THE LAW COMMISSION AND THE SCOTTISH LAW COMMISSION

TRUSTEE SAVINGS BANKS BILL

REPORT ON THE CONSOLIDATION OF THE TRUSTEE SAVINGS BANKS ACTS 1954 TO 1968

Presented to Parliament by the Lord High Chancellor, the Secretary of State for Scotland and the Lord Advocate by Command of Her Majesty
April 1969

LONDON
HER MAJESTY'S STATIONERY OFFICE
2s. 0d. net

Cmnd. 4004

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—

The Honourable Mr. Justice Scarman, O.B.E., *Chairman.*

Mr. L. C. B. Gower.

Mr. Neil Lawson, Q.C.

Mr. N. S. Marsh, Q.C.

Mr. Andrew Martin, Q.C.

Mr. Arthur Stapleton Cotton is a special consultant to the Commission. The Secretary of the Commission is Mr. J. M. Cartwright Sharp, and its offices are at Lacon House, Theobald's Road, London, W.C.1.

The Scottish Law Commission was set up by section 2 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law of Scotland. The Commissioners are—

The Honourable Lord Kilbrandon, *Chairman.*

Professor A. E. Anton.

Professor J. M. Halliday.

Mr. A. M. Johnston, Q.C.

Professor T. B. Smith, Q.C.

The Secretary of the Commission is Mr. A. G. Brand, M.B.E. Its offices are at the Old College, University of Edinburgh, South Bridge, Edinburgh 8.

THE LAW COMMISSION AND THE SCOTTISH LAW COMMISSION

TRUSTEE SAVINGS BANKS BILL

REPORT ON THE CONSOLIDATION OF THE TRUSTEE SAVINGS BANKS ACTS 1954 TO 1968

To the Right Honourable the Lord Gardiner, Lord High Chancellor of Great Britain,

the Right Honourable William Ross, M.B.E., M.P., Her Majesty's Secretary of State for Scotland, and

the Right Honourable the Lord Wilson of Langside, Q.C., Her Majesty's Advocate.

The Trustee Savings Banks Bill which accompanies this Report seeks to consolidate the Trustee Savings Banks Acts 1954 to 1968. In order to produce a satisfactory consolidation we are making the recommendations set out in the Appendix to this Report.

The Trustee Savings Banks Act 1954 was a consolidation Act which reproduced the existing law without amendment. Most of our recommendations propose the repeal without re-enactment of certain provisions of that Act or minor amendments thereof. All these could have been authorised under the Consolidation of Enactments (Procedure) Act 1949. As, however, a few amendments which seem to us to be desirable, for example, those proposed in Recommendations 2, 11 and 20, are somewhat too substantial to be effected under that Act, we thought it preferable to make this Report and recommend that those, as well as the other amendments, be made.

The Treasury, the National Debt Office, the Registry of Friendly Societies, the Inspection Committee of Trustee Savings Banks and the Trustee Savings Banks Association have been consulted and agree with our recommendations.

LESLIE SCARMAN,
Chairman of the Law Commission.

C. J. D. SHAW,
Chairman of the Scottish Law Commission.

5th March 1969.

326372

APPENDIX

Note: In this Appendix any reference to a numbered section is, unless the reference is to a section of a specified Act, a reference to the section bearing that number in the Trustee Savings Banks Act 1954.

RECOMMENDATIONS

1. Section 2 provides that a savings bank shall not have the benefit of the Act unless, among other things, the rules of the bank have been certified by the Registrar of Friendly Societies to be in conformity with law and the provisions of the Act and have been entered in a book to be kept by an officer of the bank. Section 6 requires any alteration of the rules to be certified by the Registrar and entered in the book mentioned in section 2.

Section 65 (clause 76) empowers the trustees of a trustee savings bank to make with the approval of the National Debt Commissioners rules to enable an officer of the bank to surrender part of the pension granted to him by the trustees under section 64 in return for a pension to be granted by the trustees to the officer's spouse. Sections 68 and 69 (clauses 80 and 81) empower the trustees of a trustee savings bank, or of two or more such banks acting jointly, to establish in accordance with rules made by the trustees with the consent of the Commissioners a superannuation reserve fund (section 68) and a contributory superannuation fund (section 69).

Sections 65, 68 and 69 derive from enactments later in date than those reproduced in sections 2 and 6 and the provisions now contained in sections 2 and 6 have always been regarded as having no application to rules made under section 65, 68 or 69 or the enactments reproduced therein. This seems right since these rules are different from the rules for the management of the bank with which sections 2 and 6 are concerned. They can only be made with the approval of the National Debt Commissioners and the provisions to be made by them are outlined in the sections. Examination of these rules by the Registrar is therefore unnecessary. However, sections 2 and 6 are in general terms and might be regarded as applicable to the rules which are concerned solely with superannuation matters.

We recommend that sections 2 and 6 be amended so as to exclude from the provisions of those sections rules made under sections 65, 68 and 69. Effect is given to this recommendation in clauses 2(5) and 6(5) of the Bill.

2. Section 4(1), which reproduced section 2(1) of the Savings Banks Act 1891, provides that there shall be an Inspection Committee of trustee savings banks with the several powers and duties conferred by the Act. Section 4(2) is as follows:—

> (2) Subject to the provisions of this Act, the term of office of members of the Committee and the making of appointments, and the powers, procedure and duties of the Committee shall continue to be governed by the scheme made under section two of the Savings Banks Act, 1891, in the same manner as immediately before the commencement of this Act.

Section 4(3) empowers the Committee, with the approval of the National Debt Commissioners, to modify the said scheme and provides for the modification to be laid before Parliament.

Section 2(2) of the Act of 1891 required the individuals named in Schedule 1 to that Act to frame a scheme for the appointment of the Inspection Committee and for determining the mode in which the members were to be appointed, and their term of office and, subject to the provisions of the Act, their powers, procedure and duties. A scheme was made in 1891 and was laid before Parliament in accordance with section 2(7) of the Act of 1891. The scheme has never been modified. A copy of it is annexed to this report.

Section 4(2) is unsatisfactory because the scheme made in 1891 was not a statutory rule or order and its provisions have therefore never been readily ascertainable. Section 4(3) is unsatisfactory for a similar reason. Although any modification of the scheme has to be laid before Parliament the Statutory Instruments Act 1946 does not apply to the document by which the modification is made. The scheme itself is also unsatisfactory in several respects. The provisions which deal with the appointment of members after the initial setting up of the Committee are not clear and the validity of the provision for the payment of travelling expenses to members of the Committee is open to question. Furthermore, these expenses and the remuneration of members of the Committee are dealt with separately, the expenses in the scheme and the remuneration in section 4(7).

We recommend—

(*a*) that the Bill should require the Inspection Committee of trustee savings banks to make, with the approval of the National Debt Commissioners, a scheme which, subject to the enactments reproduced in the Bill, makes provision—

(i) with respect to the composition of the Committee, and to the appointment, tenure of office and vacation of office of members of the Committee, and to the procedure of the Committee;

(ii) for revoking the scheme made under section 2 of the Savings Banks Act 1891;

(*b*) that the power to make the scheme, and the power to modify it, should be exercisable by statutory instrument which should be laid before Parliament and that the Statutory Instruments Act 1946 should apply to a statutory instrument containing such a scheme or modification in like manner as if the scheme or modification had been made by a Minister of the Crown;

(*c*) that a provision entitling members of the Committee to such reasonable travelling expenses in respect of attendance at meetings of the Committee as may be approved by the Minister for the Civil Service should be included in the Bill;

(*d*) that section 4(2) should be re-enacted in the Bill but should cease to have effect on the coming into force of the scheme.

Effect is given to this recommendation in clauses 4(2), (7) and (8) and 96(3) of the Bill.

3. Section 6(1) provides that no alteration, amendment or repeal of the rules of a trustee savings bank shall take effect until it has been entered in the book mentioned in section 2. Section 6(2) provides that two copies of any alterations or amendments of the rules shall be submitted by the trustees to the Registrar of Friendly Societies in order that he may certify that they are in conformity with law and with the provisions of the Act or point out in what respect they are repugnant thereto. As from the time when any alterations or amendments are certified by the Registrar they are, by virtue of section 7(1) of the Act, binding on the trustees, managers and officers of the bank and on the depositors. The use of both words "alteration" and "amendment" is unnecessary. In the context of section 6 either word would suffice.

It is said to be doubtful whether the repeal of a rule with or without the substitution of a new rule is an alteration or amendment of the rules and so within section 6(2). It seems clear that the repeal of one rule alters or amends the rules taken as a whole, and the doubt only arises because section 6(1) contains a reference to repeal whereas section 6(2) does not.

We recommend that the doubt be removed and that in re-enacting sections 6 and 7 unnecessary words be omitted. Effect is given to this recommendation in clauses 6 and 7(1) of the Bill.

4. Section 12(2)(*f*) (clause 14(4)) provides that an order made under that section "shall have effect as if enacted in this Act", and sections 21(6) and 73(3) (clauses 28(6) and 86(3)) make the same provision in relation to regulations made under those sections. The words in question do not preclude an inquiry into the validity of the subordinate legislation referred to: *Minister of Health* v. *R., Ex parte Yaffe* [1931] A.C. 494. They find no place in modern Acts and the Joint Committee which in 1959 considered the Bill to consolidate certain enactments relating to county courts agreed that similar words in section 156(2) of the County Courts Act 1934 should be omitted from the clause which reproduced that section.

We recommend that section 12(2)(*f*), and so much of sections 21(6) and 73(3) as provide that regulations under those sections shall have effect as if enacted in the Act, should not be reproduced in the Bill but be repealed by it.

5. Section 20(1) provides for the determination by the Registrar of Friendly Societies of disputes between the trustees and managers of a trustee savings bank and an "individual depositor", a person who is or claims to be the personal representative, next of kin or creditor of a depositor, the trustee in bankruptcy or assignee of a depositor or a person who claims to be entitled to money deposited in the bank.

Paragraph 4(1) of Schedule 4 to the Trustee Investments Act 1961 provides that section 20(1) of the Act of 1954 shall apply to any depositor being a body of trustees as it applies to an individual depositor. This provision suggests that "individual depositor" in section 20(1)(*a*) means a single depositor, the word "individual" having been included to indicate a contrary intention within section 1 of the Interpretation Act 1889 which provides that unless a contrary intention appears words in the singular in an Act passed after 1850 shall include the plural. If section 20(1)(*a*) is so construed a dispute between a bank and depositors who have made a deposit in their joint names is outside the section unless the depositors are a body of trustees. The exclusion of these disputes constitutes an anomaly which is not of substantial importance but is undesirable.

We recommend that the anomaly be removed. Effect is given to this recommendation in clause 27(1) of the Bill.

Section 20(5) is as follows:—

> (5) The powers and duties of the Registrar under this section, except so far as relates to disputes between the trustees and managers of a trustee savings bank and a depositor or a person claiming through or under a depositor, may be transferred to and vested in such persons as the Treasury may by statutory instrument appoint.

The explanation for this is historical. Under section 48 of the Trustee Savings Banks Act 1863 disputes were referred to the barrister appointed under section 4 of that Act to certify the rules of a savings bank. Under section 2(1) of the Savings Banks (Barrister) Act 1876 various functions of the barrister so appointed, including the powers and duties relating to any dispute arising between the trustees and managers of any savings bank and any depositor or person claiming through or under a depositor, were transferred to and vested in the Registrar of Friendly Societies. Section 2(2) of that Act provided that all powers and duties of the said barrister (other than those mentioned in section 2(1)) should be transferred to and vested in such persons as the Treasury from time to time appointed.

Many years later it was decided that the transfer effected by section 2(1) of the Act of 1876 had been incomplete. Accordingly in 1924 the Treasury exercised its power under section 2(2) of the Act of 1876 and made an order (1924/1502 S.R. & O. Rev. XX p. 583) which transferred to and vested in the Registrar such powers and duties, if any, as were not so transferred and vested by section 2(1) of that Act relating to any dispute between the trustees and managers of a savings bank and the various persons mentioned in section 48 of the Act of 1863.

After the making of the 1924 Order all the powers and duties relating to disputes between the trustees and managers of a savings bank and the persons mentioned in section 48 of the Act of 1863 were undoubtedly vested in the Registrar. It was, however, arguable that the Treasury could still exercise its power under section 2(2) of the Act of 1876 and transfer to other persons the powers and duties of the Registrar relating to disputes, except disputes between the trustees and managers of a savings bank and a depositor or a person claiming through or under a depositor. That power has never been exercised and is never likely to be exercised but it was thought necessary to preserve it in the Act of 1954, and section 20(5) preserves it.

We recommend that section 20(5) should not be reproduced in the Bill but be repealed by it.

6. Section 21(2)(*a*) requires the Treasury to make regulations for the purpose of extending to trustee savings banks any regulations made with respect to the post office savings bank so far as those regulations provide for the payment or transfer of sums which belong to persons appearing to be of unsound mind. The terminology of section 21(2)(*a*) is out of date and does not accord with the regulations in the Post Office Savings Bank Regulations 1966 (S.I. 1966 No. 727 II p. 1662) which provide for the above mentioned matter. Those regulations take account of the legislation with respect to mental disorder now in force and of the fact that that legislation is different for each part of the United Kingdom and for the Channel Islands and the Isle of Man.

We recommend that the words in section 21(2)(*a*) " persons appearing to be of unsound mind " should be replaced by words describing the persons in question in terms which are up to date and which would enable the regulations to operate throughout the whole area of operation of the Act of 1954. Effect is given to this recommendation in clause 28(2)(*a*) of the Bill.

7. Section 21(2)(*c*) requires the Treasury to make regulations for the purpose of extending to trustee savings banks any regulations made with respect to the post office savings bank so far as those regulations provide for determining the evidence to be accepted of any matter for the purpose of the payment or transfer of any sum. This provision is ineffective because there is no power to make regulations with respect to the post office savings bank for determining the evidence to be accepted of any matter for that purpose. There is, however, power in section 21(4)(*a*) of the Act of 1954 (clause 28(4)) and section 2(2)(*b*) of the Post Office Savings Bank Act 1954 to make regulations for prescribing the means by which particular facts may be proved and the mode in which evidence thereof may be given and for authorising proof of any particular facts given in the manner prescribed by the regulations to be treated as conclusive evidence of those facts for the purpose of the payment or transfer of any sum. Section 21(4)(*a*) is wider than section 21(2)(*c*) and there is no need to have two provisions which enable regulations to be made for the same purpose.

The provision made by section 21(2)(*c*) appears in the Act of 1954 but not in the Post Office Savings Bank Act 1954 because of an omission in the Savings Banks Act 1920. Section 21(2) derived from section 2 of the Savings Banks Act 1887. The corresponding provision for the post office savings bank was contained in section 1(1) of that Act and sections 1(1)(*c*) and 2(*c*) were identical in effect. Section 1(1)(*c*), but not section 2(*c*), was repealed by the Savings Banks Act 1920 which enacted in section 3 the provision which now appears as section 21(4)(*a*) of the Act of 1954 and section 2(2)(*b*) of the Post Office Savings Bank Act 1954. There is no doubt that the failure to repeal section 2(*c*) of the Act of 1887, as well as section 1(1)(*c*) of that Act, in 1920 was an oversight.

We recommend that section 21(2)(*c*) should not be reproduced in the Bill but be repealed by it.

8. Section 21(5), as amended by the Administration of Estates (Small Payments) Act 1965, enables regulations to provide for dispensing with probate or other proof of the title of the personal representative of a deceased person where

the sum in a trustee savings bank which forms part of the estate of that person does not exceed £500. The subsection further provides that that sum may be paid or distributed to or among the persons appearing in manner provided by the regulations to be beneficially entitled to the personal estate of the deceased, the various ways in which a person may be so entitled being listed, "or in the case of any illegitimacy of the deceased person or his children, to or among such person or persons as may be directed by the said regulations ".

The relevant regulation of the Trustee Savings Banks Regulations 1929 (S.R. & O. 1929 No. 1048 Rev. XX p. 584), regulation 28, makes no special provision for the case where the deceased person or any of his children was or is illegitimate. In view of the changes in the law relating to succession to the property of deceased persons in cases of illegitimacy made by Part I of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 and Part II of the Family Law Reform Bill, now before Parliament, it is virtually certain that no use would ever be made of the power to make special provision for that case. The provision conferring the power is therefore unnecessary.

We recommend that in re-enacting section 21(5) so much of that subsection as relates to the case of illegitimacy of a deceased depositor or his children should be omitted. Effect is given to this recommendation in clause 28(5) of the Bill.

9. Section 23 is as follows—

> Where a deposit has been made in a trustee savings bank by or for the benefit of a person under twenty-one years of age it shall be lawful for the trustees or managers of the bank to make a payment to that person in respect thereof and his receipt shall be a sufficient discharge notwithstanding his incapacity or disability in law to act for himself.

Section 23 reproduced section 30 of the Trustee Savings Banks Act 1863. A later enactment, section 2 of the Savings Banks Act 1887, required the Treasury to make regulations for the purpose of extending to trustee savings banks any regulations made in pursuance of that Act with respect to the post office savings bank so far as those regulations provide for the payment or transfer of sums which belong to persons appearing to be minors and for determining the receipts which were to be a good discharge in the case of the payment or transfer of any sum. Section 2 was reproduced in section 21(2) (clause 28(2)). Regulations were made in compliance with section 2 and the regulation now in force which deals with the withdrawal of money deposited by or in the name of an infant is regulation 5 of the Trustee Savings Banks Regulations 1929.

There is no need to have two provisions, one in the Act and one in the regulations, both concerned with the same case. Moreover, a deposit " for the benefit " of an infant could be construed as covering the case where an infant is the beneficiary under a trust, but it should not be possible in that case for payment to be made to the infant alone. The section would also permit payment to be made to an infant under seven years of age. This is not permitted by the regulations.

We recommend that section 23 should not be reproduced in the Bill but be repealed by it.

10. Section 22(1) empowers the trustees and managers of a trustee savings bank to accept a deposit from a person acting as trustee on behalf of a depositor whether the trustee is himself a depositor in another trustee savings bank or not and provides that the trustee shall on behalf of the depositor make the declaration required in the case of a person making a deposit on his own account. Section 22(2) requires the deposit to be entered in the books of the bank in the joint names of the trustee and of the person on whose account the sum is deposited. Section 22(3), as amended by section 5(7) of the Trustee Savings Banks Act 1958, is as follows:—

(3) Repayment of a deposit under this section, or of part of a deposit, shall not be made without the receipt of the said trustee and of the person on whose account the deposit was made, or of the survivor or the personal representative of the survivor, either in person or, unless the person giving the receipt is under the age of fourteen, by agent appointed in writing in a form approved by the trustees of the bank, and such a receipt shall alone be a good and valid discharge to the trustees and managers of the bank:

Provided that if it is shown to the satisfaction of the trustees and managers that the person on whose account the deposit was made is of unsound mind, repayment may be made to the said trustee.

In 1954 trustees in general did not have power to invest in deposits in a trustee savings bank. They now have that power by virtue of the Trustee Investments Act 1961. Accordingly it would be misleading to re-enact section 22(1) in a form which suggested that the trustees of such a bank need to be empowered to accept a deposit from a trustee in the special case with which section 22 is concerned.

Section 22 and its predecessors have always been used as a means by which one person can make a gift of money to another while retaining control over it during his lifetime and a contingent interest therein. Thus if a grandfather makes a deposit in a trustee savings bank for his grandchild's benefit, the likelihood is that the child will survive him and accordingly become entitled to the money deposited. But if the child dies first the money will revert to the grandfather. The account for which section 22 provides is more in the nature of a special kind of joint account than a trust account.

Section 22 is unsatisfactory in several respects. It does not provide for the case where the person making the deposit becomes incapable by reason of mental disorder of managing his property and affairs or where either of the persons in whose names the account stands becomes bankrupt. These omissions are supplied by regulation 7 of the Trustee Savings Banks Regulations 1929 which also repeats the effect of the proviso to section 22(3).

Section 22 also leaves open the question whether a child under seven can give a valid receipt under the section. Regulation 5 of the 1929 Regulations deals with withdrawals of money deposited by, or in the name of, an infant and enables an infant aged seven or over to give a valid receipt. It is not, however, clear whether that regulation applies to withdrawals from the account for which section 22 provides. Finally, although section 22(3), as amended, implies that an infant aged fourteen or over may appoint an agent for the purpose of giving a receipt under the section it leaves it open to argument whether the appointment will invariably be valid.

We recommend that section 22 should be amended to take account of the Trustee Investments Act 1961 and of the relevant regulations made under section 21(2) and that provision should be made to remove any doubt as to the capacity of an infant to give a receipt or appoint an agent for the purposes of the section. Effect is given to this recommendation in clause 30 of the Bill.

11. Section 24, as originally enacted, was as follows:—

24.—(1) The trustees or treasurers of any charitable or provident institution or society, or charitable donation or bequest for the maintenance, education or benefit of the poor, or of any penny savings bank, may invest the funds of the institution or society in the funds of a trustee savings bank.

(2) Where a payment is made by a trustee savings bank to a trustee, treasurer or other officer of such a charitable or provident institution or society as aforesaid, or of a friendly society or penny savings bank, who is apparently authorised to require that payment, his receipt shall be a sufficient discharge and the trustee savings bank and its trustees, managers and officers shall not be responsible for any misapplication or for any want of authority of the person requiring or receiving the payment.

(3) No person who is a member of any such charitable institution as aforesaid or of any friendly society or penny savings bank shall, by reason of being a depositor in a trustee savings bank, be considered as subject or liable to any penalty, forfeiture or disability declared or expressed, or intended so to be, by or in the rules, orders or regulations of the institution or society or penny savings bank.

(4) It is hereby declared that nothing in this section is to be construed as imposing any obligation on a trustee savings bank as respects their receiving any funds.

By virtue of the Trustee Investments Act 1961, section 16, Schedule 4, paragraph 4(3), section 24(1) was repealed so far as it related to trustees. The Act of 1961 enables a trustee to invest trust funds in deposits in a trustee savings bank, but before making a deposit by way of special investment in such a bank he is required by section 6(2) of that Act to obtain and consider proper advice on the question whether the investment is satisfactory having regard to the matters mentioned in section 6(1).

Even as applicable to treasurers, section 24(1) is to some extent unnecessary. If a provident society is registered or deemed to be registered under the Industrial and Provident Societies Act 1965, section 31 of that Act specifies the securities in which the funds of the society may be invested. And if the treasurer of an institution or society is also a trustee of the funds of the institution or society, the subsection is unnecessary because it has been superseded by the Trustee Investments Act 1961. It is also objectionable if it can be construed as conferring on a treasurer, who is not a trustee of the funds of the institution or society, an independent and unrestricted power to invest those funds in deposits in a trustee savings bank.

Section 24(2) is analogous to subsection (1), though it is concerned with payments out of a bank. It was not amended by the Trustee Investments Act, since the topic with which it deals lies outside the scope of that Act.

These two subsections treat charities in an anomalous manner. In subsection (1) the words " charitable . . . institution or society " are general, though they do not seem apt to cover all charitable trusts, but the words " charitable donation or bequest " are limited by the words " for the maintenance, education or benefit of the poor ". Subsection (2) covers the case of a charitable institution or society, but not the charitable donation or bequest mentioned in subsection (1). It is not now known why these two subsections deal with charities in this way. Charities were first authorised to deposit money in savings banks by an Act of 1820 (1 Geo. 4 c. 83 s. 12) but they were deprived of this power in 1824 (5 Geo. 4 c.62 s.24). It was restored to them by section 27 of the Savings Bank Act 1828. The words " charitable donation or bequest for the maintenance, education or benefit of the poor " appeared for the first time in this section. The application of subsections (1) and (2) of section 24 to some only of the various classes of charities gives rise to an implication which was almost certainly not intended.

Section 24(3) reproduces part of section 35 of the Trustee Savings Banks Act 1863. That section derived in part from section 30 of the Savings Bank Act 1828. In so far as section 24(3) applies to members of a charitable institution it was probably aimed at the old type of charity for the poor where the beneficiary class had to be members of the charity. To demonstrate that they were " deserving ", and in order to qualify for benefit in time of need, members were required to contribute a small periodical sum to the funds of the charity. Money in the bank would have been a bar to membership under the rules of some of these charities. The position with regard to friendly societies when those societies were in their infancy may have been similar. The subsection also purports to protect the members of penny savings banks. If the " members " of such a bank are the depositors it seems clear that, whatever the position may have been a hundred years ago, the members may nowadays be depositors in a trustee savings bank. This appears from section 81 of the

Act of 1954 which defines " penny savings bank " as a bank the rules of which fix a sum not exceeding £5 as the maximum amount which may stand to the credit of any one depositor therein at any one time, and which provide, upon the attainment of that maximum amount, for its transfer to an account opened in the depositor's own name in the savings bank where the deposit account of the penny savings bank is kept. That definition originated in the Savings Banks Act 1904.

Section 24(4) is linked with subsection (1). It reproduced so much of section 19(5)(*a*) of the Industrial Assurance and Friendly Societies Act 1948 as operated on section 32 of the Trustee Savings Banks Act 1863, which was reproduced in section 24(1). Despite its relatively recent origin, section 24(4) appears to be unnecessary. No comparable provision was made when the Trustee Investments Act 1961 empowered trustees to invest trust funds in trustee savings banks.

Section 24(1) may still have some value notwithstanding the Trustee Investments Act 1961 and the Industrial and Provident Societies Act 1965. The banks have always accepted deposits from persons acting on behalf of small clubs or societies of a type which is unlikely to have any written constitution. These clubs can in general be characterised as provident institutions or societies. The person making the deposit may well be acting only as an agent of the members of the club, with such powers as they may give him from time to time. It would be difficult for the bank to make inquiries whenever such a person sought to make a deposit, as to the scope of his authority. However, the wording of the subsection is wider than is needed to protect the banks. It suggests that the treasurer of a society has an absolute power to invest its funds in a trustee savings bank, whatever the members wish.

Section 24(2) is of greater utility, since it is effective in relation to a considerable number of types of organisation in addition to the informal society. However, its effect, in relation to charities, is anomalous. Section 24(3) is believed to be obsolete and section 24(4) unnecessary.

We recommend that in re-enacting section 24—

(*a*) obsolete and unnecessary provisions should be omitted ;

(*b*) the provision made by subsection (1) conferring on a treasurer of certain institutions power to invest in a trustee savings bank should be replaced by a provision absolving such a bank and its trustees and managers from responsibility for want of authority on the part of the treasurer ; and

(*c*) the anomaly which results from limiting the application of subsection (2) to certain classes of charity should be removed.

Effect is given to this recommendation in clause 31 of the Bill.

12. Section 25 is as follows:—

(1) Subject to the following subsections of this section and to any other provision of this Act, the sums of money belonging to a trustee savings bank which the trustees of the bank are authorised to invest under this Act or under any rules of the bank shall be invested under the next following section and shall not be invested in any other manner.

(2) Subsection (1) of this section shall not apply to such sums of money as necessarily remain in the hands of the treasurer of the bank to answer the exigencies of the bank.

(3) Subsection (1) of this section shall not prevent a depositor from withdrawing any sum of money deposited by him and investing it in any other manner.

Money is invested under section 26 by paying it into the Fund for the Banks for Savings, that is to say, an account in the name of the National Debt Commissioners in the books of the Bank of England and the Bank of Ireland. Interest at a fixed rate is paid on the money so invested.

The sums of money which the trustees are authorised to invest fall into two categories which are defined in section 11. Sums of money deposited with the trustees which are required to be invested with the Commissioners in accordance with section 26 are referred to in the Act as ordinary deposits. Sums of money received from a depositor to be applied in any other manner for the benefit of the depositor are referred to as moneys received for special investment.

Section 11 indicates that money received for special investment does not fall within section 25(1). That that is the position appears more clearly from section 3(4) of the Trustee Savings Banks Act 1968 which provides that moneys received for special investment shall not be invested except in accordance with that section and section 2(2) and (3) of the Trustee Savings Banks Act 1958. Section 2 of the Act of 1958 and section 3 of the Act of 1968 have replaced section 41 of the Act of 1954 which provided for the investment of moneys received for special investment but contained no provision corresponding to section 3(4) of the Act of 1968.

It would improve the manner in which the law is stated if the provision of the Bill which reproduces section 25(1) were expressed as applying to sums of money which form part of the assets of a trustee savings bank in respect of ordinary deposits. The effect of the provision would then be immediately apparent.

Section 25(2) is to some extent out of date. Not all trustee savings banks have treasurers and even if they have the moneys needed by such a bank to meet its day to day requirements may be in the current or deposit account of that bank with a clearing bank. In any case it seems unnecessary to specify the whereabouts of the moneys needed to meet those requirements.

Section 25(3), which derived from section 15 of the Trustee Savings Banks Act 1863, appears to be unnecessary. There are various provisions in the Act which contemplate that a depositor may withdraw the money deposited by him; it would be surprising if there were not. It scarcely seems possible to argue that a provision which regulates the manner in which the trustees of a bank are to invest money in their hands can be construed as preventing a depositor from withdrawing money which belongs to him but which, while it remains deposited with the bank, can be described as belonging to the bank. Once the money has been withdrawn the person to whom it belongs can, of course, deal with it as he pleases.

No provision corresponding to section 25(3) is made in relation to money which a bank receives for special investment though the provision made by section 3(4) of the Act of 1968 with respect to the investment of such money is similar in effect to section 25(1) of the Act of 1954.

We recommend—

(*a*) that section 25(1) be amended so as to state its effect more clearly;

(*b*) that in re-enacting section 25(2) its application should not be restricted to moneys in the hands of the treasurer of a bank; and

(*c*) that section 25(3) should not be reproduced in the Bill but be repealed by it.

Effect is given to this recommendation in clause 32 of the Bill.

13. Section 47(1) imposes upon the trustees and managers of every trustee savings bank the duty of annually preparing a general statement of the sums standing to the credit of the bank in the books of the Commissioners up to 20th November in each year, and of expenses incurred. Subsections (5), (6) and (11) are as follows:—

> (5) The said annual statement shall be in such form and contain, or be accompanied by, such particulars as the Commissioners direct and shall be transmitted to the office of the Commissioners within nine weeks after 20th November in each year.

(6) A similar statement shall be transmitted to the Inspection Committee within the said period of nine weeks.

(11) The trustees of a trustee savings bank shall, at the request of the Inspection Committee, supply the Committee with a copy of the said annual statement.

Subsection (6) derives from section 8 of the Savings Banks Act 1891 and subsection (11) from section 3(4) of the same Act. Since the Inspection Committee is entitled to a copy of the annual statement by virtue of subsection (6), subsection (11) is superfluous. It is not known why the 1891 Act contained both provisions but, whatever the reason may have been, copies of documents can be produced much more easily now than was possible in 1891. Once the Inspection Committee has received the statement under subsection (6), it can make its own copies.

We recommend that section 47(11) should not be reproduced in the Bill but be repealed by it.

14. Section 49(7) requires the Inspection Committee to make an annual report of their proceedings under the Act to the National Debt Commissioners. Paragraph 17 of the scheme referred to in recommendation 2 provides that the Committee shall make their annual report for the year ending on 20th November and shall communicate it to the Commissioners not later than the following 1st February. The latter date has in practice been found to be too soon. Moreover, it would improve the manner in which the law is stated if all the requirements with respect to the Committee's report were brought together.

We recommend that all the requirements with respect to the Committee's report should be made by the Act. Effect is given to this recommendation in clause 58(10) of the Bill.

15. Section 55(1) is as follows:—

When a trustee savings bank is finally closed, the trustees, or any two or more of them, shall forthwith notify the Commissioners in writing, and shall with the consent of the Commissioners, convert into money any property held by the said trustees or by any person as trustee for the bank.

The Savings Banks Act 1929 made provision for the vesting of the property of trustee savings banks in custodian trustees. This provision is now in section 9 of the 1954 Act. By virtue of section 9(5) custodian trustees are not necessarily also general trustees. Although under section 9(7) the management of the property remains vested in the general trustees, and these trustees are able to give instructions to the custodian trustees, a sale must in fact be carried out by the custodian trustees, as they will have the legal title to the property. Another defect in section 55(1) is the reference to property held " by any person as trustee for the bank ". These words appear to be otiose but, in any case, all that is needed is to require the conversion into money of any property belonging to the closed bank.

We recommend that section 55 be amended to take account of the fact that the property of a trustee savings bank is held by custodian trustees and to require those trustees to convert that property into money. Effect is given to this recommendation in clause 65(1) of the Bill.

16. Section 57(1), apart from a proviso which is irrelevant for the purpose of the present recommendation, is as follows:—

(1) The following persons, that is to say—

(*a*) every treasurer, actuary or cashier entrusted with the receipt or custody of a sum of money subscribed or deposited for the purpose of a trustee savings bank or any interest or dividend accruing therefrom, and

(*b*) every officer or other person receiving any salary or allowance for his services from the funds of a trustee savings bank,

shall give good and sufficient security to be approved of by not less than two trustees of the bank for the just and faithful execution of his office or trust.

Subsection (3) provides for the type of security to be given under the section by an actuary or cashier or officer or other person receiving any salary or allowance for his services.

Treasurers of trustee savings banks have always been unpaid. Actuaries, who are not actuaries in the normal modern sense, but general managers, and cashiers, are paid officers of the banks. The list of persons in paragraphs (*a*) and (*b*) thus overlap, since the treasurer will be the only person mentioned in paragraph (*a*) not receiving any salary or allowance for his services from the bank's funds. The duplication is explicable if, as seems likely, paragraph (*a*) is directed to the time before a bank is established, and paragraph (*b*) to the time after it is established. The words " money subscribed or deposited for the purposes of a trustee savings bank " can only mean capital provided for starting the bank. In early times new banks were often financed by voluntary private contributions. This is not so now.

We recommend that section 57(1) be amended to remove the overlap between paragraphs (*a*) and (*b*) and that the necessary consequential amendment of section 57(3) be made. Effect is given to this recommendation in clause 67(1) and (4) of the Bill.

17. Section 58 provides that an employee of a trustee savings bank who fails to pay over to the bank any money received by him from or on account of a depositor or on account of the bank shall be guilty of a misdemeanour. The punishment which may be imposed on a person convicted of an offence under this section is not stated in the Act.

Section 7(1) of the Criminal Law Act 1967 provides that where a person is convicted on indictment of an offence against any enactment and is for that offence liable to be sentenced to imprisonment, but the sentence is not by any enactment either limited to a specified term or expressed to extend to imprisonment for life, the person so convicted shall be liable to imprisonment for not more than two years. Section 7(1) of the Criminal Law Act (Northern Ireland) 1967 is to the same effect. A person convicted on indictment of a statutory misdemeanour is liable at common law to be sentenced to imprisonment, and section 7(1) of each of the said Acts accordingly applies to an offence under section 58. By virtue of section 7(3) of each of the said Acts, the court by which he is convicted may impose a fine instead of, or in addition to, a sentence of imprisonment.

With a view to making the law more readily ascertainable, we recommend that the liability of a person convicted on indictment by a court in England, Wales or Northern Ireland of an offence under section 58 to be sentenced to a fine or to imprisonment for a term not exceeding two years or both should be stated in the clause which reproduces that section. Effect is given to this recommendation in clause 68(2) of the Bill.

18. Under section 60(1) the trustees and managers of a bank can require persons who hold bank property and their personal representatives and assigns to account for it and give it up. Subsections (2) and (3) are as follows:—

(2) Where there is a neglect or refusal to comply with paragraph (i) or paragraph (ii) of the foregoing subsection, [which respectively deal with accounts and payments], the trustees of the bank may apply by petition to the court of quarter sessions having jurisdiction where the bank is established and that court shall proceed in a summary way and, after hearing all parties concerned, make such order as appears to the court to be just.

(3) An order of the court under this section shall be final and conclusive and all assignments, sales and transfers made in pursuance of the order shall be good and effectual in law for all purposes.

These subsections go back to 1817, when they appeared in section 21 of the first Act which regulated saving banks (57 Geo.3.c.130). That Act applied to England and Wales only. Under section 2 of that Act a copy of the rules of a bank had to be deposited with the clerk of the peace for the county where the bank was established. Savings banks were local institutions, and quarter sessions were therefore not an inappropriate forum for determining disputes concerning their property. The modern system of county courts was not established until 1846. If therefore the Act of 1817 had not made this special provision, the trustees of the bank would usually have had to have recourse to one of the superior courts in London, with inevitable delay and expense.

Although the Act of 1817 applied to England and Wales only, the provision giving this jurisdiction to quarter sessions appeared as a Great Britain provison (that is to say, applying also to Scotland) in section 13 of the Trustee Savings Banks Act 1863 which was an Act "to consolidate and amend" the laws relating to savings banks, and the application of the provision to Scotland was preserved in section 60 of the Act of 1954.

In our view there can be no justification for retaining this jurisdiction of quarter sessions. They now play no other part in relation to trustee savings banks. Moreover by modern standards they are not suitable for hearing cases of this description. If such banks need to resort to litigation to recover property they can bring actions in England and Wales in the High Court or the county court, and in Scotland in the Sheriff Court or the Court of Session.

Courts of quarter sessions have never existed in the Isle of Man or the Channel Islands, and they were abolished in Northern Ireland by the County Courts Act (Northern Ireland) 1959.

Not only therefore is section 60(2) superfluous and anomalous in England, Wales and Scotland, but it is also without effect in Northern Ireland, the Channel Islands and the Isle of Man. Subsection (3) depends upon it, since it is designed to give orders of courts of quarter sessions a force which they might not otherwise have.

We recommend that section 60(2) and (3) should not be reproduced in the Bill but be repealed by it.

19. Section 61(1) enables a bank to recover its property from certain persons into whose possession it has come through an officer of the bank. The ultimate source of this section is section 28 of the Savings Bank Act 1833. The section provides that if an officer of a bank—

> "(*a*) dies, or
>
> (*b*) becomes a bankrupt or insolvent, or makes any assignment of his lands, goods, chattels or effects for the benefit of his creditors, or
>
> (*c*) has any execution or attachment or other process issued against his lands, goods, chattels, or effects,
>
> his personal representative or, as the case may be, his trustee in bankruptcy or assignee, or the sheriff or other officer executing such process as aforesaid"

shall hand over the property and pay any sums due to the bank from the officer.

The bankruptcy laws applied in former times only to persons who were traders. When a person who was not a trader failed to pay his debts, the consequence was imprisonment. There was however, starting in the late seventeenth century, a series of Acts designed to limit imprisonment for debt. The persons for whose benefit they were passed were generally known as insolvent

debtors. Thus by 1833 the distinction between a bankrupt and an insolvent was well established. The Acts for the relief of insolvent debtors then in force were 7 Geo.4.c.57, 11 Geo.4 and 1 Will.4.c.38 and 2 Will. 4.c.44. Section 69 of the Bankruptcy Act 1861 extended the bankruptcy laws to all persons, whether traders or not, and the difference between a bankrupt and an insolvent accordingly disappeared. (In Ireland the difference remained until the law was changed by the Bankruptcy (Ireland) Amendment Act 1872.) The reference to an insolvent has therefore no meaning now in the context of section 61.

Paragraph (*b*) of section 61(1) refers to " lands, goods, chattels or effects ". The phrase recurs in paragraph (*c*). The word " property " would cover all these items.

Section 61(l)(ii) provides that all sums of money remaining due to the bank are to be paid first out of the estate, assets or effects of the officer and goes on to provide that " all such estates, assets, lands, goods, chattels and effects shall be bound to the payment and discharge of the sum of money so remaining due accordingly ". The words quoted appear to add nothing to what has gone before and are therefore unnecessary.

We recommend that in re-enacting section 61(1) obsolete and unnecessary words should be omitted and that the word " property " should be substituted for the words " lands, goods, chattels or effects ". Effect is given to this recommendation in clause 72(1) of the Bill.

20. Section 80 provides that if a bank, association, company or other person, not being a trustee savings bank, uses or adopts the title of " savings bank certified under the Act of 1863 " or " savings bank certified under the Trustee Savings Banks Act 1954 ", as their or his designation, or in carrying on business, the members of the association or company or, as the case may be, the said person shall be guilty of a misdemeanour.

Section 80 is defective in that it purports to deal with the case of a bank which is not a trustee savings bank using the title of a certified savings bank but fails to provide that the bank or its members shall be guilty of a misdemeanour. In addition, unlike modern enactments, the section penalises the shareholders of a company and the members of any other body corporate but makes no provision for punishing the body itself or an officer of the body who is not a member thereof but who is in effect the person responsible for the offence having been committed.

The law regulating the punishment which may be imposed on a person convicted of an offence under section 58 or section 80 is the same. Accordingly the statements made in the second paragraph of recommendation 17 also apply to the offence under section 80.

We recommend that section 80 should be re-enacted in modern form and we make the same recommendation in relation to an offence under section 80 as is made by recommendation 17 in relation to an offence under section 58. Effect is given to these recommendations in clause 92 of the Bill.

21. All the Acts comprised in the Trustee Savings Banks Acts 1954 to 1968 extend to the Isle of Man and the Channel Islands. There are a number of provisions in the Act of 1954 which require adaptation or modification to make them accord with the law applicable in those Islands, but the Act neither makes those adaptations and modifications nor enables them to be made by subordinate legislation. The modern practice is for adaptations and modifications of United Kingdom Acts in their application to the Isle of Man and the Channel Islands to be made by Order in Council and, since the law applicable in those Islands may be changed, for authorising the Order to be varied or revoked.

We recommend that a provision giving effect to the modern practice be included in the Bill. Effect is given to this recommendation in clause 99 of the Bill.

ANNEX

SCHEME FOR THE APPOINTMENT OF AN INSPECTION COMMITTEE OF TRUSTEE SAVINGS BANKS, FOR DETERMINING THE MODE IN WHICH THE MEMBERS OF THE COMMITTEE ARE TO BE APPOINTED AND THER TERM OF OFFICE, AND, SUBJECT TO THE PROVISIONS OF THE SAVINGS BANKS ACT, 1891, (54 & 55 VIC., CAP. 21) THEIR POWERS, PROCEDURE AND DUTIES.

1. The Inspection Committee shall consist of seven members.

2. They shall be appointed for a term of four years, and shall be eligible for reappointment, except as hereinafter provided.

3. One member shall be appointed by the Governor of the Bank of England for the time being, one member by the Council of the Institute of Chartered Accountants in England and Wales, one member by the Council of the Incorporated Law Society, and one member by the Chief Registrar of Friendly Societies for the time being.

4. The Trustees and Managers of each Trustee Savings Bank, which is shewn from time to time by the last issued Return of the National Debt Commissioners relating to Trustee Savings Banks to have not less than £500,000 invested upon its General Account with the Commissioners, shall, not later than the 1st October, nominate one person as eligible to serve on the Inspection Committee; and the four members nominated under Clause 3 of this scheme shall, at their first meeting, immediately after they have chosen a temporary Chairman, select three members of the Inspection Committee from among the persons so nominated, and shall transact no other business.

5. Any casual vacancies among the four members of the Inspection Committee appointed under Clause 3 shall be filled up in like manner as the original appointments for the residue of the term of the member vacating his office. Any casual vacancies among the three members of the Inspection Committee, chosen under Clause 4, shall be filled up by the Inspection Committee from among the remaining persons nominated by the Trustees and Managers of the Trustee Savings Banks for the residue of the term of the member vacating his office.

6. In the event of any of the persons or bodies named in Clause 3 failing or refusing to appoint a member of the Inspection Committee, the Inspection Committee shall elect a person to fill the vacancy so made for the same term as that for which the person not appointed would have been a member.

7. One of the four members first appointed under Clause 3 shall vacate his office on the 20th November 1892, one on the 20th November 1893, one on the 20th November 1894, and one on the 20th November 1895. The persons vacating office at these dates shall be determined by ballot and shall be re-eligible.

8. The National Debt Commissioners shall, as soon as they have approved this scheme, notify to the persons and bodies entrusted with the duty of nominating members of the Inspection Committee, or persons eligible for selection as members of the Inspection Committee, the provisions of this scheme; and the persons and bodies so notified shall, not later than the 1st October 1891, make a return to them of the persons they have chosen, and the National Debt Commissioners shall communicate to the four persons appointed under Clause 3 of this scheme the names, addresses, and descriptions of the persons chosen by Trustees and Managers under Clause 4 of this scheme at least three weeks before the day on which they shall summon the first meeting of the members of the Inspection Committee; and shall receive a report from the four members of the Inspection Committee of the three members selected by them, and shall notify their selection to the three persons so selected, and to the nominating Banks, and shall summon the Inspection Committee to their second meeting, and fix the day thereof.

9. At the first meeting to which all the members of the Inspection Committee are summoned, they shall elect a Chairman to hold office in the first instance till the 21st day of November 1892, and shall make arrangements for an office in London, and for appointing a Secretary at such cost and at such salary as shall be approved by the Treasury.

10. A Chairman shall be elected annually on, or as soon as may be after, the 21st day of November, and shall be eligible for re-election.

11. When the Inspection Committee is duly constituted, it shall send out notices to all persons and bodies entitled to nominate, appoint, or elect members or persons eligible for membership, of the Inspection Committee, and shall have the conduct and management of all matters connected with the filling up of vacancies among its members, subject to the conditions herein contained. Any dispute concerning any notice, election, mode of procedure, or other matter, shall be referred to the National Debt Commissioners, whose decision shall be final.

12. The Inspection Committee shall meet twelve times a year or oftener if need be.

13. The Inspection Committee shall, with the approval of the National Debt Commissioners, from time to time frame rules for their procedure and mode of conducting business.

14. If any member of the Inspection Committee absents himself from three successive meetings of the Committee, or fails to attend at least six meetings during one year, except for temporary illness or other cause to be approved by the Committee, or is punished with imprisonment for any crime, or is adjudged bankrupt, or enters into a composition or arrangement with his creditors, such person shall cease to be a member of the Inspection Committee, and his office shall thereupon be vacant.

15. At all meetings of the Inspection Committee three shall be a quorum.

16. After the first constitution of the Committee, the year shall commence on the 21st November.

17. The Inspection Committee shall make their annual report for the year ending the 20th November, and shall communicate their report to the National Debt Commissioners as soon as convenient after that date, but in no case later than the 1st February following.

18. Members of the Inspection Committee, not resident in London, shall be allowed such reasonable travelling expenses for each attendance, in addition to any other remuneration, as may be approved by the Treasury.

E. LYULPH STANLEY.
FRANCIS HERVEY.
ALBERT K. ROLLIT.
JOHN E. ELLIS.
THOS. C. WRIGHT.
JOHN URE.
H. COURT.

London, 23*rd July*, 1891.

The National Debt Commissioners approve this scheme in conformity with sub-section 2 of section 2 of the Act 54 & 55 *Vic., cap.* 21.

C. RIVERS WILSON.
Comptroller General.

31*st July*, 1891.

(326372) Dd. 142034 K12 4/69

HER MAJESTY'S STATIONERY OFFICE

Government Bookshops

49 High Holborn, London W.C.1
13A Castle Street, Edinburgh EH2 3AR
109 St. Mary Street, Cardiff CF1 1JW
Brazennose Street, Manchester M60 8AS
50 Fairfax Street, Bristol BS1 3DE
258 Broad Street, Birmingham 1
7 Linenhall Street, Belfast BT2 8AY

Government publications are also available through any bookseller

SBN 10 140040 3