*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

## 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.