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Scottish Law Commission

(SCOT. LAW COM. No. 52)

REPORT ON THE MARRIED WOMEN'S POLICIES OF ASSURANCE (SCOTLAND) ACT 1880

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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:

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SCOTTISH LAW COMMISSION

To: The Right Honourable Ronald King Murray, Q.C., M.P.,
Her Majesty's Advocate

In pursuance of our duty under section 3(1)(a) of the Law Commissions Act 1965 to receive and consider any proposals for the reform of the law made to us, we examined proposals concerning the Married Women's Policies of Assurance (Scotland) Act 1880. We have the honour to submit our Report.

J. O. M. HUNTER,
Chairman.

21 *April* 1978.

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REPORT ON THE MARRIED WOMEN'S POLICIES OF ASSURANCE (SCOTLAND) ACT 1880

PART I: INTRODUCTION

1. We have received from more than one source proposals that the Married Women's Policies of Assurance (Scotland) Act 1880[1] (hereinafter referred to as 'the 1880 Act') should be amended. For example, the Council of the Law Society of Scotland proposed to the Commission that the 1880 Act should be brought into line with the Married Women's Property Act 1882[2] (hereinafter referred to as 'the 1882 Act') which applies to England and Wales. In particular, it was proposed that the 1880 Act should be amended to enable a woman to take out a policy of assurance under the Act for the benefit of her husband, her children or any of them.

2. The 1880 Act was modelled on section 10 of the Married Women's Property Act 1870[3] which was repealed and re-enacted in wider terms by the 1882 Act; the provisions of the 1880 Act have never been similarly extended. The principal question that arises is whether this extension should be done now and, if so, whether opportunity should be taken to make any other amendments to the 1880 Act. We formulated provisional conclusions on these matters some time ago, after which we consulted various professions, organisations and individuals, especially persons with experience in matters of insurance and taxation, and benefited considerably from their suggestions. In the interval since this consultation a fundamental change was made in the taxation law relevant to the use of such policies by the introduction of the system of capital transfer tax introduced by the Finance Act 1975[4] and there has also been litigation upon the interpretation of policies written under the 1880 Act. These legislative[5] and judicial changes have been assimilated. Although policies written under the 1880 Act were particularly useful for estate duty purposes in the past, it seems likely that they will continue to be of use under the capital transfer tax system. We have, therefore, reached the conclusion that the time is now ripe for reporting the result of our consideration of these matters.

3. We have incorporated our recommendations for legislation in a draft Bill, the text of which is contained in Appendix II to this Report.

PART II: PURPOSES AND USES OF THE ACT

4. The purpose and use of the Act was to enable a husband, simply and inexpensively, to make to his wife an irrevocable gift of property in the form of a policy on his life which would not be subject to attack by his creditors, at a time when any moveable estate belonging to a wife unless protected by an alimentary trust fell to her husband under the *jus mariti* and all gifts between spouses were revocable by the donor. In addition, the eventuality of the wife's

[1]1880 c. 26.
[2]1882 c. 75.
[3]1870 c. 93.
[4]1975 c. 7 ss. 19–47.
[5]Finance Act 1968 c. 44 s. 38; Finance Act 1969 c. 32 s. 36; Finance Act 1975 c. 7 ss. 19–47.

predecease was catered for by enabling the donor to confer benefits under the policy on his children. Such results could have been achieved by the setting up of a trust under the common law but the provisions of the Act enabled a trust to be set up without the necessity of the preparation of a special trust deed and without the necessity of the delivery of the trust property to the trustees or any equivalent, as was and still is necessary under the common law for the constitution of an effective trust.

5. The possibility of setting up a trust under the Act was seen to have considerable further advantages under the estate duty provisions of the Finance Act 1894.[6] A policy under the 1880 Act was, as soon as it was effected, deemed to be a trust for the benefit of the assured's wife and children, and consequently was in law, property in which the deceased did not have an interest. It followed that the policy did not fall to be aggregated for estate duty purposes with the deceased's other property passing on his death. This advantage was very considerable and such policies were much used in order to save estate duty until their advantages were reduced by legislation in 1954[7] and 1968.[8]

6. The possibility of using policies of assurance for the purpose of obtaining the benefits of exemptions for 'transfers of value' specified in Schedule 6 of the Finance Act 1975[9] remains and it appears likely that policies written under the 1880 Act will continue to be of considerable importance as providing a simple method of constituting a trust.

7. In addition to its use for purposes of taxation, a policy written under the 1880 Act will enable a person engaged in business, either on his own account or in partnership with others, to make a reasonable financial provision for his wife and family, secure in the event of his or of his firm's bankruptcy. Although *jus mariti* was abolished in 1881, the wife's property including her money, is often inmixed with her husband's funds and there is then a presumption that this property is part of his assets in bankruptcy.[10] By section 5 of the Married Women's Property (Scotland) Act 1920,[11] donations between spouses were declared to be irrevocable, but such donations may still be attacked at common law, or under the Bankruptcy Act 1621,[12] or under section 5(b) of the said 1920 Act, and an ordinary post-nuptial settlement enjoys no special protection. A policy under the 1880 Act, however, may be challenged by creditors only on the narrow grounds specified in, and with the limited remedy afforded by, the proviso to section 2 of the 1880 Act which is, therefore, likely to be of continuing practical utility.

PART III: A COMPARISON OF THE 1880 ACT AND THE 1882 ACT

8. Section 2 of the 1880 Act is in the following terms:

'A policy of assurance effected by any married man on his own life, and expressed upon the face of it to be for the benefit of his wife, or of his

[6] 1894 c. 30.
[7] Finance Act 1954 (c. 44) s. 33.
[8] Finance Act 1968 (c. 44) s. 38.
[9] 1975 c. 7.
[10] Married Women's Property (Scotland) Act 1881, (c. 21) s. 1(4).
[11] 1920 c. 64.
[12] 1621, Record ed., c. 18; 12 mo. ed. c. 18.

children, or of his wife and children, shall, together with all benefit thereof, be deemed a trust for the benefit of his wife for her separate use, or for the benefit of his children, or for the benefit of his wife and children; and such policy, immediately on its being so effected, shall vest in him and his legal representatives in trust for the purpose or purposes so expressed, or in any trustee nominated in the policy, or appointed by separate writing duly intimated to the assurance office, but in trust always as aforesaid, and shall not otherwise be subject to his control, or form part of his estate, or be liable to the diligence of his creditors, or be revocable as a donation, or reducible on any ground of excess or insolvency: And the receipt of such trustee for the sums secured by the policy, or for the value thereof, in whole or in part, shall be a sufficient and effectual discharge to the assurance office: Provided always, that if it shall be proved that the policy was effected and premiums thereon paid with intent to defraud creditors, or if the person upon whose life the policy is effected shall be made bankrupt within two years from the date of such policy, it shall be competent to the creditors to claim repayment of the premiums so paid from the trustee of the policy out of the proceeds thereof.'

9. The corresponding provision in English law is section 11 of the 1882 Act,[13] which is in the following terms:

> 'A policy of assurance effected by any man on his own life, and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured or be subject to his or her debts: Provided, that if it shall be proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, out of the moneys payable under the policy, a sum equal to the premiums so paid. The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy. In default of any such appointment of a trustee, such policy, immediately on its being effected, shall vest in the insured and his or her legal personal representatives, in trust for the purposes aforesaid. The receipt of a trustee or trustees duly appointed, or in default of any such appointment, or in default of notice to the insurance office, the receipt of the legal personal representatives of the insured shall be a discharge to the office for the sum secured by the policy, or for the value thereof, in whole or in part.'

10. In a number of respects the Scottish and English provisions are identical in effect. In both cases the term "policy" will include both "whole life" and endowment policies.[14] The terms of a policy may *per se* bring that policy within

[13] 1882 c. 75.
[14] See Dymond's *Death Duties*, (15th Ed.), p. 501.

the scope of the relative Act without express reference to such Act[15] although such policies normally bear *ex facie* to have been effected under the relative Act. The fact that moneys may be paid under the policy to the assured during his lifetime does not affect the trust. While his receipt discharges the assurance company, he must hold the moneys *qua* trustee for the ultimate beneficiaries.[16] The assured may exercise option rights under a policy, but he does so as trustee for existing beneficiaries.[17] The protection of both Acts is now available to illegitimate children and adopted children.[18]

11. The principal differences between the two Acts are as follows:—

(*a*) *Power of married women to effect policies under the Act*

Under the 1882 Act ('the English Act') but not under the 1880 Act ('the Scottish Act') the policy may be effected not only by a husband for the benefit of his wife but by a wife for the benefit of her husband.

(*b*) *Power of unmarried person to effect policies under the Act*

Under the 1880 Act a policy may be effected only by a married man.[19] The 1882 Act by using the words 'by any man' instead of the words 'by any married man' makes it likely that such a policy under that Act may be effected by an unmarried man to ensure for the benefit of his future wife and children, although in such a case the trust created by the Act would only become irrevocable on his marriage. The restriction to married persons is particularly inappropriate in view of the inclusion of illegitimate children as possible beneficiaries.

(*c*) *Power of selection or appointment*

Under the 1880 Act, the policy must be expressed upon the face of it to be for the benefit of 'the [married man's] wife or of his children, or of his wife and children' and does not expressly indicate that selection among the beneficiaries is competent.

12. These are the principal differences between the two Acts and it will be clear that important facilities or advantages are presented by the English Act which are not presented by the Scottish Act. We consider that these disparities cannot be justified and we understand that they have caused persons who have their domicile or habitual residence in Scotland to have recourse to the English Act rather than to the Scottish Act, a situation which we think highly undesirable.

13. It has also been pointed out to us that difficulties have been experienced by insurance companies in connection with the differences between the interpretation put upon policies written under the 1880 Act by the Scottish and English courts. However, policies written under the 1880 Act are not subject to special rules of statutory interpretation although the statutory phrase 'for the benefit of' has been the subject of construction in such a way as to include benefit to a beneficiary's estate when he is dead.[20] It is probable that this construction would be applied equally under the Scottish and the English Acts.

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[15] *Chrystal's Trs.* v. *Chrystal*, 1912 S.C. 1004; In re Gladitz [1937] Ch. 588.

[16] In re Fleetwood's Policy [1926] Ch. 48; See also *Schumann* v. *Scottish Widow's Fund Society*, 1886, 13 R, 678.

[17] See *Allan's Trustees* v. *Inland Revenue*, 1971 S.L.T. 62 especially per Lord Reid at pp. 63–64.

[18] Family Law Reform Act 1969 (c. 46), s. 19(1) and Adoption Act 1958 (c. 5), s. 14(3).

[19] *Coulson's Trs.* v. *Coulson* (1901) 3 F. 1041 per Lord Justice Clerk MacDonald at p. 1043.

[20] See *Barclay's Trs.* v. *Inland Revenue* 1975 S.L.T. 17; [1975] 1 A.E.R. 168.

14. However, there are cases where words used in a policy written under the 1882 Act will be afforded a different effect from similar words used in a policy written under the 1880 Act. The reason for this does not depend upon any difference in the provisions in the two Acts but upon the existence of general differences between the English and Scottish law applicable to trusts generally. Perhaps the most important provision special to England in this connection is section 31 of the Trustee Act 1925[21] which provides how income is to be dealt with in a case where property is held in trust and there is not a provision for immediate payment. This section is set out in full in Appendix I. An illustration of how Scots law operates differently is provided by the decision in *Royal Bank of Scotland* v. *Inland Revenue*[22] in which a problem arose under the Finance Act 1969[23] in relation to a trust in which benefits were expressed to be for the benefit of one person whom failing another where the destination over was to take effect on the death of the life assured. The Inland Revenue contended successfully that the effect of such a destination was to postpone vesting in the policy until the death of a life assured and that any income accruing on the trust property, in the meantime, would fall to be accumulated for the benefit of the beneficiary who ultimately took the capital with the result that a charge to estate duty under section 2(1)(b)(iv) of the Finance Act 1894[24] as amended by the Finance Act 1969[25] would arise on the trust property on the ground that there had been a termination of a period of accumulation on the death of the life assured. Although this question was discussed in relation to a policy taken out under an ordinary trust deed, much of the reasoning in that case would be applicable to a policy written under the Act in similar terms.

15. Although the issue of this Report had been delayed until the decision just mentioned was available for study, it is now apparent that difficulties of the kind considered in the foregoing paragraphs are not special to trusts arising from policies written under the 1880 Act and that if these differences between the law of England and the law of Scotland are to be removed, this should be done by a more general legislation since it would be anomalous to provide special rules of this character for trusts written under the 1880 Act.

PART IV: RECOMMENDATIONS

(*a*) *Extension of the Act to married women*

16. The proposal which initiated an examination of the 1880 Act was directed at the extension of the 1880 Act to policies effected by a woman for the benefit of her husband or her children. In our view, and this was strongly supported at consultation, such an extension is completely justified. We therefore *recommend* that the Act should be extended so as to enable a woman to effect policies under its provisions on her own life for the benefit of her husband, or of her children or of her husband and children, or any of them. (Recommendation 1).

[21]1925 c. 19.
[22]1977 S.L.T. 45.
[23]1969 c. 32.
[24]1894 c. 30.
[25]1969 c. 32. s. 36.

(b) Extension of the Act to unmarried persons

17. We consider that there is no reason why the benefits of the Act should be restricted to married men or married women and accordingly recommend that the 1880 Act should be amended so that any man or woman would be entitled to the benefit of the Act. We therefore *recommend* that section 2 of the Act should be amended to enable a man or a woman to effect a policy of assurance on his/her own life for the benefit of his/her future wife or husband and his/her children or any of them, children to include illegitimate children and adopted children. (Recommendation 2).

(c) Class of beneficiaries

18. Under both the 1880 Act and the 1882 Act the beneficiaries for whose benefit provision may be made is restricted to the spouse and children of the assured, children now including illegitimate and adopted children. In view of the decision in *Barclay's Trustees*,[26] grandchildren and others may benefit as entitled to participate in the policy as beneficiaries in the estate of a child. Apart from this, grandchildren or remoter issue cannot be provided for expressly under either Act. As a result of consultation, we have reached the conclusion that it would be unwise to complicate the provisions of the 1880 Act by extending further the class of beneficiaries for whose benefit provision may be made under the Act. Unless there were elaborate rules of construction adopted for the purposes of policies written under the 1880 Act, it would be difficult to ensure that a person taking out such a policy was giving effect to his intention particularly in questions of conflict between children and remoter issue. Since one of the principal advantages of a policy written under the 1880 Act is simplicity and availability to persons not desiring to have prepared an elaborate trust deed, we have concluded that rules of construction for policies written under the Act are undesirable. Consequently we have also concluded that it would be undesirable to extend the protection of the Act to further classes of beneficiaries and therefore make no recommendation for such extension.

(d) Power of selection or appointment

19. We consider that it would be appropriate to amend the 1880 Act by adding the phrase 'or any of them' at the end of the recital of authorised beneficiaries. Although it is arguable that this phrase is already implied, we see no reason for not making this plain when amendment of the Act is in any event proposed and we therefore *recommend* that the Act be so amended. (Recommendation 3).

(e) Power of trustees to deal with the policy

20. It is important that the powers of the trustee or trustees acting under a policy written under the 1880 Act should be clearly defined. It appears to us that the best way to clear up the question of the power of the trustees to deal with the policy is to provide that a policy written under the 1880 Act should be a trust within the meaning of the Trusts (Scotland) Act 1921[27] and we so *recommend*. (Recommendation 4). We also *recommend* that it should be provided expressly that the trustee should have power, where such acts are not at variance with the terms or purposes of the trust, to exercise any option under the policy or under any deed of trust or other document constituting a trust in relation to the policy,

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[26] 1975 S.L.T. 17; [1975] 1 A.E.R. 168.
[27] 1921 c. 58.

convert the policy to a partial or fully paid up assurance, convert the policy into any other form of insurance on the life of the person effecting the policy, increase or reduce the amount of the annual premiums payable under the policy and alter the period during which the premiums under the policy are payable. (Recommendation 5).

(f) Power of beneficiary to deal with his interest

21. Cases such as *Scottish Life Assurance Company Ltd.* v. *John Donald*[28] and the *Edinburgh Life Assurance Company* v. *Balderston*[29] have given rise to doubts upon the power of the beneficiaries to deal with their interests under such a policy. In view of the decision in *Beith's Trustees* v. *Beith*,[30] we consider that the basis for these decisions is now removed but as we understand that in practice difficulties have been experienced because of doubt on this matter, we *recommend* that the opportunity of amendment of the 1880 Act should be taken to make it clear that a beneficiary, being of full age and not suffering from any legal disability, may deal with his interest under such a policy as he pleases and even where this would result in the benefits or the policy reverting to the person effecting the policy or his estate. (Recommendation 6). As a corollary to recommendation 6 and recommendations 4 and 5 it would appear appropriate that the power of the Court of Session to approve or authorise variations of trust should be available generally[31] in relation to such a policy and we therefore further recommend that the powers conferred on the Court of Session by section 1 of the Trusts (Scotland) Act 1961[32] should be exercisable in relation to a trust constituted by a policy written under the 1880 Act. (Recommendation 7).

(g) Professional charges by trustees

22. We understand that difficulty has sometimes been experienced in practice in administering trusts set up under the 1880 Act because of the doubt upon whether professional trustees could be remunerated for professional services rendered by them to the trust. We *recommend* that the opportunity should be taken to make clear that a policy written under the Act shall not be prevented from being for the benefit of the beneficiaries for whose benefit it is expressed to be effected by reason of a provision that a trustee may, in his professional capacity, charge remuneration for his professional services. (Recommendation 8).

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[28](1901) 9 S.L.T. 200.

[29](1909) 2 S.L.T. 323.

[30]1950 S.C. 66.

[31]The terms of a policy of assurance to which section 2 of the Married Women's Policies of Assurance (Scotland) Act 1880 relates may be varied by the court in an action of divorce by virtue of section 5 of the Divorce (Scotland) Act 1976.

[32]1961 c. 57.

APPENDIX I

TRUSTEE ACT 1925

SECTION 31

(1) Where any property is held by trustees in trust for any person for any interest whatsoever, whether vested or contingent, then, subject to any prior interests or charges affecting that property—

(i) during the infancy of any such person, if his interest so long continues, the trustees may, at their sole discretion, pay to his parent or guardian, if any, or otherwise apply for or towards his maintenance, education, or benefit, the whole or such part, if any, of the income of that property as may, in all the circumstances, be reasonable, whether or not there is—

(*a*) any other fund applicable to the same purpose; or

(*b*) any person bound by law to provide for his maintenance or education; and

(ii) if such person on attaining the age of eighteen years has not a vested interest in such income, the trustees shall henceforth pay the income of that property and of any accretion thereto under subsection (2) of this section to him, until he either attains a vested interest therein or dies, or until failure of his interest:

Provided that, in deciding whether the whole or any part of the income of the property is during a minority to be paid or applied for the purposes aforesaid, the trustees shall have regard to the age of the infant and his requirements and generally to the circumstances of the case, and in particular to what other income, if any, is applicable for the same purposes; and where trustees have notice that the income of more than one fund is applicable for those purposes, then, so far as practicable, unless the entire income of the funds is paid or applied as aforesaid or the court otherwise directs, a proportionate part only of the income of each fund shall be so paid or applied.

(2) During the infancy of any such person, if his interest so long continues, the trustees shall accumulate all the residue of that income in the way of compound interest by investing the same and the resulting income thereof from time to time in authorised investments, and shall hold those accumulations as follows:—

(i) If any such person—

(*a*) attains the age of eighteen years, or marries under that age, and his interest in such income during his infancy or until his marriage is a vested interest or;

(*b*) on attaining the age of eighteen years or on marriage under that age becomes entitled to the property from which such income arose in fee simple, absolute or determinable, or absolutely, or for an entailed interest;

the trustees shall hold the accumulations in trust for such person absolutely, but without prejudice to any provision with respect thereto contained in any settlement by him made under any statutory powers

during his infancy, and so that the receipt of such person after marriage, and though still an infant shall be a good discharge; and

(ii) In any other case the trustees shall, notwithstanding that such person had a vested interest in such income, hold the accumulations as an accretion to the capital of the property from which such accumulations arose, and as one fund with such capital for all purposes, and so that, if such property is settled land, such accumulations shall be held upon the same trusts as if the same were capital money arising therefrom;

but the trustees may, at any time during the infancy of such person if his interest so long continues, apply those accumulations, or any part thereof, as if they were income arising in the then current year.

(3) This section applies in the case of a contingent interest only if the limitation or trust carries the intermediate income of the property, but it applies to a future or contingent legacy by the parent of, or a person standing in *loco parentis* to, the legatee, if and for such period as, under the general law, the legacy carries interest for the maintenance of the legatee, and in any such case as last aforesaid the rate of interest shall (if the income available is sufficient, and subject to any rules of court to the contrary) be five pounds per centum per annum.

(4) This section applies to a vested annuity in like manner as if the annuity were the income of property held by trustees in trust to pay the income thereof to the annuitant for the same period for which the annuity is payable, save that in any case accumulations made during the infancy of the annuitant shall be held in trust for the annuitant or his personal representatives absolutely.

(5) This section does not apply where the instrument, if any, under which the interest arises came into operation before the commencement of this Act.

APPENDIX II

Draft Married Women's Policies of Assurance (Scotland) Bill

ARRANGEMENT OF CLAUSES

Clause

1. Application of section 2 of the Married Women's Policies of Assurance (Scotland) Act to policies effected by married women or unmarried persons and amendment of that section.
2. Powers of trustee under policy.
3. Power of beneficiary to assign or renounce interest under policy.
4. Application of Trusts (Scotland) Act 1961.
5. Citation and extent.

APPENDIX II

Married Women's Policies of Assurance (Amendment) (Scotland) Bill

DRAFT

OF A

BILL

INTITULED

An Act to amend section 2 of the Married Women's Policies of Assurance (Scotland) Act 1880.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Application of section 2 of the Married Women's Policies of Assurance (Scotland) Act 1880 to policies effected by married women or unmarried persons and amendment of that section.

1. Subject to the provisions of this Act, in section 2 of the Married Women's Policies of Assurance (Scotland) Act 1880 (hereafter referred to as 'section 2' and which provides that a policy of assurance effected by any married man on his own life, and expressed upon the face of it to be for the benefit of his wife, or children, or both, shall be deemed a trust for their benefit)—

1880 c. 26.

(*a*) for the words from the beginning to the words 'for the benefit of his wife and children' are substituted the words 'A policy of assurance effected by a man or woman on his or her own life, and expressed upon the face of it to be for the benefit of his or her spouse or prospective spouse, as the case may be, and children, or of any of them, shall together with all benefit thereof, be deemed a trust for their benefit;';

(*b*) after the words 'him' or 'his' wherever occurring are inserted the words 'or her';

EXPLANATORY NOTES

Clause 1

1. Clause 1 implements Recommendations 1, 2 and 3 of the Report by extending the advantages conferred by the Married Women's Policies of Assurance (Scotland) Act 1880 so that married women and unmarried persons contemplating marriage will now be able to effect policies under the Act and the Clause makes it clear that selection among beneficiaries is competent.

(*c*) at the end is added the following paragraph—

'In this section "children" includes children that the person effecting the policy has or may have, including his or her illegitimate or adopted children, but does not include children of his or her spouse or prospective spouse and another person, unless they have been adopted by the person effecting the policy.'

EXPLANATORY NOTES

See page 13.

Powers of trustee under policy.

1921 c. 58.

2.—(1) It is hereby declared that where a policy of assurance vests in trust by virtue of the provisions of section 2—

(*a*) that trust constitutes a trust within the meaning of the Trusts (Scotland) Act 1921, and

(*b*) any person in whom such a policy vests is a trustee within the meaning of that Act.

(2) In addition to his other powers any such trustee may, where such acts are not at variance with the terms or purposes of the trust—

(*a*) exercise any option under the policy or under any deed of trust or other document constituting a trust in relation to the policy;

(*b*) convert the policy to a partially or a fully paid-up assurance;

(*c*) convert the policy into any other form of assurance on the life of the person effecting the policy;

(*d*) increase or reduce the amount of the annual premiums payable under the policy; and

(*e*) alter the period during which the premiums under the policy are payable.

(3) A policy of assurance is not prevented from vesting in any such trustee, by reason only that it contains a provision to the effect that a trustee may in his professional capacity charge such remuneration for his professional services as is reasonable.

EXPLANATORY NOTES

Clause 2

1. Subsections 1 and 2 implement Recommendations 4 and 5 and make clear the position of a trustee acting under a policy written under the 1880 Act. The Clause sets out the powers he enjoys, provided they are not at variance with the terms or purposes of the trust, in addition to the powers conferred on him by virtue of the Trusts (Scotland) Acts.

2. Subsection 3 implements Recommendation 8 by clarifying that the fact that a policy contains a provision allowing a trustee in his professional capacity to charge remuneration for his professional services will not derogate from the protection afforded to the policy proceeds by the 1880 Act.

Power of beneficiary to assign or renounce interest under policy.

3.—(1) A beneficiary under the terms of a policy of assurance to which the provisions of section 2 apply, being of full age and not suffering from any legal disability, may, subject to those terms—

(*a*) assign his or her interest under the policy whether in security or otherwise;

or

(*b*) renounce that interest.

(2) Subsection (1) has effect whether or not the effect of so assigning or, as the case may be, renouncing the interest, is to make the policy or any of the benefits under the policy—

(*a*) subject to the control of the person effecting the policy; or

(*b*) part of that person's estate; or

(*c*) liable to the diligence of that person's creditors.

(3) In this section the expression 'interest' in relation to a policy of assurance, includes any interest, direct or indirect, vested or contingent, under the policy.

(4) This section applies in relation to any policy of assurance to which section 2 applies whether it is dated before or after the commencement of this Act.

EXPLANATORY NOTES

Clause 3

1. Clause 3 implements Recommendation 6 and clarifies that a beneficiary may deal with his interests under a policy as he wishes. The Clause is retrospective in that it applies to all policies written under the 1880 Act regardless of the date of the policy.

Application of Trusts (Scotland) Act 1961.

4. The powers conferred on the Court of Session by section 1 of the Trusts (Scotland) Act 1961 in relation to any trust taking effect under any will, settlement, or other disposition, are exercisable in relation to any trust constituted by virtue of the provisions of section 2, and for the purposes of the exercise of those powers the said section 1 has effect in relation to any trust so constituted, as it has effect in relation to any trust taking effect under any will, settlement or other disposition.

EXPLANATORY NOTES

Clause 4

1. As a corollary of Clauses 2 and 3, Clause 4 implements Recommendation 7 and allows the Court of Session to exercise the powers vested in it by virtue of section 1 Trusts (Scotland) Act 1961 in relation to trusts constituted by policies written under the 1880 Act.

Citation and extent.

5.—(1) This Act may be cited as the Married Women's Policies of Assurance (Amendment) (Scotland) Act 1978.

(2) This Act extends to Scotland only.

EXPLANATORY NOTES

Clause 5

1. Subsection (1) contains a provision in common form as to short title.
2. Subsection (2) deals with the territorial extent of the Bill.

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