwashing or other unreliable sources of ESG investment).

7. Temporal provisions are supported

8. No further comments

#### Clause 6 Liability of trustees to third parties

9. No comments against the proposal as drafted.

10. Temporal provisions are supported

11. Assume Beddoes Order continues to be available as well

#### Clause 7 Validation of appointments where objects are excluded or take illusory shares

12. No comments against the proposal as drafted.

13. Temporal provisions are supported

14. No further comments

#### Clauses 8 & 9 Consequential amendments

##### Definition of protector in Trusts Act 1995

*“protector” means a person other than a trustee who, as the holder of an office created by or under the terms of a trust, is authorised or required to participate in the administration of the trust;*

15. No comments against the proposal as drafted.

16. No further comments

#### Part 3 Amendment of the Trustee Act 1961

##### Clause 10 – General

##### Clauses 11, 12 & 13 Power to declare exercise of a power voidable

17. No comments against the proposal as drafted.

18. Temporal provisions are supported

19. No further comments

#### Part 4 Other Amendments

##### Clause 14 Amendment of the Limitation Act 1984

20. No comments against the proposal as drafted.

21. One member stated that the prospective seems reasonable in this context.

22. No further comments.

The Association of Corporate Service Providers (ACSP) is a registered business name of The Association of Fiduciary Service Providers Limited  
A Company Limited by Guarantee Registered in the Isle of Man No: 096172C  
Registered Office: First Floor, Millennium House, Victoria Road, Douglas, Isle of Man, IM2 4RW  
Directors: J Atherton, B Bielich, P Brogan, R Cattle, A Couper Woods, T Duncan, S Hynes, T Mee, R Orton, S Partridge.

The Island should introduce a standard to which we adhere to protect the reputation of the Island and its licenceholders.”

*Pat Brogan*

Kind regards

Pat Brogan

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**Simcocks**

Attention: Ms J Coole, Policy Advisor

Date 9 May 2022

Treasury  
Isle of Man Government  
Government Office  
Douglas

YourRef

OurRef KOL

By email: Treasuryconsultations@gov.im

Please respond to Kevin O'Loughlin  
e-mail: [koloughlin@simcocks.com](mailto:koloughlin@simcocks.com)

Dear Sirs

**Trusts and Trustees Bill 2022 Consultation.**

Simcocks Advocates writes to support the Bill.

This is on the basis of STEP's previous input and at the same time urging Government to consider a following Bill that goes further to bring the Isle of Man level with or ahead of competitor jurisdictions.

Simcocks also supports ESG legislation.

Yours faithfully



**SIMCOCKS**



Attention Jo Coole, Policy Advisor

30 May 2022

Treasury  
Government Office  
Bucks Road  
Douglas  
Isle of Man  
IM1 3PU

Dear Madam

**Trusts and Trustees Bill 2022 Consultation response**

This letter summarises our previous responses to the Consultation:

1. STEP Isle of Man supports the Bill.
2. STEP Isle of Man urges Government to consider a following Bill that goes further to bring the Isle of Man level with or ahead of competitor jurisdictions.
3. In relation to ESG legislation for trustees, STEP Isle of Man advocates the Isle of Man being ambitious and innovative and the Isle of Man aiming to make a statement that the Isle of Man is the home for ESG business.

Yours faithfully

A handwritten signature in black ink, appearing to be 'K O'Loughlin', with a long horizontal flourish extending to the right.

**Kevin O'Loughlin**  
Director  
For and on behalf of  
Society of Trust and Estate Practitioners (Isle of Man) Limited

Society of Trust and Estate Practitioners (Isle of Man) Limited  
Email: [admin@stepiom.com](mailto:admin@stepiom.com) Web: [www.step.org](http://www.step.org)

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K O'Loughlin · Neil Chadwick · V Dyson





ISLE OF MAN  
**TREASURY**  
*Yn Tashtey*



This document can be provided in large print or audio tape on request

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