

*These notes refer to the Trustee Act (Northern Ireland)
2001 (c.14) which received Royal Assent on 20 July 2001*

Trustee Act (Northern Ireland) 2001

EXPLANATORY NOTES

COMMENTARY ON CLAUSES

Part IV: Agents, Nominees and Custodians

Section 11: Power to employ agents

Section 11 governs the functions that may be delegated by trustees. Subject to the provisions of Part IV, trustees may authorise an agent to carry out any or all of their “delegable functions”. As was mentioned above, the scope of delegable functions differs for charitable and non-charitable trusts. *Section 11(2)* provides that a trustee of a non-charitable trust may delegate any function other than those listed. The exceptions or non-delegable functions comprise - (a) a function relating to the distribution of trust assets; (b) a power to allocate trust payments to income or capital; (c) a power to appoint a trustee; and (d) a power to delegate a trust function or to appoint a nominee or custodian.

Section 11(3) sets out the scope of delegable functions for charitable trustees, which is in different terms. The functions which charitable trustees may delegate are (a) functions involving carrying out a decision taken by the trustees – so these are non-discretionary matters; (b) investment matters; (c) raising funds for the charity except in so far as the income is derived from the profits of a trade which is an integral part of carrying out the trust’s charitable purpose; and (d) any other function prescribed by an order made by the Department for Social Development.

Section 11(4) defines the concept of “a trade which is an integral part of carrying out the trust’s charitable purpose”. This covers the situation where the trade is exercised in the course of the actual carrying out of a primary purpose of the trust, or the work in connection with the trade is mainly carried out by beneficiaries of the trust. An example of non-delegable fund raising activities within the scope of this definition would be the charging of fees by a school operating as a charitable trust.