

*These notes refer to the Trustee Delegation Act 1999
(c.15) which received Royal Assent on 15 July 1999*

TRUSTEE DELEGATION ACT 1999

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Trustee Delegation Act 1999 which received Royal Assent on 15 July 1999. They have been prepared by the Lord Chancellor's Department in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.
3. Annex A sets out the text of Powers of Attorney Act 1971 s 10 as amended by the Act. A glossary of technical terms used in these notes is provided at Annex B.

SUMMARY

4. The Act implements, with minor modifications, the changes to the law recommended by the Law Commission in its report *The Law of Trusts: Delegation by Individual Trustees (1994) Law Com No 220*.
5. The sections of the Act may conveniently be divided into five groups.
 - Sections 1 - 4 create an exception to the general rule that the exercise of trustee functions may not be delegated.
 - Sections 5 - 6 amend the general statutory conditions on which a trustee may delegate the exercise of his or her trustee functions and provide for the creation of a statutory form of power of attorney for use by a trustee.
 - Sections 7 - 9 prevent the rules of law which require capital monies to be paid to at least two trustees from being circumvented by use of a power of attorney and make provision relating to registered enduring powers of attorney.
 - Section 10 creates a rule of interpretation that an attorney's authority to do an act in relation to land includes authority to do that act in relation to any estate or interest in the land.
 - Sections 11 - 13 deal with commencement and other supplementary matters.

BACKGROUND

6. The primary responsibility of trustees has traditionally been to hold property on behalf of the beneficiaries under the trust. The trustee must safeguard the property and deal with it in the best interests of the beneficiaries. It is a general rule of trust law that trustees, having voluntarily agreed to act as such, cannot delegate the exercise of their powers and duties. The rule is subject to the following exceptions:
 - if the instrument establishing the trust specifically authorises delegation;

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- if delegation is permitted by all the beneficiaries (for this exception to apply, all the beneficiaries must be both mentally capable and at least eighteen years old);
 - if delegation is permitted under section 25 of the Trustee Act 1925 or section 3(3) of the Enduring Powers of Attorney Act 1985.
7. Following criticism of section 3(3) the Law Commission was asked to consider the operation of the present law. It issued a consultation paper *The Law of Trusts: Delegation by Individual Trustees CP No 118* in 1991. The response to the paper supported the Commission's provisional conclusion that section 3(3) was inappropriate for delegation by trustees in general but that special provision should be made for co-owners of land who are trustees. In 1994 the Law Commission published its report *The Law of Trusts: Delegation by Individual Trustees Law Com No 220*. In the report the Law Commission concluded that in relation to delegation by individual trustees generally the conditions imposed by section 25 of the Trustee Act 1925 were, subject to certain minor changes, appropriate but that section 3(3) was inappropriate. The Law Commission also concluded that some relaxation of the rules, designed to address the needs of beneficial co-owners of land, was justified.

THE Act

8. The Act has thirteen sections and a repeal Schedule. The Act relates only to England and Wales.

COMMENTARY ON SECTIONS

9. **Section 1** creates a new statutory exception to the general rule that a trustee must exercise in person the functions vested in him or her as a trustee. The effect of the exception is that, where a power of attorney authorises a donee to act on behalf of the donor in relation to property of the relevant kind, the donee is not prevented from acting by the rule that the donor must exercise trustee functions in person.
10. The provision is of particular benefit to co-owners of land. First, it enables co-owners to delegate without having to comply with the restrictions which apply where trustees hold land only for third parties. The need for this special rule for co-owners of land arises because the 1925 property legislation requires land owned by more than one person to be held on trust. The result is that co-owners of land are, whether they appreciate it or not, trustees of a freehold or leasehold estate in land irrespective of whether they hold the land for themselves or other people. Secondly, the provision enables a co-owner of land to make effective provision for the disposal of the co-owned land if he or she becomes mentally incapable. This is necessary because section 3(3) of the Enduring Powers of Attorney Act 1985 is repealed (section 4). Finally, the provision ensures that the donee is able to deal with the proceeds of sale and income from the land as well as the land itself. Without this additional scope the donee of a power of attorney could dispose of land under section 1 but be unable to deal with the proceeds of sale.
11. **Subsection (1)** provides that, where the donee of a power of attorney would only be prevented from doing an act because doing it would involve the exercise of a function of the donor as a trustee, the donee may nevertheless do that act if:
- the act relates to land (as defined in section 11(1)), the capital proceeds of a conveyance (as defined in subsection (2)) of land, or income from land; and
 - at the time the act is done, the donor has a beneficial interest of any size or nature in the land, proceeds or income to which the act relates.
12. The person creating the trust or the donor may, however, exclude or restrict this provision in the document creating the trust or the power of attorney (as the case may be) (subsections (3) and (5)).

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13. *subsection (2)* defines conveyance and the reference to a trustee function of the donor for the purpose of section 1. The definitions are set out in the glossary.
14. *subsection (3)* provides that the terms of the deed creating a power of attorney may limit or exclude delegation under this section. A donor is therefore not compelled to allow the donee to exercise a function by virtue of section 1.
15. *subsection (4)* addresses the issue of liability. It makes clear that, although a trustee is not liable for permitting a delegate to act under subsection (1), a trustee is liable for what a delegate does or fails to do. Subsection (4) is subject to subsection (5).
16. *subsection (5)* provides that a person creating a trust may limit or exclude the effect of subsections (1) and (4) by making express provision in the document creating the trust. There is a similar provision in relation to section 25 of the Trustee Act 1925 (Trustee Act 1925 s 69(2)).
17. *subsection (6)* replicates in relation to the exercise of trustee functions under subsection (1) the general effect of section 25(7) of the Trustee Act 1925 in relation to delegation under that section. It enables the bank or company in whose books shares and stocks are registered to ignore the notice of the trust which it would otherwise receive when dealing with a donee acting under subsection (1): for example where the donee uses the proceeds of sale of land to acquire stock from a company. This provision is necessary because a company registered in England and Wales is prohibited from entering notice of any trust on its register of members (Companies Act 1985 s 360).
18. *subsection (7)* addresses a particular problem arising from the operation of the doctrine of conversion. It provides that where that doctrine deems a trustee of land to have an interest in the proceeds of sale of the land rather than the land itself, the interest is to be treated for the purposes of sections 1 and 2 as being an interest in the land. The doctrine of conversion in relation to land held on trust for sale was largely abolished by section 3(1) of the Trusts of Land and Appointment of Trustees Act 1996. However, the doctrine still applies to trusts created by wills where the testator died before 1 January 1997. Subsection (7) avoids any arguments as to whether the donor has an interest in the land or the proceeds of sale where the doctrine still applies.
19. *subsection (8)* did not appear in the draft Bill attached to the Law Commission's Report. The subsection makes it clear that section 1 only takes effect where a donee of a power of attorney is not otherwise authorised to exercise trustee functions. See also section 4(6).
20. *subsection (9)* prevents the new provision from applying to powers of attorney granted before the Act comes into force.
21. **Section 2** supports section 1. A person dealing with a donee under section 1 has to know whether the donor has a beneficial interest in the relevant property (section 1(1)). This could be left to investigation. However, investigation of title to beneficial interests is notoriously complicated. Section 2 simplifies the transaction by providing a mechanism on which the person dealing with the donee can rely. The result is that a purchaser whose title depends upon a donee of a power of attorney having the right to exercise a trustee function by virtue of section 1(1) can rely on a written statement by the donee that, at the time that he or she exercised the trustee function, the donor had a beneficial interest in the relevant property.
22. *subsection (1)* states that section 2 applies to a purchaser whose interest depends on section 1 applying to a particular power of attorney.
23. *subsections (2) and (3)* provide that, where section 2 applies, an "appropriate statement" (as defined in subsection (3)) is, in favour of a purchaser, conclusive evidence that the donor had the necessary beneficial interest in the land, capital proceeds of a conveyance of land or income from land (as the case may be) at the time the donee

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exercised the trustee function by virtue of section 1(1). Such evidence may be displaced by fraud or inaccuracy on the face of the statement.

- An “*appropriate statement*” is a signed statement made by the donee that the donor has a beneficial interest in the property at the time that the donee exercises the trustee function by virtue of section 1. The statement must be made by the donee during the period of three months that begins with the day that the trustee function is exercised under section 1.
24. *subsection (4)* provides that a donee who makes a false statement is liable to the penalties which apply on making a false statutory declaration under section 5 of the Perjury Act 1911: a penalty on summary conviction of imprisonment for up to six months and/or a fine not exceeding level 5 on the standard scale (currently £5,000); on indictment, the penalty would be imprisonment for up to two years and/or an unlimited fine.
 25. **Section 3** provides that a donee of a general power of attorney in the form prescribed by section 10 of the Powers of Attorney Act 1971 may by virtue of section 1(1) exercise the trustee functions of the donor in relation to relevant property. To this extent, the section reverses the effect of *Walia v. Michael Naughton Ltd* [1985] 1 WLR 1115 (see note to section 4). The relevant extract from the 1971 Act showing the amendment effected by the Act is set out in Annex A.
 26. **Section 4** repeals section 3(3) of the Enduring Powers of Attorney Act 1985 subject to various transitional provisions.

Section 3(3) provides that “Subject to any conditions or restrictions contained in the instrument, an attorney under an enduring power, whether general or limited, may (without obtaining any consent) execute or exercise all or any of the trusts, powers or discretions vested in the donor as trustee and may (without the concurrence of any other person) give valid receipt for capital or other money paid.”
 27. This provision was introduced late in the passage of the Bill which became the Enduring Powers of Attorney Act 1985. It was intended to stop the combination of clause 2(8) of the then Bill (a power of attorney under Trustee Act 1925 s 25 cannot be an enduring power) and the effect of the decision in *Walia v Michael Naughton Limited* [1985] 1 WLR 1115 from reducing the efficacy of the enduring powers of attorney scheme by preventing an attorney under an enduring power from disposing of any of the donor’s property held on trust. In that case it was held that a power of attorney granted under section 10 of the Powers of Attorney Act 1971 was not appropriate to entitle the donee to execute a transfer of the legal estate in co-owned land because the transferor, whether or not purporting to convey as beneficial owner, was exercising the function of a trustee. Section 3(3) may however have gone much further than was necessary to achieve the desired result and may have the much wider, and undesirable, effect of delegating all the donor’s functions as a trustee whether or not he or she owns the property in question.
 28. The repeal implements the policy that trustees who hold property only for third parties should only be able to delegate their trustee functions by statute subject to the safeguards imposed by section 25 of the Trustee Act 1925 (see section 5). The repeal brings to an end the existence of the inconsistent but overlapping regimes for delegation by individual trustees under section 25 of the Trustee Act 1925 and section 3(3) of the Enduring Powers of Attorney Act 1985. The transitional provisions are necessary because it is likely that there are in existence enduring powers of attorney in relation to which the donor is no longer mentally capable of making new provision for the delegation of trustee functions.
 29. *subsection (1)* provides that the repeal of section 3(3) applies, without transitional provisions, to all enduring powers of attorney created after the Act comes into force.

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30. *subsections (2) - (4)* provide that, for enduring powers in existence when the Act comes into force, the repeal takes effect one year after the Act comes into force unless the enduring power is registered pursuant to an application for registration made before or within that year, in which case, section 3(3) continues to apply to it until the registration is cancelled. The period of a year enables donors of enduring powers who are mentally capable to make new arrangements, whilst the exception preserves the effect of delegations where the donor is no longer capable of delegating his or her functions. In cases where such applications are unsuccessful section 3(3) continues to apply while the application is pending until final refusal (as defined in subsection (5)). Where section 3(3) ceases to apply, section 1 may take effect in relation to the power (see subsection (6)).
31. The expressions ‘registration’, ‘registered’ and ‘cancelled’ are defined by reference to the 1985 Act. Under that Act, if the donee of an enduring power has reason to believe that the donor is or is becoming mentally incapable, the donee must apply to the Court of Protection for registration of the instrument creating the power (Enduring Power of Attorney Act 1985 s 4). On the donor becoming mentally incapable, the donee may not, except in certain limited circumstances, exercise the enduring power of attorney (Enduring Powers of Attorney Act 1985 s 1). On registration, the donee may exercise the power of attorney and a revocation of the power by the donor is only valid if confirmed by the Court of Protection (Enduring Powers of Attorney Act 1985 ss 1(1), 7 and 8(3)). The circumstances in which the Court of Protection can cancel a registration are set out in section 8(4) of the 1985 Act. They include confirmation by the Court of Protection of a revocation by the donor.
32. *subsection (5)* provides that an application is deemed to be “finally refused” when the applicant has withdrawn or abandoned the application or the right to appeal has been exhausted.
33. *subsection (6)* did not appear in the Bill annexed to the Law Commission Report. The Law Commission had proposed that on section 3(3) ceasing to have effect, an enduring power made before that Bill came into force would no longer have been effective to delegate trustee functions. Subsection (6) provides that on section 3(3) ceasing to apply, section 1 may take effect in relation to an enduring power (see also section 1(8)). Thus, where the donor of an enduring power does not make a new delegation in the one year transitional period, the enduring power may still be effective in relation to property falling within section 1. Without this provision, all donors of enduring powers created before the Act comes into force would have to grant new enduring powers to delegate trustee functions after section 3(3) ceases to apply.
34. **Section 5** substitutes a new section 25 of the Trustee Act 1925 in relation to powers of attorney granted after the Act comes into force. In its previous form section 25 allowed a trustee to delegate by power of attorney for a period of up to twelve months the exercise of the trusts, powers and discretions (i.e. functions) vested in him or her as trustee. This power to delegate was, however, subject to various safeguards intended to protect the interests of beneficiaries from excessive delegation. In brief, these were that the trustee may not delegate to a sole co-trustee (unless a trust corporation); must give notice of each appointment to specified persons; and remained liable for the acts and omissions of the attorney. The powers conferred by section 25 could be excluded or restricted by the document, if any, creating the trust (Trustee Act 1925 s 69(2)).
35. *subsection (1)* sets out the text of the new section 25. The new section 25(1) enables a trustee to delegate by power of attorney the exercise of trustee functions. The only change from the previous section 25(1) is the removal of the reference to the permitted duration of such delegation. This is dealt with in the new section 25(2) which preserves the twelve month time limit but clarifies its effect. The result is that, subject to that maximum, a power of attorney can define the period for which it has effect. If nothing is said, the power is to apply for twelve months from the date of its execution by the donor.

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36. The new section 25(3) replaces the old section 25(2). The only change to this provision is the removal of the prohibition on a sole co-trustee being the donee of a power of attorney granted under section 25. This prohibition was ineffective for two reasons. First, it did not apply if there were more than two trustees all except one of whom delegated to one co-trustee. Second, it did not take account of the possibility of delegation by several trustees to one attorney. The objective of securing the involvement at the relevant time of at least two persons can be better secured by other means (see section 7).
37. Subsections (5) and (6) of the new section 25 are new. Taken together these subsections provide a new prescribed form of power of attorney which may be used by a single trustee wishing to delegate all of his or her trustee functions in relation to a single trust to a single attorney. This new form is similar to that created by section 10 of the Powers of Attorney Act 1971 which cannot be used by trustees but is widely used generally. A power of attorney differing in immaterial respects only has the same effect as a power in the prescribed form.
38. The only other substantive difference between the new section 25 and the old section 25 is the omission of the old subsection (3) (instrument creating a power of attorney to be attested by at least one witness), which was superseded by section 1(3) of the Law of Property (Miscellaneous Provisions) Act 1989. Section 1(3) specifies that an instrument is only validly executed as a deed if it is signed by the person making the deed either in the presence of a witness who attests the signature or at his or her direction and in his or her presence and the presence of two witnesses who each attest the signature; and, in either case, it is delivered as a deed by him or her or a person authorised to do so on his or her behalf. No special provision for executing powers of attorney under section 25 is therefore required.
39. Subsections (4) and (7) - (10) of the new section 25 replace subsection (4) and (5) - (8) respectively of the old section 25 without any substantive change.
40. *Subsection (2)* provides that the new section 25 does not apply to powers of attorney granted before the Act comes into force.
41. *Subsection (3)* amends some descriptive wording in section 34(2)(b) of the Pensions Act 1995. The amendment does not affect the substance of section 34(2)(b). The descriptive words removed reflect the original limitation in section 25 as enacted which restricted its operation to circumstances in which a trustee was to be absent abroad for more than one month. The restriction was removed by the Power of Attorney Act 1971. The amendment removes the redundant wording “during absence abroad” and inserts “for period not exceeding twelve months” which corresponds with the provisions in the new section 25.
42. *Section 6* repeals section 2(8) of the Enduring Powers of Attorney Act 1985 (which provided that a power of attorney granted under section 25 could not be an enduring power). The repeal allows an enduring power of attorney to be used to delegate trustee functions under section 25 of the Trustee Act 1925 after the Act comes into force. The requirements of section 25 apply.
43. *Section 7* specifies the circumstances when a person acting alone cannot satisfy a statutory requirement that two trustees are to receive trust money (the “two-trustee rules”). These requirements are that:
 - (a) capital monies arising from land must be paid to, or at the direction of, at least two trustees (Settled Land Act 1925 ss 18(1)(c) and 94(1); Law of Property Act 1925 s 27(2));
 - (b) a valid receipt for such capital monies must be given otherwise than by a sole trustee (Trustee Act 1925 s 14(2)); and

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- (c) a conveyance or deed must be made by at least two trustees to overreach any powers or interests affecting a legal estate in land (Law of Property Act 1925 s 2(1)(ii)).
44. The section is intended to make it clear that, so long as there are at least two trustees, the “two-trustee rules” can be satisfied either by two people acting in different capacities or by two people acting jointly in the same capacity but not by one person acting in two capacities. For example, where A and B are the only trustees: if A and B each appoint X as attorney, X (acting alone) would not satisfy the “two-trustee rules”. However, if A appointed X as his attorney and B appointed Y as his, X and Y could act together and satisfy the requirement. Similarly, if A appointed X and Y as his joint attorneys and B appointed X and Y as his joint attorneys, X and Y can satisfy the requirement.
45. *Subsection (3)* provides that section 7 takes effect in relation to all powers of attorney whenever created. However, it does not prevent an attorney under an enduring power to which section 3(3) still applies (see section 4) from acting pursuant to that section.
46. **Section 8** inserts four new subsections in section 36 of the Trustee Act 1925 (power of appointing new or additional trustees). The new subsections give the donee of an enduring power of attorney created after the commencement of the Act a new but limited power of appointment of new trustees in certain circumstances. The new power is necessary to prevent the strengthened “two-trustee rules” (section 7) from frustrating the new power for an attorney under an enduring power to exercise the trustee functions of the donor (section 1). For example, A holds land for himself and B. A appoints X as his attorney under an enduring power. A loses mental capacity and the power is registered. X wants to sell the land but cannot satisfy the “two-trustee rules” unless a new trustee is appointed.
47. *Subsection (1)* inserts subsections 36(6A) - (6D) into section 36 of the Trustee Act 1925.
- Subsection (6A) provides that a person (‘the attorney’) who satisfies subsection (6B) may appoint a new trustee under section 36(6)(b) if the attorney is either a trustee and an attorney under a registered enduring power of attorney (defined in subsection (6C)) for all the other trustees (to a maximum of two) or an attorney for all the trustees (to a maximum of three). The maximum of three is specified because section 36(6) cannot be used to increase the number of trustees beyond four.
 - Subsection (6B) is satisfied if the attorney intends to exercise a trustee function in relation to land, capital proceeds of a conveyance of land or income from land under section 1(1), section 25 of the Trustee Act 1925 or the instrument creating the trust.
 - Subsection (6C) defines a ‘registered power’ as an enduring power of attorney registered under section 6 of the Enduring Powers of Attorney Act 1985 (see the note to section 4(3) and 4(4) as to when a duty to register arises).
 - Subsection (6D) provides that the power in subsection (6A) may be excluded or limited in the document creating the power of attorney or the trust (as the case may be).
48. *Subsection (2)* provides that the power to appoint a new trustee does not apply to an attorney appointed by a power granted before the commencement of the Act.
49. **Section 9** inserts a new subsection (3) into section 22 of the Law of Property Act 1925. Section 22(2) provides that if land subject to a trust of land is vested, solely or jointly, in a trustee who is incapable by reason of mental disorder of exercising his or her functions as a trustee, the trustee shall be discharged before the legal estate is dealt with. This provision might prevent an attorney for an incapable trustee under a registered enduring power from dealing with the legal estate and thereby defeat the policy underlying the Enduring Powers of Attorney Act 1985 and section 1. The new

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subsection (3) provides that no discharge is necessary if there is an attorney under an enduring power (as defined in Enduring Powers of Attorney Act 1985 s 2) entitled to act for the incapable trustee. The new subsection (3) applies whenever the enduring power was created.

50. **Section 10** creates a general rule of interpretation in relation to the extent of the authority conferred by a power of attorney in relation to land. The new rule provides that, in powers of attorney created after the commencement of the Act, a reference to land includes, subject to any contrary intention in the power of attorney, a reference to all the interests of the donor of the power of attorney in the land at the time that the donee acts. This new provision prevents the technical distinctions between legal and equitable interests in land frustrating the intentions of donors of powers of attorney who may not appreciate the legal niceties. For example, A and B are a married couple who own their own house. In creating a power of attorney A may refer to “my house” even if it is jointly owned, but even if he says “our house” he is unlikely to make it clear whether he is referring to his legal interest, which he holds as trustee, or his equitable interest of which he is the beneficial owner.
51. *Subsection (1)* provides that a reference to land (as defined in section 11(1)) in a power of attorney includes a reference to every estate and interest (whether legal or equitable) which the donor has in that land for the time being.
52. *Subsection (2)* provides that the donor of a power of attorney may exclude or restrict the effect of subsection (1) by expressing a contrary intention in the power.
53. *Subsection (3)* limits the rule of interpretation to powers of attorney granted after the commencement of the Act.
54. **Section 11** defines ‘land’ and ‘enduring power’ for the purposes of the Act. The definitions are set out in the glossary.

COMMENCEMENT

55. **Sections 1 - 12** will come into force on such date as the Lord Chancellor may appoint by order.

HANSARD REFERENCES

56. The following table sets out the dates and Hansard references for each stage of this Act’s passage through Parliament.

Stage	Date	Hansard reference
House of Lords		
Introduction	3 December 1998	Vol. 595 Col. 605
2 nd Reading	11 January 1999	Vol. 596 Cols. 11-20
Committee	2 February 1999	Vol. 596 Cols. 1421-3
Report	2 February 1999	Vol. 596 Cols. 1421-3
Third Reading	9 March 1999	Vol. 598 Cols. 125-9
House of Commons		
Introduction	9 March 1999	
2 nd Reading Committee	17 March 1999	2 nd Reading Committee Hansard
2 nd Reading	14 June 1999	Vol. 327 Col. 115 (formal)

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Committee (SCF)	22 June 1999	Standing Committee F Hansard
Third Reading	14 July 1999	Vol. 335 Cols. 534-6

Royal Assent – 15 July 1999	House of Lords	Hansard Vol.604 Col.601
	House of Commons	Hansard Vol.335 Col.648

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ANNEX A: SECTION 10 OF THE POWER OF ATTORNEY ACT 1971

“10 Effect of general power of attorney in specified form

- (1) Subject to subsection (2) of this section, a general power of attorney in the form set out in Schedule 1 to this Act, or in a form to the like effect but expressed to be made under this Act, shall operate to confer -
 - (a) on the donee of the power; or
 - (b) if there is more than one donee, on the donees acting jointly or acting jointly or severally, as the case may be,authority to do on behalf of the donor anything which he can lawfully do by an attorney.
- (2) *Subject to section 1 of the Trustee Delegation Act 1999, this section does not apply to functions which the donor has as a trustee or personal representative or as a tenant for life or statutory owner within the meaning of the Settled Land Act 1925.*”

Note: text in italics denote amendment introduced by the Act

ANNEX B: GLOSSARY OF TERMS

Beneficial Interest: the rights of a *beneficiary* in respect of property held under a *trust* for him or her.

Beneficiary: a person entitled to benefit from a *trust*.

Charge: an interest in property creating a security for the performance of an obligation: for example, a mortgage of land may secure an obligation to repay a debt.

Conversion: the doctrine of *conversion* states that where land is held on *trust for sale*, the interests of the *beneficiaries* are deemed to be interests in the proceeds of sale, even before the land has been sold. Treating interests in land in this way simplified conveyancing but produced artificiality and inconsistency in relation to the categorisation of interests as interests in land or in the proceeds of sale.

Conveyance: in general terms a conveyance is a legal document (other than a will) which transfers property. It is defined in the Law of Property Act 1925 s 205(1)(ii) as including a mortgage, *charge*, lease, assent [*an assurance by personal representatives of a deceased person vesting property in the person entitled*], vesting declaration [*a declaration in a deed appointing new trustees that the property vests in the trustees*], vesting instrument [*a deed vesting settled land*], disclaimer, release and every other assurance [*a disposition and transfer*] of property or an interest therein by any instrument, except a will.

Deed : is a written document executed with the necessary formality (Law of Property (Miscellaneous Provisions) Act 1989 s 1).

Donee: the person who is given authority under a *power of attorney*.

Donor: the person who gives a *power of attorney* to a *donee*.

Enduring Power of Attorney: a *power of attorney* made in accordance with the Enduring Powers of Attorney Act 1985. An enduring power may be effective notwithstanding the mental incapacity of the donor. In the Act “enduring power” is defined by reference to the Enduring Powers of Attorney Act 1985, which provides in particular that an *enduring power* must be granted in the prescribed form and be executed in the prescribed manner by the donor and the attorney (Enduring Powers of Attorney Act 1985 s 2(1)). The present prescribed form is set out in the Enduring Powers of Attorney (Prescribed Form) Regulations 1990 SI 1990/1376.

Equitable Interests: all *interests in land* which are not *legal interests* are equitable interests. The rights of the *beneficiaries* against the trust assets are equitable interests.

Execution: describes the way in which a person signs or seals (in the case of a corporation) a document and gives it legal effect.

Instrument: a formal legal document.

Interests in land: rights of ownership of or over land are interests in land. Interests may be estates, interests or *charges* (although an estate is simply a special kind of interest). These may be legal or equitable. See also *equitable interests* and *legal interests*.

Land: land is defined in the Trustee Act 1925 as land of any tenure, and mines and minerals, whether or not severed from the surface, buildings or parts of buildings, whether the division is horizontal, vertical or made in any other way, and corporeal hereditaments [*rights in property which may be inherited*]; also a manor, an advowson [*a right to present a clergyman to a benefice*], and a rent and other incorporeal hereditaments, and an easement [*a right over land for the benefit of other land, such as a right of way*], right, privilege, or benefit in, over, or derived from land, (Trustee Act 1925 s 68(6) as amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(2) and schedule 4).

Legal interests in land: today, the only legal estates are those for either a fee simple absolute in possession or a term of years absolute: in broad layman’s terms a freehold or a leasehold. See Law of Property Act 1925 ss 1(1) and 205(1)(x). The other types of legal interest and *charge*

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are relatively few (Law of Property Act 1925 s 1(2)). All other interests are *equitable interests* (Law of Property Act 1925 s 1(3)). In relation to a *trust of land*, the trustees hold the legal estate. Third parties will usually want to acquire the legal interest free of the rights of the beneficiaries under the trust.

Overreaching: to overreach an interest on a disposition of property means to dispose of the property free of that interest. It is a mechanism whereby the rights of a beneficiary in trust land are detached from it and transferred to the proceeds of the sale of land, via the doctrine of conversion, enabling property to be sold where appropriate.

Power of Attorney: a power of attorney is both the authority given by one person ('the donor') to another person ('the donee' or 'attorney') to act for the donor in a transaction or a series of transactions or in the management of his or her affairs and the document by which that authority is given. Under the law of England and Wales a power of attorney made by an individual must be executed as a deed (Powers of Attorney Act 1971 s 1(1)).

Purchaser: is defined in the Law of Property Act 1925 as a person who, acting in good faith, acquires an interest in, or charge on, property for money or money's worth (Law of Property Act 1925 s 205 (1)(xxi) as it applies to Part I of that Act).

Settled land: land held or deemed to be held on *trust* (usually referred to as a settlement) subject to the terms of the Settled Land Act 1925. Trusts of this kind may now only be created in exceptional circumstances (see Trusts of Land and Appointment of Trustees Act 1996 s 2 and schedule 1). Such trusts were used in relation to land in which two or more beneficial interests were to exist in succession to one another. See Settled Land Act 1925 s 117(1)(xxiv).

Trustee function of the donor: a *trustee function* of the donor is one the donor has as a sole trustee or one he or she exercises jointly with fellow trustees.

Trust and trustee: a trustee is a person who has property or rights which he holds or is bound to exercise for or on behalf of another or others, or for the accomplishment of some particular purpose or purposes. He or she is said to hold the property on trust for that other or others, or for that purpose or purposes.

Trust corporation: a trust corporation is one of certain companies with a large paid up capital, or one of certain officials. The most commonly encountered trust corporation is perhaps an executor and trustee company owned by one of the major banks or financial institutions. The term is defined in the Trustee Act 1925 (s 68(1) para (18) which definition was extended by Law of Property (Amendment) Act 1926 s 3).

Trust for sale: a trust imposing a duty on the *trustees* to sell property subject to the trust and to hold the net proceeds of sale for the *beneficiaries*. Before the coming into force of the Trusts of Land and Appointment of Trustees Act 1996, a statutory trust for sale was imposed on co-owned land other than *settled land* (Law of Property Act 1925 ss 34 - 36 before amendment by the 1996 Act).

Trust of land: a trust of land is any *trust* of property which consists of or includes land subject to exceptions for *settled land* and land to which the University and College Estates Act 1925 applies (Trusts of Land and Appointment of Trustees Act 1996 s 1).

Trustee: See *trust and trustee*.

Trustee function means the trusts, powers and discretions vested in the *donor* as *trustee* (Trustee Act 1925 s 25(1); Trusts of Land and Appointment of Trustees Act 1996 s 9(1)).