These notes refer to the Trusts (Capital and Income) Act 2013 (c.1) which received Royal Assent on 31 January 2013

TRUSTS (CAPITAL AND INCOME) ACT 2013

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Trusts (Capital and Income) Act 2013 which received Royal Assent on 31 January 2013. They have been prepared by the Ministry of Justice 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. A glossary set out at the end of these Notes explains some of the terms used.

TERRITORIAL EXTENT AND APPLICATION

4. The Act extends to England and Wales only. The Act does not deal with provisions within the legislative competence of the National Assembly for Wales and does not affect the functions of Welsh Government Ministers.

BACKGROUND AND SUMMARY

Capital and income in trusts

5. The Act gives effect, subject to minor modifications, to the recommendations made in the Law Commission's Report *Capital and Income in Trusts: Classification and Apportionment* (Law Com No. 315). It makes changes to technical rules of trust law which apply to trustees who have to distinguish between capital and income in managing the property of a private trust or a charity.

6. In this context, capital is trust property that constitutes a pool or fund of assets, and is to be distinguished from the income earned on those assets. The metaphor of a tree and its fruit is illustrative: the "tree" is the capital (such as an office block), and the "fruit" is the income (such as the rent received from renting out the offices). Trustees who manage capital assets and receive income are likely to have to invest to preserve the value of the capital and to produce the required income. In dealing with returns on investment, they may have to distinguish between beneficiaries entitled to receive income and beneficiaries entitled to receive capital. Trustees' powers and duties in relation to investment are governed not only by the terms of the trust itself, but also by the general law: in particular, by the Trustee Act 2000. Under the 2000 Act, trustees are given a general power of investment, but this is subject to duties such as the requirement to exercise reasonable care and skill, and to have regard to standard investment criteria.

7. Under the trust, one class of beneficiaries may be entitled to capital, and another to income. For example, a private trust (the AB Trust) may be established by a person making a gift of investments on trust "for A for life, with remainder to B". The trustees will pay the income arising on the investments to A until A dies, and then transfer the investments to B. A is termed the "life tenant", and B the "remainderman"; such

a trust, which shares property and income over time, is termed a trust "for interests in succession".

8. Because of the different entitlements to income and capital, the trustees must distinguish between investment receipts according to their legal classification as income receipts due to A, or capital receipts which must be held for B and can be invested to produce income. They may also need to apply rules of apportionment between capital and income, which can affect the beneficiaries' entitlements; for example, by requiring the trustees to apply some of a capital receipt as though it were income (see paragraphs 11 and 12 below).

9. Similar issues arise in relation to charities with a permanent endowment. A permanent endowment is a protected fund which is subject to restrictions on what may be spent on the charity's purposes. This means that in order to achieve a balance between the charity's current and future purposes, the trustees must select their investments according to the likely form of the return as income or capital; capital receipts must generally be added to and held as part of the permanent endowment fund, and only income receipts can be spent. If that balance is not actually reflected in the returns received, the trustees cannot take a view over the whole return and reallocate capital and income returns – they are constrained by the form the returns actually take. Therefore, they cannot follow the approach to investment taken by many other trustees, who are able to invest with a view to the overall return; selecting investments on the basis of achieving an appropriate balance between risk and return in accordance with the general law governing trustees' investment duties.

10. The Act makes three changes to the current law.

- It disapplies, for new trusts:
  - the statutory rule requiring the apportionment of income over time imposed by the Apportionment Act 1870, insofar as it relates to trusts; and
  - three of the rules of apportionment originating in case law, which require adjustments to be made to the entitlement to income and capital receipts in certain instances.
- It alters the classification of shares received by trustees by way of investment receipts when the company in which they hold shares undergoes a demerger. Where such shares are currently classified as income, they will be classified as capital.
- It facilitates total return investment for charities with a permanent endowment; trustees will be able to make a resolution opting for new Charity Commission regulations to apply in place of the investment restrictions that currently prevent total return investment.

The rules of apportionment

11. As a general principle, trustees must not favour one beneficiary or class of beneficiaries over another in exercising their powers and fulfilling their duties. They have a duty to keep a fair balance between beneficiaries who are entitled to capital, and those who are entitled to income.

12. In the past, that general duty has been considered to require certain returns and outgoings of a trust to be shared in a particular way between capital and income, and in some cases as imposing a duty to sell certain investments, in specific circumstances. These have become known as rules of apportionment. One derives from statute, and the others from case law (and are often known as the "equitable rules of apportionment"). The four rules affected by the Act can be summarised as follows.

- Section 2 of the Apportionment Act 1870 is the statutory rule of time apportionment. The effect of the section is that income beneficiaries are entitled

only to the proportion of income that is deemed to have accrued during their period of entitlement. The trustees must work out how much income is attributable to each beneficiary, on the assumption that the income accrued at a constant rate over the period.

For example, shares are held by the trustees of the AB Trust (see paragraph 7 above); a dividend is declared on 1st February on shares that last yielded a dividend on 1st December. A died on 1st January. Under section 2 of the Apportionment Act 1870, half the dividend is payable to B and half accrues to A's estate.

- The rule known as the rule in *Howe v Earl of Dartmouth* is divided into two parts.
  - The first part of the rule creates an implied trust for sale, putting the trustees under an obligation to sell particular investments and reinvest the proceeds (known as a "duty to convert"). Broadly speaking, it applies to trusts for interests in succession created by will or codicil over the testator's residuary estate – that is, so much of the estate as remains after payment of debts, liabilities, legacies and other charges. The rule applies where the trust fund includes personalty (assets other than land) constituting investments which fulfil the following criteria. First, they must be unauthorised investments: the trustees would have no power to invest in them, either under the general law (by which, following the Trustee Act 2000, only a few investments are unauthorised) or by express restrictions in the trust instrument (for example, establishing ethical investment criteria). Secondly, they must be "of a wasting or hazardous nature"; that is, having the potential to prejudice the capital beneficiary over time through a dramatic diminution in value, and to produce an augmented level of return for the income beneficiary.
  - The second part of the rule applies to trusts for interests in succession where a trust for sale applies (this could be implied under the first part of the rule, or express). It applies more widely than the first part of the rule, as it is not limited to trusts created over residuary estates of testators, and applies to unauthorised investments of a wasting or hazardous nature in leasehold (though not freehold) interests, as well as in personalty (see above). Until the investments are actually sold in accordance with the trustees' obligation under the trust for sale, the life tenant receives a sum calculated by applying a specified rate of interest (traditionally 4 per cent) to the estimated value of the property. This operates to compensate the capital beneficiary for loss pending conversion of trust investments.
- The rule known as the rule in *Re Earl of Chesterfield's Trusts* applies where there is a trust for interests in succession and compensates the income beneficiary for loss of present income from future property held by the trust, where trustees have exercised a power to defer sale. For example, the trust fund of the AB Trust includes property held in reversion, where X is entitled to the income for life. Until X dies, the property will not produce any income for the AB Trust, but the trustees decide to hold onto it until that time. This rule requires that, when the property eventually comes into the trustees' hands, it is treated as though it represents partly arrears of income due to A; therefore, it is apportioned between capital and income.
- The rule known as the rule in *Allhusen v Whittell* applies where a testator's residuary estate is left on trust for interests in succession. It apportions debts, liabilities, legacies and other charges payable out of the residuary estate between capital and income beneficiaries so that broadly the beneficiaries are put in the same position as if payments had been made at the time of death. This requires the trustees to calculate the net average income of the estate from the date of death to the date of the relevant payment and from this to work out how much of each debt paid is attributable to capital and how much to income. The income beneficiary is then charged with interest at the rate of the net average income on the amount of the

payment so that the payment is regarded as being made partly from income and partly from capital.

13. The rules apply to private trusts for interests in succession; the extent to which they apply to charitable trusts is unclear. Professionally drafted trust instruments generally exclude them. In most trusts where they have not been excluded they are either ignored or cause considerable inconvenience by requiring complex calculations generally in relation to very small sums of money.

14. The Act abolishes the rules for trusts coming into existence after commencement. But settlors and testators who wish any or all of the rules to apply to the trust can make express provision to that effect in the trust instrument.

The classification of shares received in the course of a demerger

15. The Act addresses an aspect of the trust law classification of investment receipts from companies as income or capital: the classification of dividends received by trustee shareholders which are distributions made in the course of a corporate demerger.

16. Such demergers can be of two kinds: direct and indirect. In each case Company A transfers part of its business to a new subsidiary company, Company B, and then declares a dividend to its shareholders. In a direct demerger the dividend is satisfied by Company A distributing the share capital of Company B to its own shareholders. In an indirect demerger the shares in Company B are transferred to a separate holding company, Company C. In consideration for this transfer, Company C satisfies Company A's dividend by issuing its own shares to the shareholders of Company A.

17. Pursuant to a decision of the House of Lords,[1] shares distributed in the course of a direct demerger have to be classified as income. The result of this is that following a company reorganisation by way of a direct demerger, the trust fund's former capital asset – the original shareholding in Company A – will be effectively split between capital and income to the extent that the value is now represented by shares in Company B. The Company B shares passing to the income beneficiary could represent a substantial percentage of the original shareholding in Company A – far in excess of normal expectations for an income return.

18. However, exceptionally, it was later decided in the High Court that shares distributed in the course of an indirect demerger should be classified as capital.[2] Therefore, in such a case the shares in Company C retain the classification of the original Company A shareholding; the income beneficiary does not receive a portion of that asset merely by virtue of the corporate reorganisation.

19. The Act provides that the shares distributed in defined direct and indirect demergers will for the future in both cases be treated as capital for the purposes of the trust. This reform affects both private and charitable trusts, whenever created.

20. The new classification of such receipts may, in some circumstances, prejudice the income beneficiary. The Act provides a power to compensate the income beneficiary by way of a payment from trust capital in these circumstances.

Total return investment for charities

21. As explained at paragraph 9 above, charities with permanent endowment are ordinarily restricted in their investment decisions, since they must keep separate income available for current use and capital held to produce future income. Because investment returns that trust law classifies as capital cannot be spent on current charitable purposes, trustees of charities with permanent endowment have to pursue an investment strategy which produces sufficient income yet maintains a balance between capital and income returns.

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1 *Bouch v Sproule* (1887) LR 12 App Cas 385.
2 *Sinclair v Lee* [1993] Ch 497.

A strategy that produced too little income would limit the funds available to provide public benefit (even if a healthy overall profit had been made taking into account capital returns). A strategy that produced too much income would reduce the level of permanent endowment available to produce future income. Trustees must therefore invest with a view to the likely form of the receipt – as income or capital – in an endeavour to ensure that future investment receipts do not favour income or capital disproportionately.

22. By contrast, under a total return investment scheme, trustees invest with a view to optimising the overall investment return, no matter whether that takes the form of capital or income. The trustees then decide how much of that overall return should be allocated to be expended on current charitable purposes and how much should be retained to produce future returns; even if that means spending funds which would be classified as capital, and accumulating (adding to capital) returns classified as income. While in taking those decisions trustees have to balance the need for current expenditure and the need to maintain the long term capital value of the fund, decisions on investment are not influenced by the requirement to generate returns that take the form of income or capital, as the case may be. The usual considerations when trustees invest – in particular, the need to balance risk and return – still apply.

23. At present, trustees of charities with permanent endowment can only operate total return investment if they apply to the Charity Commission for an order enabling them to do so, in accordance with the Charity Commission's scheme for total return investment set out in its Operational Guidance.[3] The Act gives the Charity Commission power to make regulations enabling total return investment, and enables trustees of charities with permanent endowment by resolution to operate total return investment in accordance with those regulations, without having to make an application to the Charity Commission for an order.

COMMENTARY ON SECTIONS

Section 1: Disapplication of apportionment etc rules

24. Section 1 disapplies the specified statutory and equitable rules of apportionment for all trusts created or arising on or after the day on which the section comes into force: subsection (5). This includes a trust created by will, or arising under the intestacy rules, in relation to a death on or after that day; a trust established by a settlor in his or her lifetime; and a separate trust created by the exercise of a power associated with a trust already in existence. The rules are described at paragraph 12 above.

25. Subsection (1) disapplies the time apportionment rule imposed on trustees by section 2 of the Apportionment Act 1870. The effect is that an income receipt is due to the beneficiary who is entitled to income at the time when it arises. There is no longer any requirement to apportion an income receipt where the entitlement to income has changed during the period over which it accrued.

26. A further effect of subsection (1) is relevant to trusts where the trustees have power to maintain a class of beneficiaries out of income to which they are not yet absolutely entitled – for example, a trust "for the children of C". Subsection (1) makes it unnecessary, when a child is born, to carry out an apportionment calculation to ascertain the income from which that child can be maintained.[4] Instead, income as it arises is available for the maintenance of the beneficiaries entitled to be maintained from it.

27. Subsection (2)(a) disapplies the first part of the rule in *Howe v Earl of Dartmouth*. The effect of subsection (2)(a) is that trustees will not be under an immediate obligation to sell residuary personalty where it consists of an unauthorised investment of a wasting and hazardous nature. They may still choose to do so in any event; but in some

3 Charity Commission, *Operational Guidance 83 Endowed Charities: A Total Return Approach to Investment* (available at http://www.charity-commission.gov.uk/About_us/OGs/index 083.aspx).

4 Overturning *Re Joel* [1967] Ch 14.

circumstances immediate sale would be unwise, and without the rule the trustees can exercise their discretion in the context of their general duty of care. Subsection (3) specifies that the trustees have power to sell where previously they had a duty to sell.

28. Subsection (2)(b) disapplies the second part of the rule in *Howe v Earl of Dartmouth*. The effect of the disapplication of the rule is that where a trust for interests in succession holds unauthorised investments consisting of hazardous or wasting property, and a trust for sale applies, the income beneficiary will be entitled to the actual income from such investments as it arises.

29. Subsection (2)(c) disapplies the rule in *Re Earl of Chesterfield's Trusts*. The effect is that, where a trust for interests in succession holds property that does not in fact produce any income until it falls into possession (such as a reversionary interest), such property will be treated as capital when it comes into the possession of the trustees.

30. Subsection (2)(d) disapplies the rule known as the rule in *Allhusen v Whittell*. The effect of the disapplication of the rule is that where a testator's residuary estate is left on trust for interests in succession, the debts, legacies, annuities and other charges payable from the residuary estate will only be payable out of capital.

31. Subsection (4) provides that subsections (1) to (3) are subject to contrary provision in the trust instrument, or in any power by which the trust was established. The effect of this subsection is that settlors or testators who wish to include any of the rules disapplied in subsections (1) and (2) may do so by excluding the section or by expressly invoking the rule by name in the trust instrument.

Section 2: Classification of certain corporate distributions as capital

32. Subsection (1) provides that where a trust receives a tax-exempt corporate distribution (as defined in subsection (3)) it is to be treated as a receipt of capital, rather than income. If it is received by a private trust for interests in succession, the distribution will therefore be held as capital rather than being paid out to the income beneficiary; and where the shareholders are the trustees of a charity with permanent endowment, the distribution will be held as capital by the trustees and added to the permanent endowment. "Distribution" here includes a distribution of assets, whether in cash or otherwise, and whether by dividend or otherwise.

33. This classification applies to all trusts, including those established before the commencement of the section (subsection (6)). It is subject to contrary intention in the trust instrument, or in any power by which the trust was established, as to the classification of such receipts (subsection (2)).

34. Subsections (1) and (3)(a) change the classification of shares distributed to a trust by way of dividend in the course of a demerger. They do so by reference to distributions falling within sections 1076, 1077 and 1078 of the Corporation Tax Act 2010, which provide that shares distributed in the course of certain direct or indirect demergers are exempt from income tax (they are "exempt distributions"). The effect of subsections (1) and (3)(a) of the section is that such shares are to be regarded as capital in the hands of trustee shareholders.

35. Subsection (3)(b) gives the Secretary of State a power to specify by order other tax-exempt distributions by corporate bodies which are to be treated as a receipt of capital by trustees.

36. Subsections (4) and (5) limit the Secretary of State's power to make such an order by statutory instrument subject to a negative resolution procedure (subsection (5)). Subsection (4) provides that such an order can only be made where the distribution is not subject to income tax or capital gains tax, for example where an exemption from tax, similar to that applicable to distributions to which subsection (3)(a) applies, is extended to other corporate receipts.

Section 3: Power to compensate income beneficiary

37. Section 3 provides trustees with a power to compensate income beneficiaries where there has been a tax-exempt distribution classified as capital under section 2 (subsection (1)(a)). This power can only be exercised where the trustees are satisfied that it is likely there would have been a receipt of income from the body corporate, had the distribution not been made (subsection (1)(b)). For example, a demerging company may have not have paid a dividend which would otherwise have been paid (or may have paid a smaller dividend) because the directors decided instead to "roll up" profits in the demerger shares.

38. Subsections (2) and (3) enable trustees to use capital in order to put an income beneficiary, to the extent that it is practicable, in the position in which the trustees consider he or she would have been if the trust had received the income which they are satisfied was not paid because of the tax-exempt distribution. Thus in the above example, the trustees could make a payment to the income beneficiary to make up for the non-receipt of the dividend (or larger dividend) which they have concluded would have been paid if the demerger had not occurred. They could alternatively transfer trust property (such as shares) to the income beneficiary. Any such payment or transfer is treated as a receipt of capital in the hands of the income beneficiary.

39. Subsection (4) defines "income beneficiary"; this term is not limited to beneficiaries who are entitled to receive income as of right, but includes beneficiaries who may receive income at the trustees' discretion. It is defined in terms of persons who are entitled to or may benefit from the income, and does not include, for example, a charitable purpose.

Section 4: Total return investment by charities

40. Section 4 enables the trustees of a charity with permanent endowment to invest on a total return basis by making a resolution to adopt a Charity Commission total return investment scheme, where they consider that it is in the interests of the charity to do so.

41. Accordingly, Section 4 inserts two new sections in the Charities Act 2011. New section 104A enables the trustees, if a specified condition is met, to make a resolution replacing the restrictions with respect to expenditure of capital that are imposed by the terms applicable to the permanent endowment with the requirements of the Charity Commission's total return scheme. New section 104B enables the Charity Commission to make regulations setting out the details of its total return investment scheme and procedural provisions regarding charity trustees' resolutions to adopt the scheme.

42. Section 104A applies to all charities with permanent endowment: section 104A(1) and (5). Section 104A(2) enables the charity trustees to pass a resolution in respect of part or the whole of the permanent endowment fund where they consider that it ought to be freed from the applicable restrictions to enable investment without the need to maintain a balance between capital and income returns. The effect is that the relevant restrictions on capital expenditure no longer apply to the fund affected by the resolution; instead, the Charity Commission's total return investment regulations apply (section 104A(4)). The charity trustees must be satisfied that this is in the charity's interests in order to pass a resolution under section 104A(2): section 104A(3).

43. "Available endowment fund" is defined in section 104A(5); this is the same definition as is found in sections 281 and 282 of the Charities Act 2011. The effect of this definition is that section 104A applies separately to each part of a charity's permanent endowment which is subject to separate trusts. Where a charity has more than one available endowment fund, a separate resolution will be needed for each fund that the trustees wish to manage in accordance with the Charity Commission's total return investment scheme.

44. Section 104B sets out the Charity Commission's power to make regulations. Section 104B(1)(a) enables regulations to be made concerning resolutions under section 104A.

45. Section 104B(1)(b) enables the Charity Commission to make regulations concerning the investment of the relevant fund on a total return basis, and the expenditure from such a fund. "Relevant fund" is defined in subsection (6), and includes both the fund affected by the resolution under section 104A and all investment returns on it, both capital and income.

46. Section 104B(2) and (3) contain illustrative lists of requirements and restrictions that may be included in the regulations made under section 104B(1)(a) and (b); it will be for the Charity Commission to decide on the specific provisions. For example, the Charity Commission may make regulations under section 104B(1)(a) requiring charity trustees to notify the Commission of the making of a resolution within a specified period of it being passed, and regulations under section 104B(1)(b) may impose restrictions on expenditure or require investment and allocation of investment returns in such a way as to maintain the long term capital value of the fund, so far as practicable. Nothing in this section affects the general duties of charity trustees, for example to have regard to both present and future needs of the charity.

47. Section 104B(1)(c) enables the Charity Commission to make regulations about action the charity trustees need to take in respect of a part or the whole of a fund if a resolution previously made under section 104A ceases to apply to it.

48. Provisions for the accumulation of income (that is, converting income to capital) may be included in the regulations made under section 104B(1)(b) and (c). Section 104B(4) states that any such provisions are not subject to section 14(3) of the Perpetuities and Accumulations Act 2009, which restricts any accumulation of income to the statutory accumulation period of 21 years.

Section 5: Crown application, commencement and extent

49. Subsection (3) provides for sections 5 and 6 of the Act to come into force on the day on which it is passed. The remaining sections will come into force on such day as the Secretary of State specifies by order made by statutory instrument. Subsection (4) makes it clear that such an order may specify different days for different purposes, and the Secretary of State is given power to make additional provision in that regard, for example to meet any additional requirements for transitional provisions.

COMMENCEMENT

50. Other than sections 5 and 6, which will come into force on the date the Act is passed, the provisions of the Act will be brought into force on such date or dates as are specified by order made by the Secretary of State (section 5).

HANSARD REFERENCES

51. 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 (2010-12 Session)		
Introduction	29 February 2012	Vol 735 Col 1302
Second Reading Committee	25 April 2012	Vol 736 GC 291
Second Reading	30 April 2012	Vol 736 Col 1937
House of Lords (2012-13 Session)		

Stage	***Date***	***Hansard reference***
Introduction	10 May 2012	Vol 737 Col 25
Second Reading	10 May 2012	Vol 737 Col 27
Report	15 October 2012	Vol 739 Col 1260
Third Reading	23 October 2012	Vol 740 Col 141
House of Commons		
Introduction	23 October 2012	
Second Reading Committee	5 November 2012	Col 3
Second Reading	6 November 2012	Vol 552 Col 833
Committee	13 November 2012	Col 3
Report	7 January 2013	Vol 556 Col 25
Third Reading	7 January 2013	Vol 556 Col 25
Royal Assent	31 January 2013	Lords: Vol 742 Col 1637
		Commons: Vol 557 Col 1071

ANNEX GLOSSARY:

Beneficiary: An individual or a corporation who is entitled to the benefit of trust property (for his, her or its own benefit, and not merely as a trustee holding it for others).

Charity: Defined by section 1 of the Charities Act 2011 as "an institution which is established for charitable purposes only and falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities". A charitable purpose must be for the public benefit and fall within one of the descriptions of charitable purposes provided in section 3 of the Charities Act 2011; for example, the prevention or relief of poverty. "Institution" includes a trust (section 9(3)). Thus trustees of charitable trusts do not hold the trust property for, or on behalf of, beneficiaries but rather to further the relevant charitable purpose for the public benefit.

Charity Commission: The non-ministerial Government department which acts as the regulator and registrar of charities, governed by the Charities Act 2011. The Commission can provide advice and guidance to charities, and has various legal powers, including the ability to investigate cases of dishonesty and fraud, as well as to transfer trust property and replace trustees.

Investment receipt or investment return: Money, shares, or other property received from an investment; for example, a dividend from a shareholding, or rent.

Permanent endowment: Defined by section 353(3) of the Charities Act 2011 as follows: "A charity is to be treated for the purposes of this Act as having a permanent endowment unless all property held for the purposes of the charity may be expended for those purposes without distinction between capital and income, and in this Act 'permanent endowment' means, in relation to any charity, property held subject to a restriction on its being expended for the purposes of the charity."

Power: In the context of the Act, an authority to act in relation to trust property. Some powers can be exercised to affect the beneficial interests arising under the trust. For instance, a power of advancement (enabling trustees to apply capital for the benefit of a beneficiary under the trust who is not yet entitled to the capital) or a power of appointment (enabling them to create or transfer an interest in property for the benefit of a beneficiary). The extent of a power depends on the terms of the instrument granting it; some powers have a statutory basis, such as the power of investment conferred on trustees by section 3 of the Trustee Act 2000 and the power of advancement contained in section 32 of the Trustee Act 1925.

Private trust: A trust that is not charitable, such as a will trust in favour of family members.

Residuary estate: That part of the estate of a deceased person that is left once debts (including funeral expenses and the costs of administering the estate) have been paid and legacies have been satisfied.

Settlor: A person who creates a trust.

Testator: A person who makes a will.

Total return investment: See paragraphs 21 to 23 of the Explanatory Notes.

Trust: An arrangement for the holding and administration of property which imposes obligations on a trustee to deal with property for the benefit of another. In the case of charitable trusts, trustees are obliged to use the property for certain purposes. A trust can be created by deed, by will, by statute, by declaration or by operation of law.

Trust for interests in succession: A trust where property is shared over time; for example, a trust of shares held for A for life with remainder to B. In such a trust A enjoys the income during his or her lifetime, and then the shares pass to B.

Trust for sale: Describes a situation in which trustees are under an obligation to sell particular investments and reinvest the proceeds.

Trust instrument: An instrument is a formal legal document that is effective in creating legal rights and liabilities. A trust instrument is a document that establishes the trust and sets out its terms.

Trustee: A person who has the legal title to trust property. A trustee can be a natural person or corporate body (or the Public Trustee) and must hold the trust property and deal with it, according to the terms of the trust, entirely for the benefit of the beneficiaries of the trust.