

Proposed amendments to the Trusts (Guernsey) Law, 2007

Service area / [Trusts and Private Wealth](#)

Location / [Guernsey](#)

Date / [May 2026](#)

Background

Guernsey's trusts and private wealth industry is underpinned by approximately 150 regulated trust and company service providers, employing over 1,600 people. Since the enactment of the Trusts (Guernsey) Law 1989, and its subsequent modernisation via the Trusts (Guernsey) Law 2007, the jurisdiction has maintained a reputation for stability, clarity and sophistication in the administration of trusts and related structures. Over time, the global landscape of wealth management has weathered a variety of geo-political and economic shocks, rapidly evolving jurisprudence and an ever-increasingly complex set of regulatory, tax and compliance requirements.

In response to these developments, a sub-committee of the Guernsey Bar (the "**Sub-Committee**") has undertaken a comprehensive review of the existing legislative framework for trusts, leading to formal proposals published on 20 March 2026 for a series of substantive amendments to be made. These proposals are designed to harmonise Guernsey's statutory framework with contemporary commercial realities, resolve tensions identified in recent litigation—most notably the *Rusnano*, *Pitt* and *Futter* cases—and ensure that Guernsey remains the jurisdiction of choice for the administration and governance of trusts.

This briefing note sets out the proposals – in detail, in table format for quick reference and with our commentary – and will be of interest to those service providers, professionals and advisers, both in Guernsey and abroad, who are engaged in the fiduciary sector and the delivery of trust services. References below are to sections in the Trusts (Guernsey) Law 2007 (the "**Trusts Law**" or "**2007 Law**").

Section 15 – reservation of powers and proposed reversal of fiduciary presumption

Details

To meet the expectations of settlors, modern trusts often include the reservation of key powers to be exercised by, or with the consent of, the settlor or a trusted third-party other than the trustees. Section 15(2)(b) currently provides that the reservation or grant of such powers does not, subject to the terms of the trust, impose any fiduciary duty on the holder of that power. The Sub-Committee has advised that this statutory presumption is out-of-step with international norms, where powers held by third parties (often called protectors) are typically presumed to be fiduciary in nature, unless the trust instrument expressly provides otherwise.

In addition, trust law practitioners have also identified a potential inconsistency of approach between the current default position of Section 15(2)(b) and Section 32(3)(b), the latter of which currently states that a person consulted by a trustee or whose consent is required shall not be deemed a trustee but may, if the trust terms provide, be under a fiduciary duty. In practice, this has created ambiguity regarding the status of protectors who hold a mix of consultative, veto or dispositive powers.

To address these issues, it is proposed that Section 15(2)(b) is amended so that there is a presumption in favour of the power holder having fiduciary duties in respect of the exercise of those powers, unless the terms of the trust expressly provide otherwise. Section 32 would also be aligned to follow the same approach. These amendments would apply prospectively to trusts created after the amendments are brought into effect.

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Provision	Existing Trusts Law position	Proposed amendment	Practical consequence
Section 15(2)(b)	Presumption against fiduciary duty for the holder of a reserved or granted power.	Presumption in favour of fiduciary duty, unless the trust terms provide otherwise.	Protectors and power holders will be held to fiduciary standards by default, increasing beneficiary protection.
Retrospectivity	Not applicable.	Prospective application only for trusts established post-amendment.	Existing trusts will not be retrospectively altered.
Section 32	Silent on interaction between Section 15 and Section 32.	Harmonisation of Section 32 to align with the new Section 15 presumption.	Greater clarity for protectors as both consultant-advisers and power holders.

CO comment: The move towards a fiduciary presumption for both Sections 15 and 32 brings consistency of approach, aligns Guernsey with other leading jurisdictions and reduces the scope for potential litigation. For trust administrators, the practical consequence is a heightened need to ensure that the capacity in which a protector (or other, non-trustee power holder) exercises the power(s) conferred is clearly defined in the trust instrument from the outset. If a settlor intends for a power holder to act in a personal, non-fiduciary capacity, this will need to be explicitly drafted into the instrument to override the proposed legislative defaults.

Section 16 – perpetual duration of trusts and proposed clarification of application

Details

Prior to the Trusts Law coming into force, a trust could last for up to 100 years from its creation under Guernsey law. Section 16 changed this by enabling trusts created after the 2007 Law

came into force to have an unlimited duration. Section 16(2) preserved the 100-year limit for trusts created prior to the 2007 Law, wherever they had been established. Concerns have been raised that trusts originally settled in other jurisdictions with unlimited duration that subsequently changed their proper law to Guernsey could inadvertently find that their duration had been curtailed due to a drafting ambiguity in Section 16(2).

To address this concern, it is proposed that the 100-year limit only applies to trusts, the proper law of which was Guernsey law, during the period between the enactment of the 2007 Law and its predecessor, the Trusts (Guernsey) Law, 1989. Additionally, the amendments will grant the court a new power to extend the duration of time-limited trusts if it is in the best interests of the beneficiaries.

Quick reference table guide

Trust origin	Existing Trusts Law position	Proposed amendment	Rationale
Settled in Guernsey between 1989–2007	100 years duration limit.	No change.	Consistency with original settlement terms.
Settled abroad (Unlimited duration) then moved to Guernsey	Arguably limited duration to 100 years by Section 16(2).	Clarified to be unlimited duration.	Facilitate the move of trusts to Guernsey without unintended curtailing of duration.
All Trusts (Post-2007)	Unlimited duration.	Unlimited duration.	Modern standard.
Related court powers	Requirement to decant assets from time-limited trust to trust with unlimited duration to comply with S16(3).	Court power to extend duration of time-limited trust without the need for decanting of assets into new trust.	Avoid potential foreign tax triggers and simplify administration.

Continued

CO comment: The proposed amendments to Section 16 align with modern expectations and provide an alternative to the current exercise of “*decanting*” to comply with Section 16(3), which can trigger significant tax liabilities in foreign jurisdictions when assets are transferred from one trust to another.

Sections 17, 20, 34 and 35 – number and appointment of trustees and operational efficiencies

Details

A number of the proposals are aimed at enhancing operational efficiencies by including flexibility in the appointment of trustees and the administration of trusts.

Section 17 currently requires that the number of trustees shall be not less than two, except in specific circumstances. This requirement can create logistical difficulties for trusts where the single trustee exception does not apply and there are delays in appointing a replacement trustee when one of two trustees unexpectedly retires or becomes incapacitated. In these circumstances, Section 17 could effectively paralyse the trust’s administration until a replacement trustee can be appointed. The Sub-Committee recommends amending Section 17 to permit a minimum of one trustee by default, unless the trust expressly stipulates a higher number.

Section 20 currently makes provision for the resignation or removal of trustees. However, there is no provision for the automatic removal of a trustee who lacks mental capacity or becomes unfit to act. The Sub-Committee recommends that this gap should be addressed and that consequential amendments to Section 14 may also be required to ensure that questions of trustee capacity are determined exclusively under Guernsey law.

The Sub-Committee notes that Guernsey law is clear that the appointment of a trustee ends upon that person’s death. However, it comments that the mechanism for the vesting of trust assets upon the death or removal of a trustee could helpfully be facilitated by a clear legislative pathway for the automatic vesting of trust property in continuing or new trustees.

CO comment: The proposed amendments do away with restrictions that are now seen as unnecessary or unduly cumbersome by today’s standards and bring Guernsey into line with the commercial practices of competing jurisdictions. Amendments aimed at streamlining the process of handover on a change of trustee are to be welcomed and would be of particular benefit to the management of smaller or family-run trusts. However, legislative drafters will need to consider and adapt provisions from established models, such as the UK’s Trustee Act 1925, to ensure that legislative language accounts for Guernsey’s approach to the ownership of property as well as the nuances of Guernsey’s fiduciary standard encompassed by the concept of “*en bon père de famille*”.

Section 34 currently permits a trustee to delegate functions via a power of attorney for a period not exceeding three years, subject to stringent notice requirements. To make this power more “*user-friendly*”, it is proposed to remove the three-year limit, allowing for potentially indefinite delegation. Whilst bringing in this enhanced flexibility will assist with “*single-function*” delegations, it could introduce new risks regarding the “*wholesale*” delegation of multiple trust powers or functions.

To balance flexibility with the need for appropriate safeguards, it is proposed that for wholesale delegations, notice to co-trustees and persons with the power to appoint trustees remains essential. However, for single-function delegations—such as those required for a specific real estate transaction or the execution of a single contract—the notice requirements in existing Sections 34(3), (5), (6), and (7) will be relaxed.

CO comment: These amendments will bring additional flexibility for the administration of trusts and will significantly streamline commercial dealings for institutional trustees.

Section 35 currently denies remuneration for trustees unless this is permitted by the trust, or all beneficiaries have consented to it in writing, or it is approved by the court. It is proposed to reverse this for the remuneration of professional regulated trustees so that following the amendment of the law they would be entitled to receive reasonable remuneration out of trust property. This presumption would apply as a default, subject to the terms of the trust, any agreement in writing between the trustee and every beneficiary, or any order of the court.

CO comment: This amendment will ease administrative difficulties and expense for those trusts where the terms are silent, defective or ambiguous as to compensating the trustees for their services.

Continued

Provision	Existing Trusts Law position	Proposed amendment	Practical consequence
Section 17	Requires a minimum of two trustees unless exceptions apply.	Reduce minimum to one trustee unless trust expressly provides otherwise.	Eases interim vacancies in trusteeship.
Section 20	Deals with resignation and removal of trustee.	Introduce automatic removal of trustee when they lack capacity; clarity over consequences of death or removal of a trustee and include mechanism for vesting of trust assets in new trustee.	Provide clarity and practical assistance on a change of trustees.
Section 34	Currently allows delegation of trust or function by power of attorney for up to three years, unless exceptions apply.	Remove the three-year limit whilst preserving notification safeguards for wholesale (rather than one –off) delegations.	Facilitates engagement by trustees in commercial transactions and generally provides additional flexibility in administration of trust.
Section 35	Currently provides that a trustee is not entitled to remuneration except in certain circumstances.	Professional regulated trustees will be entitled to reasonable remuneration (subject to contrary indicators) from the trust after the date of amendment.	Reduce difficulties for trusts where terms regarding remuneration are missing, ambiguous or defective.

Section 38 – non-disclosure of deliberations or letters of wishes

Details

Section 38 currently provides that, subject to the terms of the trust and to any court order, trustees are not obliged to disclose certain documents relating to the exercise of their functions or any letter of wishes. It is proposed that this protection of confidentiality is extended to the same documents held, or relating to the exercise of functions, by trust officials, such as a protector or enforcer where they owe fiduciary duties.

CO comment: The proposed amendment extends the protection of confidentiality in cases where the existing legislative protection (being addressed to the trustees alone) could be undermined by requests to disclose documents aimed at trust officials who are not themselves trustees but have received documents from the trustees in the course of conducting their functions.

Sections 41, 44, 48 and 50 – easing transactional issues, clarifying the treatment of capital and income accumulations and rights to security

Details

Section 41 was enacted with professional trusts service providers in mind. It currently addresses the position of trustees that act for more than one trust and provides that notice of any matter obtained in relation to one trust does not automatically count as notice in relation to another trust of

which they also act as trustees. However, two other pressing issues can arise for institutional trustees in the context of entering into transactions between trusts that they administer as trustee. One is referred to as the “two-party rule” of contract law, which prevents a person from contracting with themselves. The other is the “no conflict rule” or “self-dealing rule”, which can arise where the trustees have a personal interest in the substance of a transaction which may lead to a conflict of interests. These rules potentially create legal barriers when professional trustees wish to enter into a transaction between two different trusts under the same management.

The proposed amendment to Section 41 will permit persons acting in the capacity of trustee to contract with themselves as trustee of more than one trust.

CO comment: This is a pragmatic solution for transactions between multiple trusts under the trusteeship of the same trustee, which can commonly occur as part of institutional wealth management businesses. Legislative drafters will need to include safeguards to protect the interests of the beneficiaries of the contracting trusts, whilst facilitating the smooth conduct of such transactions.

Continued

Section 44 currently grants trustees a non-possessory lien over trust property to secure their right of indemnity for expenses properly incurred in connection with the trust. This was a new provision when it was included in the 2007 Law and provides protection for retiring trustees, as the lien arises by operation of law and can continue even after the trustees have surrendered trust property out of their possession at the time of retirement. However, recent case law in the Privy Council regarding a trust governed by Jersey law —specifically the *Z Trust in Equity Trust (Jersey) Limited v Halabi and ITGL v Fort Trustees*¹ — has left lingering questions regarding the priority of this lien against third-party secured creditors.

It is proposed to amend the Trusts Law to ensure third-party lenders have confidence that their secured interests take priority over any trustee’s (or former trustee’s) lien arising by operation of law, unless otherwise agreed. Amendments will also clarify that the lien does not provide priority over security arrangements created before the Trusts Law came into force on 17 March 2008.

CO comment: This amendment will bring clarity for third-party secured lenders to trust structures and will be critical for “distressed” or “insolvent” trust structures, where the trust’s assets are insufficient to meet its liabilities.

Section 48 currently does not deal with how long trustees can hold onto income before the power to distribute it lapses and how income that is accumulated is to be treated. It is not clear whether such accumulated income should be regarded as added to capital and, if so, at what point. There is currently no Guernsey case law which assists with these issues. In a world where distributions of capital and of income may result in

different tax outcomes, the Sub-Committee has accepted a recommendation that this section should be amended to bring clarity to these issues.

CO comment: Appropriate amendments to Section 48 will be welcomed by the internationally mobile community, where the tax treatment of distributions can often depend upon the timing, nature and source of receipts in the hands of beneficiaries.

Section 50: The Sub-Committee notes that some sections of the Trusts Law expressly recognise the trustees’ right to reasonable security prior to surrendering trust property from their possession, for example, on resignation or removal from office under Section 43 or on the termination of a trust under Section 53. However, this approach is not fully and consistently expressed in analogous situations, including in Section 50 on the revocation of a trust. The proposal is that there should be clarification that a trustee may require reasonable security for existing, future, or contingent liabilities before surrendering trust property in these circumstances, subject to the proviso that, where security is given by way of an indemnity against trust property, this shall not be greater than that to which the trustee would have been entitled had he remained a trustee of the trust, unless the court or all beneficiaries agree otherwise.

CO comment: The proposed amendments will bring clarity and consistency to the protection of trustees, when coming to the end of their trusteeship under different circumstances whilst protecting the legitimate expectations of third-party secured creditors.

Quick reference table guide

Claim type	Existing Trusts Law position	Proposed amendment	Context/Case law
Secured third-party lender	Uncertain vs. trustees’ lien.	Priority over trustees’ lien.	Alignment with <i>Halabi Case</i> implications, bringing certainty for secured creditors.
Trustee’s statutory lien (Section 44)	Deemed to have priority in some contexts.	Subordinate to secured lenders; pari passu with claims of other trustees.	Clarification that lien is proprietary but subordinate to express security.
Claims between successive trustees	Pari passu.	Pari passu.	Consistent with <i>Halabi Case</i> judgment.
Trustee’s right to security	Express reference to reasonable security on retirement, resignation and termination of trust.	Extend right to reasonable security in circumstances where trust property is to be surrendered.	Clarification and consistency of approach in similar circumstances.

¹ *ETJL v Halabi; ITGL v Fort Trustees* [2022] UKPC 36

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Section 53 – beneficiaries’ right to call for termination of trust

Details

Section 53(3) is based on the principle derived from the 1841 English law case of *Saunders v Vautier*, allowing all adult beneficiaries of a trust to require the termination of a trust, provided they are all in existence, have been ascertained and have legal capacity. Since then, the principle has been adopted in other common law jurisdictions. In the 2019 Guernsey law case of *Rusnano Capital AG (In liquidation) v. Molard International (PTC) Ltd*², the Guernsey Court of Appeal³ upheld the decision in the lower court that the wording of Section 53(3), properly construed, enabled this right to call for the termination of the trust to be exercised by a sole existing beneficiary, even if the trust instrument contained a power to add more beneficiaries. As such, Section 53(3) was seen as expanding the scope of the original English law principle. The Sub-Committee recommends that Section 53(3) is amended so that it only applies where the class of beneficiaries is closed (i.e. there is no power to add new beneficiaries) and the beneficiaries as a group can therefore demonstrate an absolute, vested and indefeasible interest in the trust property. Furthermore, the amendment will explicitly provide that the power to call for the termination of a trust does not apply to “hybrid trusts”, being trusts that include a purpose element (charitable or non-charitable) as well as being for the benefit beneficiaries.

CO comment: The proposed amendments bring Guernsey back into line with English law and other common law jurisdictions on the scope of the rule in *Saunders v Vautier* and in this sense follow the court’s conclusion that legislative intervention would be needed to bring about this alignment.

Sections 57, 63, 69, 76, 80, Hastings–Bass and hearing cases in private – powers of the court in relation to trusts and ADR

Details

Section 57 currently provides that that applications to vary or revoke the terms of a trust or modify the powers of the trustees on behalf of minors, persons under a legal disability, persons unborn or potential future beneficiaries may be made without leave of the court. Such an application made on behalf of any other person currently requires leave of the court. The Sub-Committee recommends adding a new category where leave of the court is not required for a person who is able to agree to the proposed change, but for whom there may be adverse consequences of doing so.

Section 63 currently provides for the use of mediation or arbitration to resolve trust disputes in limited circumstances. The Sub-Committee recommends that this provision is expanded and amended to permit the wider use of Alternative Disputes Resolution (“ADR”) and to facilitate the binding nature of such procedures and their outcomes.

Section 69 currently lists certain persons who can apply to the court for certain applications. Whilst the list currently includes a person whom the trustees are required to consult or from whom they must obtain consent before exercising any function, it does not include a protector who solely holds positive powers. The Sub-Committee recommends that all trust officials (including such protectors) be added to this list so that they have the right to make such applications without first obtaining the leave of the court, as is presently the requirement. The definition of trust official in Section 80 is also to be amended – see below.

Section 76 currently provides for a general prescription period of three years within which the litigation of certain claims needs to be commenced. Currently, for a claimant, this three year period runs from the date the claimant first has knowledge of the breach, with safeguards for minors or those under a legal disability. The Sub-Committee recommends re-introducing the alternatives of the prescription running from the earlier of date of delivery of complete and accurate accounts of the trust to the beneficiaries or the date on which the claimant first has knowledge of the breach of trust that gives rise to the claim.

Section 80 is the definitions section of the Trusts Law. It currently defines the term “trust official” as a person having a function or holding an office in respect of the trust other than a settlor, trustee, enforcer or beneficiary. Where, as is commonly the case, the protector of the trust is the settlor or a beneficiary of the trust, the present definition would rule them out as being a trust official. The Sub-Committee recommends that such protectors are included in the definition of trust official. Further, clarification should be included so that only a person who has a function, or holds an office, under the Trusts Law or the terms of trust is considered to be a trust official. The intention is to expressly rule out those who provide a contractual service to a trust, such as an accountant, investment adviser or other professional services provider.

Rule in *Hastings–Bass*

The rule in the 1975 English law case of *Hastings–Bass*⁴ allows a court to set aside the exercise of a trustees’ discretion where its effect was different from what was intended and the trustees would not have acted as they did, had they not failed to take account of something relevant or taken into account something irrelevant. This rule has been recognised as applying in Guernsey and has been invoked in support of applications for relief in appropriate cases.

More recently in 2013 the English Supreme Court examined this rule in the combined cases of *Futter and another v. HMRC* and *Pitt and another v. HMRC*⁵ and effectively restated it so that it is now regarded as requiring additional factors to be present before it can be successfully invoked. As a result, the rule is now seen as more restrictive, such that inadequate deliberations of the trustees must be found to be sufficiently

² *Rusnano Capital AG (in liquidation) v. Molard International (PTC) Limited and Pullborough Int. Corp* [2019] GRC011.

³ *Molard International (PTC) Limited and Pullborough Int. Corp v. Rusnano Capital AG (in liquidation)* [2019] GCA 077.

⁴ *Hastings–Bass (deceased), Re* [1975] Ch 25 (CA)

⁵ *Futter and another (Appellants) v The Commissioners for Her Majesty’s Revenue and Customs (Respondent) and Pitt and another (Appellants) v The Commissioners for Her Majesty’s Revenue and Customs (Respondent)* [2013] UKSC 26

Continued

serious as to amount to a breach of fiduciary duty before the court will intervene. The Sub-Committee notes that there has been considerable commentary amongst trust practitioners on this development and that in the absence of intervening legislation, the court in Guernsey would likely follow the more restrictive formulation of the rule in *Hastings-Bass*.

Balancing the protection of beneficiaries against aberrant conduct by trustees versus the protection of trustees in not imposing too stringent a test, the Sub-Committee recommends the Trusts Law be amended so that the rule in *Hastings-Bass* is applied as it had been understood before the decisions in *Futter v. HMRC and Pitt v HMRC*.

The Sub-Committee recommends taking this opportunity to provide for the following related matters:

- the exercise of a fiduciary power in such circumstances may be declared by the court to be void, or of such effect as the court may determine, or of no effect from the time of its exercise;
- an application for relief may be made by a wide range of persons to be specified in the legislation including the trustee and beneficiary; and
- the amendment should apply to fiduciary powers conferred or exercised before, on or after the amendment is brought into effect.

Trust administration proceedings to be heard in private

The Trusts Law does not currently include any provision setting out the basis on which cases involving trusts will typically be heard in private rather than in public – the latter being the default presumption based on the principle of open justice. This position has created some uncertainty as to which approach the court will adopt in cases which involve sensitive issues. Where an application to court is made to be heard in private and for a judgment to be anonymised, this can increase the time and costs incurred for the parties, irrespective of the outcome of the application. This additional burden could potentially deter access to justice, particularly where cost is an issue.

In the context of the court’s supervisory jurisdiction, the Sub-Committee recommends that the Trusts Law is amended to permit the court to make provision, by way of Rules of Court, in respect of private hearings and ancillary matters (such as the anonymisation of the name of the parties, the trust and the details of the trust’s assets).

CO comment: The proposal is to be welcomed as it will provide a pathway for greater certainty in the context of applications relating to sensitive or confidential matters; it will potentially save costs and time for the parties, their advisers and the court, and at the same time, the court will retain control over practice and procedure in the conduct of applications for which maintaining confidentiality is a key concern.

Quick reference table guide

Section No	Subject matter	Proposed amendment
Section 57	Variation of trusts on behalf of minors.	New category of person who can apply to court for variation etc without obtaining prior leave to do so.
Section 63	ADR.	Broaden and clarify circumstances in which ADR is used to resolve trust disputes.
Section 69	General powers of court.	Broaden categories of persons who can apply to court to include all trust officials.
Section 76	Limitation and prescription of claims.	Amend the period of prescription to include the alternatives of prescription running from the earlier of the date of delivery of the accounts of the trust to the beneficiaries or the date on which the claimant first has knowledge of the breach.
Section 80	Definition of “trust official”.	Include as a “trust official” a protector who is a settlor or beneficiary; and clarify that a provider of services to a trust under a contractual arrangement is not a “trust official”.
Rule in <i>Hastings-Bass</i> .		Align the application of the rule to its original 1975 formulation rather than the more restrictive 2013 interpretation in the cases of <i>Futter v. HMRC and Pitt v HMRC</i> .
Trust administration proceedings to be heard in private.		Permit court to set out rules as to when cases can be heard in private and matters can be anonymised, to preserve confidentiality.

Continued

Next steps

The proposed changes to the Trusts Law are set out in a detailed Policy Letter dated 20 March 2026 tabled by the Committee for Economic Development before the States of Deliberation (Guernsey's parliamentary debating chamber). The Chamber is asked to consider the proposals and, to the extent appropriate, direct the preparation of legislation as may be necessary to give effect to the proposals as approved. The proposals are currently scheduled as Proposition 21/2026 of Billet VII for debate on Wednesday 20 May 2026. Assuming all the proposals are adopted, it would then be for the States' legislators to draw up the new law effecting the appropriate amendments to the Trusts Law in due course.



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