

*These notes refer to the Trustee Act 2000 (c.29)  
which received Royal Assent on 23 November 2000*

# TRUSTEE ACT 2000

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part IV: Agents, Nominees and Custodians

48. Sections 11 - 15 set out the powers of collective delegation that trustees have in default of wide express powers being conferred by the trust instrument. They do not relate to delegation by individual trustees, which continues to be governed by section 25 of the Trustee Act 1925 and section 1 of the Trustee Delegation Act 1999. Sections 16 - 20 govern trustees' powers to appoint nominees and custodians in cases where the trust instrument contains no express powers to do so. Sections 21 - 23 provide for the review by trustees of, and liability of trustees for, their agents, nominees and custodians. Sections 24 - 27 deal with supplementary matters.
49. These powers of delegation and appointment are subject to the duty of care created by section 1 (Schedule 1 paragraph 3) and will take effect as a default provision applicable to all trusts except pension trusts, authorised unit trusts, or funds established under schemes made under sections 24 or 25 of the Charities Act 1993 (see sections 36 - 38).
50. Under the present law the trustees of a trust cannot, as a collective body, delegate their dispositive duties to distribute the trust property to those entitled to it under the trust, or their fiduciary discretions (that is powers implying a personal discretion such as the selection of trust investments or the decision whether or not to sell or lease trust property) without express authority in the trust instrument. The Law Commission considered that in view of the increasingly specialised nature of the tasks required to be undertaken by trustees, some of the restrictions on trustees were now a serious impediment to the administration of trusts and that far "from promoting the more conscientious discharge of the obligations of trusteeship, the prohibition on the delegation of fiduciary discretions may force trustees to commit breaches of trust in order to achieve the most effective administration of the trust.". The Law Commission concluded that in relation to trusts which were not charitable trusts the characterisation of powers of investment and some powers of management as in all respects fiduciary and therefore non-delegable was outmoded and that in general terms the proper distinction to be drawn in a modern law of trusts for the purpose of ascertaining whether a particular function ought to be delegable was between administrative powers (which would be delegable) and distributive powers (which would not).
51. In relation to charitable trusts the failings of the present law are mitigated by the power of the Charity Commissioners to authorise dealings with trust property which would not otherwise be within the powers of the trustees (Charities Act 1993 section 26) but the underlying problems of the law remain. Unfortunately the Commission's proposals for trusts generally cannot be applied to charities without some refinement. This is because the concept of charitable purposes is much wider than the particular charitable objects for which the trust exists. A prohibition on the delegation of distributive functions, that is functions relating to charitable purposes, would narrow the powers to delegate of charitable trustees. The appropriate distinction in relation to charitable trusts is between the functions which relate to the generation of income to finance the charitable purposes

of the trust and the carrying out of those purposes. Different provision is therefore made in the Act for charitable and non-charitable trusts.

### ***Section 11: Power to employ agents***

52. **Section 11(1)** provides that, subject to the provisions of Part IV, trustees may delegate any or all of their “delegable functions” to an agent. For the reason already given, the nature of the functions which may be delegated will in part be governed by whether the trust is charitable or not. In the case of non-charitable trusts to which section 11 applies, the trustees may delegate any function except (a) a function relating to the distribution of the trust assets; (b) a power to allocate fees or other payments to capital or income; (c) a power to appoint a trustee; and (d) a power conferred by the trust instrument or an enactment (i) to delegate a trustee function or (ii) to appoint a nominee or custodian.
53. **Section 11(3)** sets out the functions that a trustee of a charitable trust may delegate. Paragraph (a) ensures that non-discretionary (as opposed to discretionary) functions that can now be delegated under section 23(1) of the Trustee Act 1925 will continue to be delegable. Paragraphs (b) and (c) provide for income generating activities to be delegated except in so far as the income is derived from profits of a “trade which is an integral part of the carrying out the trust’s charitable purpose”. Fund raising activities which are an integral part of carrying out the trust’s charitable purpose would therefore not be delegable. The concept of a “trade which is an integral part of the carrying out the trust’s charitable purpose” is defined in section 11(4).
54. Examples of fund raising activities which are not delegable would include the charging of fees by a school operating as a charitable trust. Paragraph (d) enables further functions to be made delegable by order made by the Secretary of State (defined in the Interpretation Act 1978 Schedule 1, as one of Her Majesty’s principal Secretaries of State). Section 11(5) provides that the order will be made subject to a negative resolution procedure.

### ***Section 12: Persons who may act as agents***

55. **Section 12** defines the persons who may act as agents for the trustees under section 11. Subject to the prohibition on the appointment of beneficiaries (section 12(3)) and to the requirement that if two or more persons are appointed they must exercise the function delegated jointly, there are no restrictions on the persons whom trustees may appoint as their agents under section 11. Thus, the trustees may delegate to one of their number or to their nominee or custodian (section 12(1) and (4)). The prohibition on the appointment of a beneficiary as an agent for the trustees (even if the beneficiary is also a trustee) will prevent the use of section 11 to avoid the restrictions on delegation by trustees of land to a beneficiary under section 9 of the Trusts of Land and Appointment of Trustees Act 1996. Under that section the delegation of a trustee function relating to land to a beneficiary is permitted if the beneficiary is of full age and beneficially entitled to an interest in possession in the trust land. Such delegation must be by power of attorney granted jointly by all the trustees and the beneficiary is subject to the same duties and liabilities as the trustees. Delegation of any function to a beneficiary continues to be possible under section 25 of the Trustee Act 1925, but again this is subject to restrictions which do not apply to delegation under section 11 of the Act.

### ***Section 13: Linked functions etc***

56. **Section 13** provides that, subject to the exceptions specified below, an agent authorised to act under section 11 is subject to any specific duties or restrictions attached to the function delegated. The reference to specific duties does not include the duty of care imposed by section 1 of the Act. That duty is limited to *trustees* and does not apply to an agent in the performance of the agency. Nevertheless, agents will owe a separate duty of care to the trustees under the general law of agency.

57. As the example given in subsection (1) of section 13 suggests, the obligation to comply with specific duties and restrictions attached to the trustee function delegated under section 11 will most commonly apply in cases where the trustees delegate their investment function. In these cases the agent will be obliged to have regard to the standard investment criteria in accordance with section 4. The agent may also be required to obtain and consider proper advice in accordance with section 5. However, it will usually be the case that the person appointed to exercise the trustees' powers of investment as an agent would be able, if he were a trustee, to utilise the exception in section 5(3). This fact is recognised by section 13(2). Section 13(1) is, however, not restricted to investment. For example, sections 36 - 39 of the Charities Act 1993 impose restrictions on dispositions and mortgages of land owned by charities. If charity trustees delegate functions in relation to land under section 11(3)(b), the agent will be required to comply with the requirements of the 1993 Act in carrying out those functions.
58. **Section 13(3), (4) and (5)** relate to the duties imposed by section 11(1) of the Trusts of Land and Appointment of Trustees Act 1996. These duties require some trustees of land, in the exercise of their functions in relation to trust land, so far as practicable, to consult certain beneficiaries and, so far as consistent with the general interest of the trust, to give effect to their wishes. The beneficiaries are those of full age and beneficially entitled to an interest in possession in the land (Trusts of Land and Appointment of Trustees Act 1996 section 11(1)). This duty can be excluded and does not apply to trusts of land created or arising under a will made before the 1996 Act came into force (Trusts of Land and Appointment of Trustees Act 1996 section 11(2) and (3)).
59. The duty to consult beneficiaries under section 11(1) of the 1996 Act is not delegable. Delegation under section 11 is therefore only permitted on terms that allow the trustees to consult and give effect to the wishes of the beneficiaries (section 13(4)). Consistently with this, an agent under section 11 is not obliged to consult under section 11(1) (section 13(5)).

#### **Section 14: Terms of agency**

60. **Section 14** relates to delegation generally and section 15 imposes special restrictions in relation to the delegation of asset management functions. Trustees who fail to comply with these requirements will be liable for breach of trust. The general rule in relation to delegation under section 11 is that trustees will be free to decide the terms of the appointment of the agent (section 14(1)). The basis upon which the agency will have effect will be governed by the general law of agency. This freedom is however subject to various restraints. First, the exercise of the power to delegate under section 11 or the trust instrument will be subject to the duty of care (section 1 and Schedule 1 paragraph 3(1)(a) and (d)). Second, there are some specific restrictions: trustees may not delegate on terms which permit the agent to appoint a substitute; which restrict the liability of the agent or his substitute to the trustees or any beneficiary; or which permit the agent to act where a conflict of interest may arise. However, these restrictions will not apply if it is reasonably necessary to delegate on such terms (section 14(2)). Third, in the case of asset management functions and remuneration, the provisions of sections 15(2) and 29 to 32 respectively apply. The restraints in the first and third categories of restriction are described in relation to the relevant sections.
61. The second is a pragmatic response to the realities of modern fund management which nonetheless ensures that adequate protection is given to beneficiaries by imposing a test of reasonable necessity on the trustees. Under the present law, subject to an exception for property abroad under section 23(2) of the Trustee Act 1925, trustees may only allow sub-delegation by their agent if authorised to do so under the trust instrument. This is no longer appropriate in modern conditions where the appointment of a fund manager will often be essential to the efficient and effective management of the assets of the trust. Section 14(3)(a) flows from this. As the standard terms of business of fund managers generally require limits on liability and the ability to act despite a conflict of

interest, the ability to appoint a manager would amount to little in practice if trustees were unable to accept such terms (see section 14(3)(b) and (c)).

### ***Section 15: Asset management: special restrictions***

62. **Section 15** places special requirements on trustees in relation to the delegation of their asset management functions; that is, their functions relating to the investment of trust assets and the acquisition, disposal and management of trust property (section 15(5)). First, although there is no requirement of writing in relation to agency agreements generally, the terms of an agreement authorising the agent to exercise asset management functions on behalf of the trustees must be in writing or evidenced in writing (section 15(1)) and must require the agent to secure compliance with the trustees' guidance as to how the functions are to be exercised for the time being (section 15(2)). This guidance must be in writing or evidenced in writing (section 15(4)) and must be framed with a view to ensuring the functions will be exercised in the best interests of the trust (section 15(3)). The document containing or evidencing the guidance is referred to in the Act as a "policy statement" (section 15(2)(a)). The policy statement must be prepared before the agent is authorised to act, but can be revised or replaced (section 15(2)(a) and (b)(ii)). The duty of care under section 1 applies to the preparation of a policy statement (Schedule 1 paragraph 3(2)(c)). The policy statement need not be in any particular form, provided that it constitutes a record of the trustees' policy on how the functions in question should be exercised.
63. For example, if trustees delegate their powers of investment to an agent, they must enter into an agreement with the agent at the outset setting out the investment objectives of the trust. Such an agreement may include considerations as to liquidity of assets to meet the needs of the trust, the desired balance between capital growth and income yield, and any "ethical" considerations relevant to the investment policy of the trust. The policy statement may expand upon the manner in which the duties imposed by section 4 (duty to invest and to review investments having regard to the standard investment criterion) should be discharged in respect of the trust. In relation to the delegation of functions relating to the acquisition and management of land on behalf of the trust, the policy statement may include considerations as to the value and type of property that may be acquired, and the quality of title required. Where relevant it may also consider the terms upon which land may be let, sold or charged. The requirement for a policy statement only applies where the trustees delegate their discretion in relation to the matters concerned. It does not apply, for example, in cases where the trustees obtain investment advice but take decisions on investment matters themselves.
64. The duties of trustees with respect to keeping the delegation of functions (and any policy statement) under review are contained in section 22.

### ***Section 16: Power to appoint nominees***

65. **Sections 16 to 20** govern the powers of trustees to appoint nominees and custodians in cases where the trust instrument contains no, or insufficient, express powers to do so.
66. In this context a nominee is a person appointed by the trustees to hold trust property in his or her own name. Thus, a person may be registered as the owner of certain shares in a company but may in fact hold them as nominee for a trust. A custodian is defined as a person who undertakes the safe custody of some or all of the assets of the trust or of any documents or records concerning the assets (section 17(2)).
67. The powers to appoint nominees and custodians are conferred by sections 16 and 17. These powers are conferred on trustees of all trusts except pension trusts, authorised unit trusts, or funds established under schemes made under sections 24 or 25 of the Charities Act 1993 (see sections 36 - 38). In addition, these powers do not apply to trusts which have a custodian trustee as the trust property will be vested in the custodian trustee (sections 16(3) and 17(4): see section 4(2) of the Public Trustee Act 1906), or

where relevant assets are vested in the official custodian for charities. Nor do the powers apply if the trust instrument or legislation provides to the contrary (section 26(b)).

68. Under the present law the ability of trustees of private trusts to employ nominees and custodians is largely governed by two common law principles. The first is that a trustee is under a duty to take such steps as are reasonable to secure control of the trust property and to keep control of it. This prevents trustees from placing assets in the name of nominees or custodians and from using powers of delegation to disguise the appointment of a nominee or custodian. Second, where there are two or more trustees they have a duty to ensure that the title to the trust property is in their joint names so that it can only be transferred with the consent of all. It follows that in the absence of express authority in the trust instrument or statute trustees can neither vest property in nominees nor place trust documents in the custody of a custodian. To do so would result in breach of trust. The Law Commission considered that the present law was unduly restrictive. In particular it did not enable trustees to use nominees (a) to provide an administrative service in relation to investments; (b) to facilitate dealings by a discretionary fund manager; (c) as a method of using CREST; and (d) in relation to overseas investments traded by a computerised clearing system. In short the present law prevented many trustees from participating in the benefits of modern investment management.
69. The duty of care (section 1) will apply to the appointment of a nominee or custodian under sections 16 and 17 or the trust instrument (Schedule 1 paragraph 3(1)(b), (c) and (d)).
70. Notwithstanding the fact that a person appointed to act as a nominee (whether under section 16 or an express power in the trust instrument) may act as a bare trustee, it is not intended that the appointment of a nominee should affect the fiduciary relationship of the trustees to the beneficiaries of the trust.
71. Subject to the provisions of Part IV of the Act (sections 11-27) section 16(1) gives trustees power to appoint a person to act as their nominee and to vest the relevant assets in the nominee provided that the appointment is in writing or evidenced in writing (section 16(2)) and the trust does not have a custodian trustee or relevant assets are not vested in the official custodian for charities (section 16(3)).

### ***Section 17: Power to appoint custodians***

72. **Section 17(1)** makes similar provision for trustees to appoint a person as a custodian. As mentioned section 17(2) defines “custodian”.

### ***Section 18: Investment in bearer securities***

73. Although section 17 confers a power to appoint a custodian, there is one situation in which a custodian must be appointed. Under section 18(1) trustees (other than sole trustees who are trust corporations (section 25(2)) who retain or invest in securities payable to bearer must appoint a custodian of those securities unless the trust instrument provides to the contrary (section 18(2)). This provision replaces section 7(1) of the Trustee Act 1925 but does not replicate the requirement in that section that the custodian must be a “banker or banking company”. Paragraph 1(2) of Schedule 3 to the Act provides that any banker or banking company holding any bearer securities deposited with him under section 7(1) will be deemed to be a custodian appointed under section 18.

### ***Section 19: Persons who may be appointed as nominees or custodians***

74. For the better protection of the beneficiaries section 19 restricts the persons who may be appointed nominee or custodian under sections 16, 17 and 18 to persons who are either carrying on business as a nominee or custodian (whether with or without other activities), are a body corporate controlled (see below) by the appointing trustees, or

a solicitors' nominee company recognised under section 9 of the Administration of Justice Act 1985, (section 19(1), (2) and (3)). It is intended that the use of such bodies corporate will allow trustees to use special purpose vehicles for nominee or custodianship purposes. In addition, trustees of charitable trusts (other than exempt charities) must comply with any guidance about the selection of a nominee or custodian issued by the Charity Commissioners (section 19(4)). Subject to these constraints, a trustee which is a trust corporation may be appointed a nominee or custodian as may two or more trustees (whether or not trust corporations) if they are to act jointly. However, a single trustee other than a trust corporation may not be appointed (section 19(5)). Section 19(6) provides that a person appointed as custodian or agent may also be appointed nominee by the trustees. Section 19(7) makes similar provision in relation to appointments of custodians. These provisions replicate the effect of section 12(4) in relation to the appointment of agents.

75. The terms "charitable trust" and "exempt charity" are defined in section 39(1) of the Act.
76. The test for determining whether a body corporate is controlled by trustees for the purpose of section 19(2)(b) is defined in section 840 of the Income and Corporation Taxes Act 1988 (see section 19(3)). This section provides that "control" in relation to a body corporate means the power of a person to secure (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate; or (b) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate, that the affairs of the first mentioned body corporate are conducted in accordance with the wishes of that person. Control may therefore be direct or indirect.

### ***Section 20: Terms of appointment of nominees and custodians***

77. **Section 20** has a similar effect in relation to the appointment of nominees and custodians as section 14 has in relation to the appointment of agents.

### ***Section 21: Application of sections 22 and 23***

78. **Sections 21 to 23** provide for the review by trustees of the appointments of agents, nominees and custodians (section 22) and the liability of the trustees for such persons (section 23). Section 21 defines when sections 22 and 23 respectively will apply. That is, where trustees have appointed an agent, nominee or custodian under sections 11, 16, 17 or 18 or under the trust instrument or under any enactment or subordinate legislation: provided that in the case of a trust instrument, the terms of the trust instrument are consistent with section 22 or 23 (as the case may be) (section 21(2) and (3)).

### ***Section 22: Review of agents, nominees and custodians***

79. Where it applies section 22(1) imposes a single duty with three elements on trustees during any agency, nominee or custodianship. First, they must keep under review the terms of the appointment and how the person appointed is performing. This obligation means that the trustees must keep under review the question of whether the person who has been appointed to act for the trust is a suitable person to do so, and whether the terms on which that person acts are appropriate. In addition, the trustees must keep under review the manner in which the agent, nominee or custodian is performing his or her functions. The duty to "keep under review" does not oblige trustees to review the arrangements at specific intervals or in a particular way. The manner in which the duty should be discharged will depend upon what is reasonable in the circumstances. Second, if circumstances make it appropriate, the trustees must consider whether to exercise any power of intervention (defined in section 22(4)) that they have: for example, to give directions or to revoke the appointment. Circumstances in which it would be appropriate for trustees to do this may arise, for example, where the agent, nominee or custodian is not carrying out his or her functions effectively, or where

the trustees have cause to doubt the suitability of the person in question to continue to act for the trust. Finally, if the trustees consider that there is a need to exercise a power of intervention, they must do so.

80. **Section 22(2)** makes specific provision in relation to agents authorised to exercise “asset management functions” (see section 15(5)). In these cases the duty under section 22(1) includes consideration of whether the current policy statement (see section 15) is being complied with; whether it should be revised or replaced and, if so, to revise or replace it accordingly (section 22(2)). Any revision or replacement must be in, or evidenced in, writing and must be formulated with a view to ensuring that the functions will be managed in the best interests of the trust (section 15(3) and (4) as applied by section 22(3)).
81. When carrying out their duties under section 22, trustees are subject to the duty of care under section 1 (see Schedule 1, paragraph 3(e)).

### ***Section 23: Liability for agents, nominees and custodians***

82. **Section 23** defines when a trustee will be liable for the acts or defaults of any agent, nominee or custodian or his or her permitted substitute. This provision will enhance the protection of beneficiaries by replacing the unsatisfactory provisions of section 23 and section 30 of the Trustee Act 1925 (as interpreted in *Re Vickery* [1931] 1 Ch 572) with the standard duty of care under section 1. These sections are to be repealed by the Act.
83. Under the present law, in the absence of express provision in the trust instrument, the liability of trustees for the actions of their agents is governed by statute. The principal provisions are sections 23(1), 23(2), 23(3) and 30(1) of the Trustee Act 1925. However, despite their common provenance, these provisions do not form a coherent whole and are considered by many not to require a sufficiently high standard in relation to the appointment and control of agents by trustees. Section 23(1) exonerates trustees who acted in good faith from loss resulting from the appointment of their agents. It is uncertain whether trustees are still required to act with reasonable prudence in appointing an agent. Section 23(2) has a limited application to agents appointed to deal with trust property abroad. Section 23(3) gives trustees a limited power to appoint certain agents and preserves the liability of trustees if assets are left in the hands of the agents longer than is necessary. However, the provision is a dead letter as the delegation can be effected under section 23(1) without the said liability. Under section 30(1) a trustee is chargeable only for moneys and securities actually received by him or her. The trustee is not liable for any loss caused by the act or default of anyone else unless it is caused by his own wilful default (i.e. a conscious breach, or reckless performance, of duty). Trustees will therefore seldom be liable for loss caused by an agent. However, in cases where section 30 does not apply (for example where an agent is employed simply to transmit trust money or property from one person to another) a higher standard is required of the trustees. They will be liable if they fail to act with reasonable prudence. The provisions of section 30 in particular have been the subject of much criticism and comment. (All references to sections 23 and 30 in this paragraph refer to the Trustee Act 1925.)
84. **Section 23(1)** of this Act makes clear that a trustee who satisfies the duty of care (section 1 and Schedule 1 paragraph 3) in relation to the appointment and review of the appointment (section 22) of an agent, nominee or custodian will not be liable for the acts and defaults of the appointee.
85. “Entering into arrangements” includes the selection of the agent, nominee or custodian, the determination of the terms of the appointment and, if applicable, the preparation of a policy statement under section 15(2) (Schedule 1 paragraph 3(2)).
86. **Section 23(2)** governs the liability of trustees for the acts or defaults of any permitted substitute of an agent, nominee or custodian. Under sections 14(2)(a) and 20(2)(a), trustees may only authorise or appoint an agent, nominee or custodian on terms that

permit the appointment of a substitute where it is reasonably necessary for the trustees to agree to such terms. Having agreed such a term, the trustees will only be liable for the acts or defaults of a substitute agent, nominee or custodian if they failed to comply with the duty of care under section 1 when agreeing that a substitute could be appointed or when carrying out their duties of review under section 22 in so far as they relate to the use of the substitute.

87. [Sections 24 to 27](#) make certain supplementary general provisions in relation to the use of agents, nominees and custodians by trustees.

#### ***Section 24: Effects of trustees exceeding their powers***

88. [Section 24](#) provides that appointments of agents, nominees or custodians under Part IV are not invalidated by any failure of the trustees to respect the limits of their powers. This provision will facilitate dealings by third parties with agents, nominees and custodians appointed by trustees. It will have the effect that third parties will not need to satisfy themselves that the trustees have complied with the requirements of the Act. Examples of the kinds of mistakes which trustees might make include: the appointment under section 11 of a person as an agent who is in fact a beneficiary of the trust contrary to section 12(3); the authorisation of an agent on terms which prevent the trustees as trustees of land from consulting with the relevant beneficiaries under section 11(1) of the Trusts of Land and Appointment of Trustees Act 1996 (section 13(4)); or an appointment on terms which permit the agent to appoint a substitute where that is not reasonably necessary. Indeed, even where an agent is authorised to exercise a function which is not a “delegable function” as defined in section 11, the authorisation will be valid.
89. [Section 24](#) does not, of course, relieve trustees of any of their obligations under the Act. They will still be liable for any loss incurred by the trust as a consequence of an *ultra vires* appointment. In addition, if a person is authorised to exercise a function as an agent, that person may also be liable, as trustee *de son tort*, if the function in question is not properly delegable under section 11. Both parties to the appointment have therefore an interest in ensuring that the appointment can properly be made.

#### ***Section 25: Sole trustees***

90. The powers of delegation conferred by Part IV are exercisable by the trustees collectively. Section 25 makes clear that with one exception Part IV of the Act applies equally to a trust with a sole trustee as to a trust with a body of trustees. The exception is that a trust corporation which is a sole trustee need not appoint a custodian of any securities payable to bearer forming part of the trust property (section 18). References to the trustees are therefore to be taken to include sole trustees except in sections 12(1) and (3) and 19(5).
91. [Section 12\(1\)](#) authorises the appointment under section 11 of one of a number of trustees as agent. Section 19(5) permits the appointment of a trustee which is a trust corporation or two or more trustees as nominees or custodians under sections 16, 17 or 18. These exceptions also make clear that a sole trustee cannot be his or her own agent, nominee or custodian. Section 12(3) prohibits the appointment of a beneficiary as an agent under section 11.

#### ***Section 26: Restriction or exclusion of this Part etc.***

92. [Section 26](#) provides that the powers to appoint agents, nominees and custodians conferred by Part IV are in addition to any other powers vested in the trustees but are subject to any limitations in the trust instrument or legislation. In short, the powers are general default provisions which will not override specific provision. “Subordinate legislation” is defined in section 6(2). Section 26 is to the same effect in relation to Part IV as are sections 6 and 9 in relation to Part II and III respectively.



***Section 27: Existing trusts***

93. **Section 27** provides that Part IV applies irrespective of the date of creation of the trust. This will bring the benefit of the new powers to the greatest possible number of trustees and beneficiaries. Part IV, like Parts II and III, does not apply to authorised unit trusts or schemes under sections 24 and 25 of the Charities Act 1993 (sections 37 – 38). However, Part IV does apply with modifications to occupational pension trusts (see section 36(4) – (8)).