

*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 VII: Miscellaneous and Supplementary

Section 37: Power to insure

At present trustees have power to take out insurance cover in respect of trust property under section 19 of the Trustee Act (Northern Ireland) 1958 but that is limited to listed risks. *Section 37* substitutes a new section 19 in the 1958 Act. This permits a trustee to insure trust property against risks of loss or damage due to any event and pay the premiums out of either income or capital funds. This power to insure applies to trusts whether created before or after its commencement.

Section 38: Personal representatives

Section 38 provides that the provisions of the Act will apply to a personal representative administering the estate of a deceased person in the same way as it applies to a trustee, with appropriate modifications. As far as remuneration for personal representatives is concerned, it is made clear in *section 38(3)* that such payments are to be treated as expenses of administering the estate.

Section 39: Pension Schemes

Section 39 governs application to pension schemes, defined as occupational pension schemes under the Pension Schemes (Northern Ireland) Order 1993, established under a trust and subject to the law of Northern Ireland. There is only partial application to such pension schemes because the legislation regulating them directly deals with many of the relevant issues. The duty of care established in Part I of the Act does not apply in relation to powers of investment or acquisition of land. Nor does the duty of care apply as regards authorising an agent to exercise investment functions or appointing a nominee or custodian. In fact, the powers of investment in Part II and powers to acquire land in Part III are not extended to pension scheme trustees. The power to appoint agents in Part IV of the Act applies to only a limited extent, as described in *sections 39(5) to (7)*. They may not appoint an agent to exercise any functions relating to investment and they may not appoint an employer or associate or connected person to act as agent. They are not given the powers to appoint nominees or custodians.

Section 40: Authorised unit trusts

Section 40 directs that the provisions in Parts II to IV do not apply to trustees of authorised unit trusts.

Section 41: Common investment schemes for charities

Section 41 directs similarly that Parts II to IV do not apply to trustees managing a fund under a common investment scheme made under section 25 of the Charities Act (Northern Ireland) 1964, apart from the exceptional situation where the relevant trusts provide that property is not to be transferred to the fund except by or on behalf of a charity the trustees of which are the trustees appointed to manage the fund.

Section 42: The Crown

Section 42 provides that this Act binds the Crown.

Section 43: Interpretation

Several of the definitions used in the Act are set out.

Section 44: Amendments, transitional and saving provisions and repeals

Section 44 gives effect to Schedules 2, 3 and 4 to the Act. Schedule 2 has minor and consequential amendments, Schedule 3 has a number of transitional provisions and savings, and Schedule 4 sets out statutory provisions to be repealed. The Department of Finance and Personnel is given power to make further amendments as appear appropriate in consequence of or in connection with Part II or Part III.

Section 45: Commencement

The commencement date of these provisions is a date or dates to be appointed by order made by the Department of Finance and Personnel. Such an order may contain further transitional provisions and savings.