

*These notes refer to the Trustee Act (Northern Ireland)  
2001 (c.14) which received Royal Assent on 20 July 2001*

# Trustee Act (Northern Ireland) 2001

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## **EXPLANATORY NOTES**

## ANNEX A: GLOSSARY OF TERMS

**Absolute Owner:** a person owning property for his own benefit.

**Administration of an estate:** the collection of assets, payment of debts, and distribution to the beneficiaries of property in the estate of a deceased person.

**Agent:** a person appointed by another (the principal) to act on his behalf, often to negotiate a contract between the principal and a third person.

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

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

**Capital Money:** money arising from certain transactions relating to settled land. It may arise from sale, the granting of certain leases and similar transactions, borrowing on the security of a mortgage, and other circumstances in which the money should be treated as capital of the settlement, for example, the proceeds of a fire insurance claim relating to the land. Generally capital money must be received by the trustees of the settlement, not the beneficiary. When the money is raised or paid for a specific purpose (for example, for improvements authorised by the Settled Land Act 1882) it must be applied for that purpose. Otherwise, it is invested and held by the trustees on the same trusts as the land itself was held.

**Charitable Trusts:** see “Trusts”.

**CREST:** a computer based system for the electronic transfer of and settlement of trades in securities replacing the former paper based system of shareholding and transfer with an electronic book entry system. The system operates under the Uncertificated Securities Regulations 1995.

**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 (see section 17(2) of the Act).

**Default power:** a power available to trustees in default of or subject to other provision in a trust instrument or regulation. The powers conferred by the Trustee Act (Northern Ireland) 1958 and the Trustee Investments Act 1961 are in general default powers.

**Dispositive duty:** see dispositive powers under “Power” below.

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

**Fiduciary relationships:** the relationship of trustee and beneficiary is but one of a number of relationships generally described as fiduciary. It is a mark of such relationships that one person receives an authority or is entrusted with a job which he is bound to exercise or perform in the best interests of another.

**General Power of Investment:** see notes to section 3 of the Act.

**Instrument:** a formal legal document. A trust instrument is the document setting out the terms of the trust.

**Interests in land:** rights of ownership of or over land are interests in land.

**Nominee:** in the context of a nominee for trustees, a nominee is a person nominated to hold trust property in his own name on behalf of the trustees. This device is commonly used to facilitate dealings with trust assets.

**Personal property (personalty):** all property that does not comprise land.

**Personal representative:** a person entitled to deal with a deceased person's estate in accordance with his will or under the rules relating to intestacy (see section 43(1) of the Act).

**Power:** in this context, a power is an authority to act in relation to another's property. A power may be administrative or dispositive. An administrative power is a power, the exercise of which does not affect the beneficial interests arising under a trust, such as a power to sell or lease property. In the present context, a dispositive power is a power, the exercise of which does affect the beneficial interests arising under a trust, for instance, a power of advancement and a power of appointment. A trustee's power of investment is a power to invest trust property. A power of advancement is a power given to trustees (whether by statute or by express provision in the trust instrument) to apply some of the capital from the trust property for the benefit of a beneficiary under the trust. For instance, in the case of a gift of capital to A on reaching the age of 30, part of that capital might be used, for instance, to buy him a house at an earlier time. A power of appointment is a power "given under some settlement or trust authorising the donee to make an appointment of some or all of the trust property."

**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 affairs and the document by which that authority is given.

**Professional charging clause:** a provision in a trust instrument authorising the remuneration of a trustee for his care and trouble, often permitting a trustee who is a solicitor, a literary executor or other professional person to charge for professional services (and in some cases business services generally).

**Private trust:** see "Trusts".

**Public trust:** see "Trusts".

**Settled land:** land which is the subject of a settlement under the Settled Land Act 1882. In broad terms this means that there is a succession of interests in the land, for example a life tenancy followed on that person's death by a fee simple for someone else.

**Standard investment criteria:** see notes on section 4 of the Act.

**Tenant for life** (life tenant): a person owning land for an equitable interest that subsists for the whole of his life but terminates on his death. The Settled Land Act 1882 lays down the statutory powers of a tenant for life.

**Trust and trustee:** a trustee is a person who has property or rights (trust property or assets) 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 (Northern Ireland) 1958, section 67, adopting the definition in Article 9 of the Administration of Estates (Northern Ireland) Order 1979.

**Trust Funds:** see section 43(1) of the Act.

**Trust instrument:** the document setting out the terms of the trust.

**Trusts:** may be private or public (charitable). A private trust is a trust for the benefit of an individual or class, irrespective of any benefit which may be conferred on the public at large. A public trust is a trust whose object is to promote the public welfare, even if it incidentally confers a benefit on an individual or class. Charitable trusts are public trusts solely and exclusively for purposes that the law regards as charitable. In this sense, a purpose is charitable only if it is for the furtherance of religion, for the advancement of education, for the relief of poverty, or for other purposes beneficial to the community. Charitable trust is defined in section 43(1) of the Act.

**Ultra vires:** an act is ultra vires if it is in excess of the powers of the person doing the act.

**Will:** a document by which a person (called the testator) appoints executors to administer his estate after his death, and directs the manner in which it is to be distributed to the beneficiaries he specifies.