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

TRUSTEE ACT 2000

EXPLANATORY NOTES

BACKGROUND

6. Trust law is of wide application. It applies far beyond the traditional spheres of wills and family settlements. It has major application to charities and has increasing importance in commerce. It is very significant in relation to the management of pension and other investment funds. However, the law governing the powers and duties of trustees, particularly the relevant provisions of the Trustee Act 1925 and the Trustee Investments Act 1961, has not kept pace with the evolving social and economic role which trusts now fulfil. This discrepancy has been brought into sharp focus by the fundamental changes in the conduct of investment business during the last ten years such as the introduction of the CREST system on the London Stock Exchange. The situation is now so serious that the view is widely held that it is very difficult for such trustees acting under the terms of trust instruments which make no specific provisions as to investment powers, to satisfy their paramount duty to act in the best interests of the beneficiaries of the trust.

7. Although the awareness of the need for reform is now sharply defined, the Act is the culmination of a long history of proposals for reform of the law of trusts. Several of the reforms in the Act were considered in the Twenty-third report of the Law Reform Committee The Powers and Duties of Trustees in 1982. In 1995 HM Treasury carried out a consultation in relation to a proposal to adjust the proportions of permitted investments under the 1961 Act. The response to this consultation made clear that a more fundamental reform was required. In November 1995 the Law Commission embarked on a review of the powers and duties of trustees and together with the Scottish Law Commission and the Trust Law Committee provided detailed advice on the present law to HM Treasury. The Trust Law Committee itself was established in 1995 to press for reform of the law of trusts.

8. In May 1996 Investment Powers of Trustees: A Consultation Document was published by HM Treasury. In June 1997 the Law Commission published a consultation paper Trustees’ Powers and Duties (LCCP No 146). Attempts were made to legislate for some of the proposed reforms under the Deregulation and Contracting Out Act 1994 but the Order was lost when Parliament was dissolved in 1997.

9. In July 1999 the Law Commission and the Scottish Law Commission jointly published Trustees’ Powers and Duties (1999) Law Com No 260 Scot Law Com No 172. In this report the Law Commissions recommended that there should be primary legislation to reform the law governing the investment powers of trustees and, in so far as it would be practicable to do so, that the Trustee Investments Act 1961 should be repealed. The Law Commission also recommended certain further changes applicable to England and Wales only.