# TRUSTEE ACT 2000

## **EXPLANATORY NOTES**

#### **COMMENTARY ON SECTIONS**

#### **Part V: Remuneration**

### Section 30: Remuneration of charitable trustees

- 109. Section 30 makes provision for the remuneration of charitable trustees. As mentioned, section 29 does not permit the remuneration of charity trustees (section 29(1) and (2)). Although the Law Commission concluded that there was a strong case for including charitable trustees within the scope of section 29, it recognised that further consultation was probably necessary before a decision could be taken. If the outcome of such a consultation were to be that charitable trustees should be able to be paid in like manner to trustees generally, it would be inconvenient if primary legislation was necessary. Accordingly, section 30 confers a power upon the Secretary of State to make provision by statutory instrument, subject to an affirmative resolution procedure (section 30(4)), for the remuneration of charitable trustees.
- 110. The provisions of sections 28 and 29 apply in relation to services provided when those clauses are in force whenever the trust was created (section 33(1)). Remuneration payable under these clauses may be paid out of the income or capital funds of the trust (see the definition of "trust funds" in section 39(1)).
- 111. Under the present law trustees have power to pay agents and to be reimbursed out of the trust fund for the expenses they incur in carrying out their duties (Trustee Act 1925 sections 23(1) and 30(2)). This power is subject to the general rule that trustees only have power to pay proper costs incident to the execution of the trust (*Holding and Management Ltd v Property Holding and Investment Trust Plc* [1989] 1 WLR 1313, 1324). Sections 31 and 32 will clarify the law by bringing together the existing statutory power and the common law qualification. Sections 23 and 30 of the Trustee Act 1925 will be repealed by the Act (section 40 and Schedule 3).