

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

TRUSTS (SPECIAL PROVISIONS) AMENDMENT (NO. 2) ACT 2020

WHEREAS it is expedient to amend the Trusts (Special Provisions) Act 1989 to provide freedom of disposition to a settlor of a trust in circumstances where an express intention appears in the trust instrument with respect to beneficiaries who are children of the settlor contrary to the provisions of the Children Act 1998 and to make consequential amendments to the Children Act 1998;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act may be cited as the Trusts (Special Provisions) Amendment (No. 2) Act 2020.

Amends section 1A of Trusts (Special Provisions) Act 1989

2 The Trusts (Special Provisions) Act 1989 is amended in section 1A—

(a) by inserting in the correct alphabetical order the following definition—

“child” has the meaning given in subsection (2);”;

(b) by renumbering section 1A as subsection (1) and inserting the following new subsection (2)—

“(2) A reference to a child or children in a trust instrument shall be construed as provided under section 18A of the Children Act 1998, unless an express contrary intention appears in the trust instrument.”.

Amends section 18B of Children Act 1998

3 The Children Act 1998 is amended in section 18B—

(a) in subsection (1), by deleting the word “For” and substituting the words “Subject to subsection (3), for”;

(b) by inserting the following new subsection—

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“(3) Section 18A shall not apply to a trust instrument made under the Trusts (Special Provisions) Act 1989 in the case where the trust instrument expressly states a contrary intention to section 18A, as provided under section 1A(2) of that Act.”.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Trusts (Special Provisions) Act 1989 to provide freedom of disposition to a settlor of a trust in circumstances where an express intention appears in the trust instrument with respect to beneficiaries who are children of the settlor contrary to the provisions of the Children Act 1998 and to make consequential amendments to the Children Act 1998.

Clause 1 provides a citation for the Bill.

Clause 2 amends the Trusts (Special Provisions) Act 1989 in section 1A to insert a definition of “child” by providing that “child” has the meaning given in subsection (2). The clause inserts a new subsection (2) to section 1A to provide that a reference to a child or children in a trust instrument shall be construed as provided under section 18A of the Children Act 1998, unless an express contrary intention appears in the trust instrument.

Clause 3 amends section 18B of the Children Act 1998 to exclude the application of section 18A to a trust instrument in the case where the trust instrument expressly states a contrary intention as provided under section 1A(2) of the Trusts (Special Provisions) Act 1989.