



Trustee Act (Northern Ireland) 2001

CHAPTER 14

£5.50



Trustee Act (Northern Ireland) 2001

CHAPTER 14

CONTENTS

PART I

THE DUTY OF CARE

1. The duty of care
2. Application of duty of care

PART II

INVESTMENT

3. General power of investment
4. Standard investment criteria
5. Advice
6. Restriction or exclusion of this Part, etc.
7. Existing trusts and statutory powers

PART III

ACQUISITION OF LAND

8. Power to acquire land
9. Restriction or exclusion of this Part, etc.
10. Existing trusts

PART IV

AGENTS NOMINEES AND CUSTODIANS

Agents

11. Power to employ agents
12. Persons who may act as agents
13. Linked functions, etc.
14. Terms of agency

15. Asset management: special restrictions
 - Nominees and custodians*
16. Power to appoint nominees
17. Power to appoint custodians
18. Investment in bearer securities
19. Persons who may be appointed as nominees or custodians
20. Terms of appointment of nominees and custodians
 - Review of and liability for agents, nominees and custodians, etc.*
21. Application of sections 22 and 23
22. Review of agents, nominees and custodians, etc.
23. Liability for agents, nominees and custodians, etc.
 - Supplementary*
24. Effect of trustees exceeding their powers
25. Sole trustees
26. Restriction or exclusion of this Part, etc.
27. Existing trusts

PART V

REMUNERATION

28. Trustee's entitlement to payment under trust instrument
29. Remuneration of certain trustees
30. Remuneration of trustees of charitable trusts
31. Trustees' expenses
32. Remuneration and expenses of agents, nominees and custodians
33. Application

PART VI

APPOINTMENT AND RETIREMENT OF TRUSTEES

34. Appointment or retirement of trustee at instance of beneficiaries
35. Appointment of substitute for incapable trustee
36. Provisions supplementary to sections 34 and 35

PART VII

MISCELLANEOUS AND SUPPLEMENTARY

Power to insure

37. Power to insure

Special cases

38. Personal representatives
39. Pension schemes
40. Authorised unit trusts
41. Common investment schemes for charities
42. The Crown

Supplementary

43. Interpretation
44. Amendments, transitional and saving provisions and repeals
45. Commencement

46. Short title

SCHEDULES:

Schedule 1	Application of duty of care
Schedule 2	Minor and consequential amendments
Schedule 3	Transitional provisions and savings
Schedule 4	Repeals



Trustee Act (Northern Ireland) 2001

2001 CHAPTER 14

An Act to amend the law relating to trustees and persons having the investment powers of trustees; and for connected purposes. [20th July 2001]

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

PART I THE DUTY OF CARE

The duty of care

1.—(1) Whenever the duty under this subsection applies to a trustee, he must exercise such care and skill as is reasonable in the circumstances, having regard in particular—

- (a) to any special knowledge or experience that he has or holds himself out as having, and
- (b) if he acts as trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

(2) In this Act the duty under subsection (1) is called "the duty of care".

Application of duty of care

2. Schedule 1 makes provision about when the duty of care applies to a trustee.

PART II

PART II
INVESTMENT**General power of investment**

3.—(1) Subject to the provisions of this Part, a trustee may make any kind of investment that he could make if he were absolutely entitled to the assets of the trust.

(2) In this Act the power under subsection (1) is called "the general power of investment".

(3) The general power of investment does not permit a trustee to make investments in land other than in loans secured on land (but see also section 8).

(4) A person invests in a loan secured on land if he has rights under any contract under which—

- (a) one person provides another with credit, and
- (b) the obligation of the borrower to repay is secured on land.

(5) "Credit" includes any cash loan or other financial accommodation.

(6) "Cash" includes money in any form.

Standard investment criteria

4.—(1) In exercising any power of investment, whether arising under this Part or otherwise, a trustee must have regard to the standard investment criteria.

(2) A trustee must from time to time review the investments of the trust and consider whether, having regard to the standard investment criteria, they should be varied.

(3) The standard investment criteria, in relation to a trust, are—

- (a) the suitability to the trust of investments of the same kind as any particular investment proposed to be made or retained and of that particular investment as an investment of that kind, and
- (b) the need for diversification of investments of the trust, in so far as is appropriate to the circumstances of the trust.

Advice

5.—(1) Before exercising any power of investment, whether arising under this Part or otherwise, a trustee must (unless the exception applies) obtain and consider proper advice about the way in which, having regard to the standard investment criteria, the power should be exercised.

(2) When reviewing the investments of the trust, a trustee must (unless the exception applies) obtain and consider proper advice about whether, having regard to the standard investment criteria, the investments should be varied.

(3) The exception is that a trustee need not obtain such advice if he reasonably concludes that in all the circumstances it is unnecessary or inappropriate to do so.

(4) Proper advice is the advice of a person who is reasonably believed by the trustee to be qualified to give it by his ability in and practical experience of financial and other matters relating to the proposed investment.

Restriction or exclusion of this Part, etc.

- 6.** The general power of investment is—
- (a) in addition to powers conferred on trustees otherwise than by this Part, but
 - (b) subject to any restriction or exclusion imposed by the trust instrument or by any statutory provision.

Existing trusts and statutory powers

7.—(1) This Part applies in relation to trusts whether created before or after its commencement.

(2) No provision relating to the powers of a trustee contained in a trust instrument made before 3rd August 1961 is to be treated (for the purposes of section 6(b)) as restricting or excluding the general power of investment.

(3) A provision contained in a trust instrument made before the commencement of this Part which—

- (a) has effect under section 3(2) of the Trustee Investments Act 1961 (c.62) as a power to invest under that Act, or
- (b) confers power to invest under that Act,

is to be treated as conferring the general power of investment on a trustee.

(4) This subsection applies to a person who is not a trustee but has a statutory power of making investments which is or includes power (however expressed)—

- (a) to make the same investments as are authorised by the Trustee Investments Act 1961 (c. 62); or
- (b) to invest in any manner in which a trustee is for the time being authorised by law to invest trust funds.

(5) Sections 3 to 5 shall (with the necessary modifications) apply in relation to a person to whom subsection (4) applies if he were a trustee.

(6) A person to whom subsection (4) applies may acquire land as an investment.

(7) In subsection (4) “statutory power” means a power conferred by or under Northern Ireland legislation passed or made before the commencement of this section, other than a provision amended by Schedule 2.

PART III**ACQUISITION OF LAND****Power to acquire land**

- 8.—(1)** A trustee may acquire land—
- (a) as an investment,
 - (b) for occupation by a beneficiary, or
 - (c) for any other reason.

(2) For the purposes of exercising his functions as a trustee, a trustee who acquires land under this section has all the powers of an absolute owner in relation to the land.

PART III

Restriction or exclusion of this Part, etc.

9.—(1) The powers conferred by this Part are —

- (a) in addition to powers conferred on trustees otherwise than by this Part, but
- (b) subject to any restriction or exclusion imposed by the trust instrument or by any statutory provision.

(2) This Part does not apply in relation to a trust of property which consists of or includes land which is settled land.

Existing trusts

10. This Part applies in relation to trusts whether created before or after its commencement.

PART IV

AGENTS NOMINEES AND CUSTODIANS

*Agents***Power to employ agents**

11.—(1) Subject to the provisions of this Part, the trustees of a trust may authorise any person to exercise any or all of their delegable functions as their agent.

(2) In the case of a trust other than a charitable trust, the trustees' delegable functions consist of any function other than—

- (a) any function relating to whether or in what way any assets of the trust should be distributed,
- (b) any power to decide whether any fees or other payment due to be made out of the trust funds should be made out of income or capital,
- (c) any power to appoint a person to be a trustee of the trust, or
- (d) any power conferred by any other statutory provision or the trust instrument which permits the trustees to delegate any of their functions or to appoint a person to act as a nominee or custodian.

(3) In the case of a charitable trust, the trustees' delegable functions are—

- (a) any function consisting of carrying out a decision that the trustees have taken;
- (b) any function relating to the investment of assets subject to the trust (including, in the case of land held as an investment, managing the land and creating or disposing of an interest in the land);
- (c) any function relating to the raising of funds for the trust otherwise than by means of profits of a trade which is an integral part of carrying out the trust's charitable purpose;
- (d) any other function prescribed by an order made by the Department for Social Development subject to negative resolution.

(4) For the purposes of subsection (3)(c) a trade is an integral part of carrying out a trust's charitable purpose if, whether carried on in the United Kingdom or elsewhere, the profits are applied solely to the purposes of the trust and either—

- (a) the trade is exercised in the course of the actual carrying out of a primary purpose of the trust, or
- (b) the work in connection with the trade is mainly carried out by beneficiaries of the trust.

Persons who may act as agents

12.—(1) Subject to subsection (2), the persons whom the trustees may under section 11 authorise to exercise functions as their agent include one or more of their number.

(2) The trustees may not authorise two (or more) persons to exercise the same function unless they are to exercise the function jointly.

(3) The trustees may not under section 11 authorise a beneficiary to exercise any function as their agent (even if the beneficiary is also a trustee).

(4) The trustees may under section 11 authorise a person to exercise functions as their agent even though he is also appointed to act as their nominee or custodian (whether under section 16, 17 or 18 or any other power).

Linked functions, etc.

13.—(1) Subject to subsection (2), a person who is authorised under section 11 to exercise a function is (whatever the terms of the agency) subject to any specific duties or restrictions attached to the function.

For example, a person who is authorised under section 11 to exercise the general power of investment is subject to the duties under section 4 in relation to that power.

(2) A person who is authorised under section 11 to exercise a power which is subject to a requirement to obtain advice is not subject to the requirement if he is the kind of person from whom it would have been proper for the trustees, in compliance with the requirement, to obtain advice.

Terms of agency

14.—(1) Subject to subsection (2) and sections 15(2) and 29 to 32, the trustees may authorise a person to exercise functions as their agent on such terms as to remuneration and other matters as they may determine.

(2) The trustees may not authorise a person to exercise functions as their agent on any of the terms mentioned in subsection (3) unless it is reasonably necessary for them to do so.

(3) The terms are—

- (a) a term permitting the agent to appoint a substitute;
- (b) a term restricting the liability of the agent or his substitute to the trustees or any beneficiary;
- (c) a term permitting the agent to act in circumstances capable of giving rise to a conflict of interest.

PART IV

Asset management: special restrictions

15.—(1) The trustees may not authorise a person to exercise any of their asset management functions as their agent except by an agreement which is in or evidenced in writing.

(2) The trustees may not authorise a person to exercise any of their asset management functions as their agent unless—

- (a) they have prepared a statement that gives guidance as to how the functions should be exercised ("a policy statement"), and
- (b) the agreement under which the agent is to act includes a term to the effect that he will secure compliance with—
 - (i) the policy statement, or
 - (ii) if the policy statement is revised or replaced under section 22, the revised or replacement policy statement.

(3) The trustees must formulate any guidance given in the policy statement with a view to ensuring that the functions will be exercised in the best interests of the trust.

(4) The policy statement must be in or evidenced in writing.

(5) The asset management functions of trustees are their functions relating to—

- (a) the investment of assets subject to the trust,
- (b) the acquisition of property which is to be subject to the trust, and
- (c) managing property which is subject to the trust and disposing of, or creating or disposing of an interest in, such property.

*Nominees and custodians***Power to appoint nominees**

16.—(1) Subject to the provisions of this Part, the trustees of a trust may—

- (a) appoint a person to act as their nominee in relation to such of the assets of the trust as they determine (other than settled land), and
- (b) take such steps as are necessary to secure that those assets are vested in a person so appointed.

(2) An appointment under this section must be in or evidenced in writing.

Power to appoint custodians

17.— (1) Subject to the provisions of this Part, the trustees of a trust may appoint a person to act as a custodian in relation to such of the assets of the trust as they may determine.

(2) For the purposes of this Act a person is a custodian in relation to assets if he undertakes the safe custody of the assets or of any documents or records concerning the assets.

(3) An appointment under this section must be in or evidenced in writing.

Investment in bearer securities

18.—(1) If trustees retain or invest in securities payable to bearer, they must appoint a person to act as a custodian of the securities.

(2) Subsection (1) does not apply if the trust instrument or any statutory provision contains provision which (however expressed) permits the trustees to retain or invest in securities payable to bearer without appointing a person to act as a custodian.

(3) An appointment under this section must be in or evidenced in writing.

Persons who may be appointed as nominees or custodians

19.—(1) A person may not be appointed under section 16, 17 or 18 as a nominee or custodian unless one of the relevant conditions is satisfied.

(2) The relevant conditions are that—

- (a) the person carries on a business which consists of or includes acting as a nominee or custodian;
- (b) the person is a body corporate which is controlled by the trustees;
- (c) the person is a body corporate recognised under Article 26A of the Solicitors (Northern Ireland) Order 1976 (NI 12).

(3) The question whether a body corporate is controlled by trustees is to be determined in accordance with section 840 of the Income and Corporation Taxes Act 1988 (c.1).

(4) The trustees of a charitable trust must act in accordance with any guidance given by the Department for Social Development concerning the selection of a person for appointment as a nominee or custodian under section 16, 17 or 18.

(5) Subject to subsections (1) and (4), the persons whom the trustees may under section 16, 17 or 18 appoint as a nominee or custodian include—

- (a) one of their number, if that one is a trust corporation, or
- (b) two (or more) of their number, if they are to act as joint nominees or joint custodians.

(6) The trustees may under section 16 appoint a person to act as their nominee even though he is also—

- (a) appointed to act as their custodian (whether under section 17 or 18 or any other power), or
- (b) authorised to exercise functions as their agent (whether under section 11 or any other power).

(7) Likewise, the trustees may under section 17 or 18 appoint a person to act as their custodian even though he is also—

- (a) appointed to act as their nominee (whether under section 16 or any other power), or
- (b) authorised to exercise functions as their agent (whether under section 11 or any other power).

PART IV

Terms of appointment of nominees and custodians

20.—(1) Subject to subsection (2) and sections 29 to 32, the trustees may under section 16, 17 or 18 appoint a person to act as a nominee or custodian on such terms as to remuneration and other matters as they may determine.

(2) The trustees may not under section 16, 17 or 18 appoint a person to act as a nominee or custodian on any of the terms mentioned in subsection (3) unless it is reasonably necessary for them to do so.

(3) The terms are—

- (a) a term permitting the nominee or custodian to appoint a substitute;
- (b) a term restricting the liability of the nominee or custodian or his substitute to the trustees or to any beneficiary;
- (c) a term permitting the nominee or custodian to act in circumstances capable of giving rise to a conflict of interest.

Review of and liability for agents, nominees and custodians, etc.

Application of sections 22 and 23

21.—(1) Sections 22 and 23 apply in a case where trustees have, under section 11, 16, 17 or 18—

- (a) authorised a person to exercise functions as their agent, or
- (b) appointed a person to act as a nominee or custodian.

(2) Subject to subsection (3), sections 22 and 23 also apply in a case where trustees have, under any power conferred on them by the trust instrument or by any statutory provision—

- (a) authorised a person to exercise functions as their agent, or
- (b) appointed a person to act as a nominee or custodian.

(3) If the application of section 22 or 23 is inconsistent with the terms of the trust instrument or the statutory provision, the section in question does not apply.

Review of agents, nominees and custodians, etc.

22.—(1) While the agent, nominee or custodian continues to act for the trust, the trustees—

- (a) must keep under review the arrangements under which the agent, nominee or custodian acts and how those arrangements are being put into effect,
- (b) if circumstances make it appropriate to do so, must consider whether there is a need to exercise any power of intervention that they have, and
- (c) if they consider that there is a need to exercise such a power, must do so.

(2) If the agent has been authorised to exercise asset management functions, the duty under subsection (1) includes, in particular—

- (a) a duty to consider whether there is any need to revise or replace the policy statement made for the purposes of section 15,
- (b) if they consider that there is a need to revise or replace the policy statement, a duty to do so, and

(c) a duty to assess whether the policy statement (as it has effect for the time being) is being complied with.

(3) Subsections (3) and (4) of section 15 apply to the revision or replacement of a policy statement under this section as they apply to the making of a policy statement under that section.

(4) "Power of intervention" includes—

- (a) a power to give directions to the agent, nominee or custodian;
- (b) a power to revoke the authorisation or appointment.

Liability for agents, nominees and custodians, etc.

23.—(1) A trustee is not liable for any act or default of the agent, nominee or custodian unless he has failed to comply with the duty of care applicable to him, under paragraph 3 of Schedule 1—

- (a) when entering into the arrangements under which the person acts as agent, nominee or custodian, or
- (b) when carrying out his duties under section 22.

(2) If a trustee has agreed a term under which the agent, nominee or custodian is permitted to appoint a substitute, the trustee is not liable for any act or default of the substitute unless he has failed to comply with the duty of care applicable to him, under paragraph 3 of Schedule 1—

- (a) when agreeing that term, or
- (b) when carrying out his duties under section 22 in so far as they relate to the use of the substitute.

Supplementary

Effect of trustees exceeding their powers

24. A failure by the trustees to act within the limits of the powers conferred by this Part—

- (a) in authorising a person to exercise a function of theirs as an agent, or
- (b) in appointing a person to act as a nominee or custodian,

does not invalidate the authorisation or appointment.

Sole trustees

25.— (1) Subject to subsection (2), this Part applies in relation to a trust having a sole trustee as it applies in relation to other trusts, and references in this Part to trustees (except in sections 12(1) and (3) and 19(5)) are to be read accordingly.

(2) Section 18 does not impose a duty on a sole trustee if that trustee is a trust corporation.

Restriction or exclusion of this Part, etc.

26. The powers conferred by this Part are—

- (a) in addition to powers conferred on trustees otherwise than by this Part, but
- (b) subject to any restriction or exclusion imposed by the trust instrument or by any statutory provision.

PART IV

Existing trusts

27. This Part applies in relation to trusts whether created before or after its commencement.

PART V

REMUNERATION

Trustee's entitlement to payment under trust instrument

28.—(1) Except to the extent (if any) to which the trust instrument makes inconsistent provision, subsections (2) to (4) apply to a trustee if—

- (a) there is a provision in the trust instrument entitling him to receive payment out of trust funds in respect of services provided by him to or on behalf of the trust, and
- (b) the trustee is a trust corporation or is acting in a professional capacity.

(2) The trustee is to be treated as entitled under the trust instrument to receive payment in respect of services even if they are services which are capable of being provided by a lay trustee.

(3) Subsection (2) applies to a trustee of a charitable trust who is not a trust corporation only—

- (a) if he is not a sole trustee, and
- (b) to the extent that a majority of the other trustees have agreed that it should apply to him.

(4) Any payments to which the trustee is entitled in respect of services are to be treated as remuneration for services (and not as a gift) for the purposes of—

- (a) Article 8 of the Wills and Administration Proceedings (Northern Ireland) Order 1994 (NI 13) (gifts to an attesting witness to be void), and
- (b) section 30(3) of the Administration of Estates Act (Northern Ireland) 1955 (c.24) (order in which estate to be paid out).

(5) For the purposes of this Part, a trustee acts in a professional capacity if he acts in the course of a profession or business which consists of or includes the provision of services in connection with—

- (a) the management or administration of trusts generally or a particular kind of trust, or
- (b) any particular aspect of the management or administration of trusts generally or a particular kind of trust,

and the services he provides to or on behalf of the trust fall within that description.

(6) For the purposes of this Part, a person acts as a lay trustee if he—

- (a) is not a trust corporation, and
- (b) does not act in a professional capacity.

Remuneration of certain trustees

29.—(1) Subject to subsection (5), a trustee who—

(a) is a trust corporation, but
 (b) is not a trustee of a charitable trust,
 is entitled to receive reasonable remuneration out of the trust funds for any services that the trust corporation provides to or on behalf of the trust.

(2) Subject to subsection (5), a trustee who—

(a) acts in a professional capacity, but
 (b) is not a trust corporation, a trustee of a charitable trust or a sole trustee,
 is entitled to receive reasonable remuneration out of the trust funds for any services that he provides to or on behalf of the trust if each other trustee has agreed in writing that he may be remunerated for the services.

(3) "Reasonable remuneration" means, in relation to the provision of services by a trustee, such remuneration as is reasonable in the circumstances for the provision of those services to or on behalf of that trust by that trustee and for the purposes of subsection (1) includes, in relation to the provision of services by a trustee who is an authorised institution under the Banking Act 1987 (c.22) and provides the services in that capacity, the institution's reasonable charges for the provision of such services.

(4) A trustee is entitled to remuneration under this section even if the services in question are capable of being provided by a lay trustee.

(5) A trustee is not entitled to remuneration under this section if any provision about his entitlement to remuneration has been made—

- (a) by the trust instrument, or
- (b) by any statutory provision.

(6) This section applies to a trustee who has been authorised under a power conferred by Part IV or the trust instrument—

- (a) to exercise functions as an agent of the trustees, or
- (b) to act as a nominee or custodian,

as it applies to any other trustee.

Remuneration of trustees of charitable trusts

30.—(1) The Department for Social Development may by regulations make provision for the remuneration of trustees of charitable trusts who are trust corporations or act in a professional capacity.

(2) The power under subsection (1) includes power to make provision for the remuneration of a trustee who has been authorised under a power conferred by Part IV or any other statutory provision, or by the trust instrument—

- (a) to exercise functions as an agent of the trustees, or
- (b) to act as a nominee or custodian.

(3) Regulations under this section may contain such supplemental, incidental, consequential and transitional provision as the Department for Social Development considers appropriate.

(4) Regulations shall not be made under this section unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

PART V

Trustees' expenses

31.—(1) A trustee—

- (a) is entitled to be reimbursed from the trust funds, or
- (b) may pay out of the trust funds,

expenses properly incurred by him when acting on behalf of the trust.

(2) This section applies to a trustee who has been authorised under a power conferred by Part IV or any other statutory provision, or by the trust instrument—

- (a) to exercise functions as an agent of the trustees, or
- (b) to act as a nominee or custodian,

as it applies to any other trustee.

Remuneration and expenses of agents, nominees and custodians

32.—(1) This section applies if, under a power conferred by Part IV or any other statutory provision, or by the trust instrument, a person other than a trustee has been—

- (a) authorised to exercise functions as an agent of the trustees, or
- (b) appointed to act as a nominee or custodian.

(2) The trustees may remunerate the agent, nominee or custodian out of the trust funds for services if—

- (a) he is engaged on terms entitling him to be remunerated for those services, and
- (b) the amount does not exceed such remuneration as is reasonable in the circumstances for the provision of those services by him to or on behalf of that trust.

(3) The trustees may reimburse the agent, nominee or custodian out of the trust funds for any expenses properly incurred by him in exercising functions as an agent, nominee or custodian.

Application

33.—(1) Subject to subsection (2), sections 28, 29, 31 and 32 apply in relation to services provided to or on behalf of, or (as the case may be) expenses incurred on or after their commencement on behalf of, trusts whenever created.

(2) Nothing in section 28 or 29 is to be treated as affecting the operation of—

- (a) Article 8 of the Wills and Administration Proceedings (Northern Ireland) Order 1994 (NI 13), or
- (b) section 30(3) of the Administration of Estates Act (Northern Ireland) 1955 (c.24),

in relation to any death occurring before the commencement of section 28 or (as the case may be) section 29.

PART VI

PART VI

APPOINTMENT AND RETIREMENT OF TRUSTEES

Appointment or retirement of trustee at instance of beneficiaries

34.—(1) This section applies in the case of a trust where—

- (a) there is no person nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; and
- (b) the beneficiaries under the trust are of full age and capacity and (taken together) are absolutely entitled to the property subject to the trust.

(2) The beneficiaries may give a direction or directions of either or both of the following descriptions—

- (a) a written direction to a trustee or trustees to retire from the trust; and
- (b) a written direction to the trustees or trustee for the time being (or, if there are none, to the personal representative of the last person who was a trustee) to appoint by writing to be a trustee or trustees the person or persons specified in the direction.

(3) Where—

- (a) a trustee has been given a direction under subsection (2)(a);
- (b) reasonable arrangements have been made for the protection of any rights of his in connection with the trust;
- (c) after he has retired there will be either a trust corporation or at least two persons to act as trustees to perform the trust; and
- (d) either another person is to be appointed to be a new trustee on his retirement (whether in compliance with a direction under subsection (2)(b) or otherwise) or the continuing trustees by deed consent to his retirement,

he shall make a deed declaring his retirement and shall be deemed to have retired and be discharged from the trust.

(4) Where a trustee retires under subsection (3) he and the continuing trustees (together with any new trustee) shall (subject to any arrangements for the protection of his rights) do anything necessary to vest the trust property in the continuing trustees (or the continuing and new trustees).

Appointment of substitute for incapable trustee

35.—(1) This section applies where—

- (a) a trustee is incapable by reason of mental disorder (within the meaning of the Mental Health Order) of exercising his functions as trustee;
- (b) there is no person who is both entitled and willing and able to appoint a trustee in place of him under section 35(1) of the Trustee Act (Northern Ireland) 1958 (c.23); and
- (c) the beneficiaries under the trust are of full age and capacity and (taken together) are absolutely entitled to the property subject to the trust.

(2) The beneficiaries may give to—

PART VI

- (a) a controller appointed for the trustee under Article 101 of the Mental Health Order;
 - (b) an attorney acting for the trustee under the authority of a power of attorney created by an instrument which is registered under Article 8 of the Enduring Powers of Attorney (Northern Ireland) Order 1987 (NI 16); or
 - (c) a person authorised for the purpose by the High Court under Part VIII of the Mental Health Order,
- a written direction to appoint by writing the person or persons specified in the direction to be a trustee or trustees in place of the incapable trustee.

(3) In this section “the Mental Health Order” means the Mental Health (Northern Ireland) Order 1986 (NI 4).

Provisions supplementary to sections 34 and 35

36.—(1) For the purposes of sections 34 and 35 a direction is given by beneficiaries if—

- (a) a single direction is jointly given by all of them; or
 - (b) (subject to subsection (2)) a direction is given by each of them (whether solely or jointly with one or more, but not all, of the others),
- and none of them by writing withdraws the direction given by him before it has been complied with.

(2) Where more than one direction is given each must specify for appointment or retirement the same person or persons.

(3) Subsection (7) of section 35 of the Trustee Act (Northern Ireland) 1958 (c.23) (powers of trustees appointed under that section) applies to a trustee appointed under section 34 or 35 as if he were appointed under that section.

(4) Sections 34 and 35 do not apply in relation to a trust created by a disposition in so far as provision that they do not apply is made by the disposition.

(5) Sections 34 and 35 do not apply in relation to a trust created before the commencement of those sections by a disposition in so far as provision to the effect that they do not apply is made by a deed executed—

- (a) in a case in which the trust was created by one person and he is of full capacity, by that person; or
- (b) in a case in which the trust was created by more than one person, by such of the persons who created the trust as are alive and of full capacity.

(6) A deed executed for the purposes of subsection (5) is irrevocable.

(7) Where a deed is executed for the purposes of subsection (5)—

- (a) it does not affect anything done before its execution to comply with a direction under section 34 or 35; but
- (b) a direction under section 34 or 35 which has been given but not complied with before its execution shall cease to have effect.

PART VII

MISCELLANEOUS AND SUPPLEMENTARY

*Power to insure***Power to insure**

37.—(1) For section 19 of the Trustee Act (Northern Ireland) 1958 (c.23) (power to insure) substitute—

“Power to insure

19. A trustee may—

- (a) insure any property which is subject to the trust against risks of loss or damage due to any event, and
- (b) pay the premiums out of any income or capital funds of the trust.”

(2) In section 20(1) of the Trustee Act (Northern Ireland) 1958 (c.23) (application of insurance money) omit "whether by fire or otherwise".

(3) The amendments made by this section apply in relation to trusts whether created before or after its commencement.

*Special cases***Personal representatives**

38.—(1) Subject to the following provisions of this section, this Act applies in relation to a personal representative administering an estate according to the law as it applies to a trustee carrying out a trust for beneficiaries.

(2) For this purpose this Act is to be read with the appropriate modifications and in particular—

- (a) references to the trust instrument are to be read as references to the will,
- (b) references to a beneficiary or to beneficiaries, apart from the reference to a beneficiary in section 8(1)(b), are to be read as references to a person or the persons interested in the due administration of the estate;
- (c) the reference to a beneficiary in section 8(1)(b) is to be read as a reference to a person who under the will of the deceased or under the law relating to intestacy is beneficially interested in the estate.

(3) Remuneration to which a personal representative is entitled under section 28 or 29 is to be treated as an administration expense for the purposes of—

- (a) section 30(3) of the Administration of Estates Act (Northern Ireland) 1955 (c.24) (order in which estate to be paid out), and
- (b) any provision giving reasonable administration expenses priority over the preferential debts listed in Schedule 4 to the Insolvency (Northern Ireland) Order 1989 (NI 19).

(4) Nothing in subsection (3) is to be treated as affecting the operation of the provisions mentioned in paragraphs (a) and (b) of that subsection in relation to any death occurring before the commencement of this section.

PART VII

Pension schemes

39.—(1) In this section "pension scheme" means an occupational pension scheme (within the meaning of the Pension Schemes (Northern Ireland) Act 1993 (c.49)) established under a trust and subject to the law of Northern Ireland.

(2) Part I does not apply in so far as it imposes a duty of care in relation to—

- (a) the functions described in paragraphs 1 and 2 of Schedule 1, or
- (b) the functions described in paragraph 3 of that Schedule to the extent that they relate to trustees—
 - (i) authorising a person to exercise their functions with respect to investment, or
 - (ii) appointing a person to act as their nominee or custodian.

(3) Nothing in Part II or III applies to the trustees of any pension scheme.

(4) Part IV applies to the trustees of a pension scheme subject to the restrictions in subsections (5) to (8).

(5) The trustees of a pension scheme may not under Part IV authorise any person to exercise any functions relating to investment as their agent.

(6) The trustees of a pension scheme may not under Part IV authorise a person who is—

- (a) an employer in relation to the scheme, or
- (b) an associate of or connected with such an employer,

to exercise any of their functions as their agent.

(7) For the purposes of subsection (6)—

- (a) "employer", in relation to a scheme, has the same meaning as in Part II of the Pensions (Northern Ireland) Order 1995 (NI 22);
- (b) Articles 4 and 7 of the Insolvency (Northern Ireland) Order 1989 (NI 19) apply for the purpose of determining whether a person is an associate of or connected with an employer.

(8) Sections 16 to 20 (powers to appoint nominees and custodians) do not apply to the trustees of a pension scheme.

Authorised unit trusts

40.—(1) Parts II to IV do not apply to trustees of authorised unit trusts.

(2) "Authorised unit trust" means a unit trust scheme in the case of which an order under section 78 of the Financial Services Act 1986 (c.60) or section 243 of the Financial Services and Markets Act 2000 (c.8) is in force.

Common investment schemes for charities

41. Parts II to IV do not apply to trustees managing a fund under a common investment scheme made under section 25 of the Charities Act (Northern Ireland) 1964 (c.33), other than such a fund the trusts of which provide that property is not to be transferred to the fund except by or on behalf of a charity the trustees of which are the trustees appointed to manage the fund.

The Crown

42. This Act binds the Crown to the full extent authorised or permitted by the constitutional laws of Northern Ireland.

*Supplementary***Interpretation**

43.—(1) In this Act—

“asset” includes any right or interest;

“asset management function” has the meaning given in section 15(5);

“charitable trust” means a trust under which property is held for charitable purposes and “charitable purposes” has the same meaning as in the Charities Act (Northern Ireland) 1964 (c.33);

“custodian” has the meaning given by section 17(2);

“the duty of care” has the meaning given by section 1(2);

“the general power of investment” has the meaning given by section 3(2);

“personal representative” has the same meaning as in the Trustee Act (Northern Ireland) 1958 (c.23);

“settled land” has the same meaning as in the Settled Land Act 1882 (c.38);

“statutory provision” has the same meaning as in section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c.33);

“trust corporation” has the same meaning as in the Trustee Act (Northern Ireland) 1958 (c.23);

“trust funds” means income or capital funds of the trust.

(2) For the purposes of this Act, a statutory provision is not to be regarded as being, or as being part of, a trust instrument.

Amendments, transitional and saving provisions and repeals

44.—(1) The statutory provisions set out in Schedule 2 shall have effect subject to the minor and consequential amendments specified in that Schedule.

(2) The Department of Finance and Personnel may by order make such amendments of any statutory provision as appears to it appropriate in consequence of or in connection with Part II or III.

(3) An order under subsection (2) —

(a) may contain such transitional provisions and savings as the Department thinks fit, and

(b) shall be subject to negative resolution.

(4) Schedule 3 (transitional provisions and savings) shall have effect.

(5) The statutory provisions set out in the first column of Schedule 4 are repealed to the extent specified in the second column of that Schedule.

PART VII

Commencement

45.—(1) Sections 1 to 44 of, and the Schedules to, this Act shall come into operation on such day or days as the Department of Finance and Personnel may by order appoint.

(2) An order under subsection (1) may contain such transitional provisions and savings as the Department of Finance and Personnel considers appropriate in connection with the order.

Short title

46. This Act may be cited as the Trustee Act (Northern Ireland) 2001.

SCHEDULES

SCHEDULE 1

Section 2

APPLICATION OF DUTY OF CARE

Investment

1. The duty of care applies to a trustee—
 - (a) when exercising the general power of investment or any other power of investment, however conferred;
 - (b) when carrying out a duty to which he is subject under section 4 or 5 (duties relating to the exercise of a power of investment or to the review of investments).

Acquisition of land

2. The duty of care applies to a trustee—
 - (a) when exercising the power under section 8 to acquire land;
 - (b) when exercising any other power to acquire land, however conferred;
 - (c) when exercising any power in relation to land acquired under a power mentioned in sub-paragraph (a) or (b).

Agents, nominees and custodians

- 3.—(1) The duty of care applies to a trustee—
 - (a) when entering into arrangements under which a person is authorised under section 11 to exercise functions as an agent;
 - (b) when entering into arrangements under which a person is appointed under section 16 to act as a nominee;
 - (c) when entering into arrangements under which a person is appointed under section 17 or 18 to act as a custodian;
 - (d) when entering into arrangements under which, under any other power, however conferred, a person is authorised to exercise functions as an agent or is appointed to act as a nominee or custodian;
 - (e) when carrying out his duties under section 22 (review of agent, nominee or custodian, etc.).
- (2) For the purposes of sub-paragraph (1), entering into arrangements under which a person is authorised to exercise functions or is appointed to act as a nominee or custodian includes, in particular—
 - (a) selecting the person who is to act,
 - (b) determining any terms on which he is to act, and
 - (c) if the person is being authorised to exercise asset management functions, the preparation of a policy statement under section 15.

SCH. 1

Compounding of liabilities

4. The duty of care applies to a trustee—
- (a) when exercising the power under section 15 of the Trustee Act (Northern Ireland) 1958 (c.23) to do any of the things referred to in that section;
 - (b) when exercising any corresponding power, however conferred.

Insurance

5. The duty of care applies to a trustee—
- (a) when exercising the power under section 19 of the Trustee Act (Northern Ireland) 1958 to insure property;
 - (b) when exercising any corresponding power, however conferred.

Reversionary interests, valuations and audit

6. The duty of care applies to a trustee—
- (a) when exercising the power under section 23(1) or (3) of the Trustee Act (Northern Ireland) 1958 to do any of the things referred to there;
 - (b) when exercising any corresponding power, however conferred.

Exclusion of duty of care

7. The duty of care does not apply if or in so far as it appears from the trust instrument that the duty is not meant to apply.

Section 44

SCHEDULE 2

MINOR AND CONSEQUENTIAL AMENDMENTS

The Settled Land Act 1882 (c.38)

1. In section 21 (investment or application of capital money), for paragraph (i) substitute—

"(i) In investment in securities either under the general power of investment in section 3 of the Trustee Act (Northern Ireland) 2001 or under a power to invest conferred on the trustees of the settlement by the settlement;"

- 2.—(1) In section 22 (regulations respecting investment, devolution and income of securities etc.), for subsection (2) substitute—

"(2) Subject to Part IV of the Trustee Act (Northern Ireland) 2001, to section 22A of this Act and to the following provisions of this section—

- (a) the investment or other application by the trustees shall be made according to the discretion of the trustees, but subject to any consent required or direction given by the settlement with respect to the investment or other application by the trustees of trust money of the settlement, and
- (b) any investment shall be in the names or under the control of the trustees."

- (2) For subsection (4) of that section substitute—

"(4) The trustees, in exercising their power to invest or apply capital money, shall—

- (a) so far as practicable, consult the tenant for life; and
- (b) so far as consistent with the general interest of the settlement, give effect to his wishes.

(4A) Any investment or other application of capital money under the direction of the court shall not during the subsistence of the beneficial interest of the tenant for life be altered without his consent.

(4B) The trustees may not under section 11 of the Trustee Act (Northern Ireland) 2001 authorise a person to exercise their functions with respect to the investment or application of capital money on terms that prevent them from complying with subsection (4) of this section.

(4C) A person who is authorised under section 11 of the Trustee Act (Northern Ireland) 2001 to exercise any of their functions with respect to the investment or application of capital money is not subject to subsection (4) of this section."

(3) Nothing in this paragraph affects the operation of section 22 in relation to directions of the tenant for life given, but not acted upon by the trustees, before the commencement of this paragraph.

3. After section 22 insert—

"Power to accept charge as security for part payment for land sold

22A.—(1) Where—

- (a) land subject to the settlement is sold by the trustees or the tenant for life for an estate in fee simple or a term having at least two hundred years to run, and
- (b) the proceeds of sale are liable to be invested,

the trustees, or the tenant for life on behalf of the trustees, may contract that the payment of any part, not exceeding two-thirds, of the purchase money shall be secured by a mortgage of the land sold, with or without the security of any other property.

(2) If any buildings are comprised in the property secured by the mortgage, the mortgage must contain a covenant by the mortgagor to keep them insured for their full value against loss or damage due to any event.

(3) A person exercising the power under subsection (1) of this section—

- (a) is not required to comply with section 5 of the Trustee Act (Northern Ireland) 2001, and
- (b) is not liable for any loss incurred merely because the security is insufficient at the date of the charge.

(4) The power under subsection (1) of this section is exercisable subject to the consent of any person whose consent to a change of investment is required by the instrument, if any, creating the trust.

SCH. 2

(5) Where the sale referred to in subsection (1) of this section is made under the order of the court, the power under that subsection applies only if and as far as the court may by order direct."

4. Omit section 41 (protection of each trustee individually).

5. Omit section 43 (trustees' reimbursements).

6. Renumber section 53 (tenant for life deemed to be in the position and to have the duties and liabilities of a trustee, etc.) as subsection (1) of that section and after that subsection insert—

“(1A) The following provisions apply to the tenant for life as they apply to the trustees of the settlement—

(a) sections 11, 13 to 15 and 21 to 23 of the Trustee Act (Northern Ireland) 2001 (power to employ agents subject to certain restrictions),

(b) section 32 of that Act (remuneration and expenses of agents etc.),

(c) section 19 of the Trustee Act (Northern Ireland) 1958 (power to insure), and

(d) in so far as they relate to the provisions mentioned in paragraphs (a) and (c), Part I of, and Schedule 1 to, the Trustee Act (Northern Ireland) 2001 (the duty of care)."

The Trustee Act (Northern Ireland) 1958 (c.23)

7. Omit Part I (investments).

8. In section 14 (power of trustees to give receipts) in subsection (1) after “securities” insert “investments”.

9. In section 15 (power to compound liabilities) in subsection (1) for “in good faith” substitute “if he has or they have discharged the duty of care set out in section 1(1) of the Trustee Act (Northern Ireland) 2001”.

10. Omit section 22 (deposit of documents for safe keeping).

11. In section 23 (reversionary interests, valuations, and audit)—

(a) in subsection (1) for “in good faith” substitute “if they have discharged the duty of care set out in section 1(1) of the Trustee Act (Northern Ireland) 2001”; and

(b) in subsection (3) omit “in good faith” and at the end insert “if the trustees have discharged the duty of care set out in section 1(1) of the Trustee Act (Northern Ireland) 2001”.

12. Omit section 24 (power to employ agents).

13. Omit section 31 (implied indemnity of trustees).

14. In section 32(3) (power to invest income during minority) for “in the way of compound interest by investing the same and the resulting income thereof” substitute “by investing it, and any profits from so investing it”.

15. In section 35(6) for the words before paragraph (a) substitute—

“(6) Where, in the case of any trust, there are not more than three trustees—”.

16. In sections 36(1)(c) and 38(1) for “individuals” substitute “persons”.

17. In section 39(2) for “the statutory power” substitute “section 38 or section 34 of the Trustee Act (Northern Ireland) 2001”.

18. Section 57 shall (notwithstanding the repeal by this Act of the Trustee (Amendment) Act (Northern Ireland) 1962 (c.10)) continue to have effect—

- (a) with the substitution for the words “on trusts” of the words “on any trusts or settlements”; and
- (b) with the insertion after the words “the trusts” (wherever occurring) of the words “or settlements”.

19. In section 67 for the definition of “banker” substitute—

““bank” means—

- (a) an institution authorised under the Banking Act 1987 or a municipal bank within the meaning of that Act;
- (b) a European deposit-taker (within the meaning of Article 82(3) of the Banking Coordination (Second Council Directive) Regulations 1992);
- (c) the National Savings Bank;”.

The Trustee Investments Act 1961 (c. 62)

20. In section 17 for subsection (2) substitute—

“(2) Section 11 of this Act extends to Northern Ireland, but, except as aforesaid and except so far as any other provisions of this Act apply by virtue of Northern Ireland legislation to trusts the execution of which is governed by the law of Northern Ireland, this Act does not apply to such trusts.”.

The Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24)

21. In section 31 for paragraph (c) substitute—

“(c) in any investments in which trustees may invest under—

- (i) the general power of investment in section 3 of the Trustee Act (Northern Ireland) 2001 (as restricted by sections 4 and 5 of that Act); or
- (ii) section 8(1)(a) of that Act (land);”.

The Local Government Act (Northern Ireland) 1972 (c. 9)

22.—(1) In section 56(3) for the words from “in a security or securities” to the end substitute “—

- (a) if regulations so provide, in such manner as may be prescribed;
- (b) in any other case, in any investments in which trustees may invest under—
 - (i) the general power of investment in section 3 of the Trustee Act (Northern Ireland) 2001 (as restricted by sections 4 and 5 of that Act); or
 - (ii) section 8(1)(a) of that Act (land).”.

(2) After section 56(3) insert—

SCH. 2

“(3A) Any money invested in accordance with subsection (3)(b) immediately before the coming into operation of regulations under subsection (3)(a) shall, for the period of 6 months from the coming into operation of those regulations, be taken to have been invested in accordance with those regulations.”.

The Solicitors (Northern Ireland) Order 1976 (NI 12)

23. In Article 3(3) for the definition of “trustee securities” substitute—
 ““trustee investments” means investments in which trustees may invest under—
- (i) the general power of investment in section 3 of the Trustee Act (Northern Ireland) 2001 (as restricted by sections 4 and 5 of that Act); or
 - (ii) section 8(1)(a) of that Act (land).”.

24. In Article 33(1)(c) for “securities” substitute “investments”.

25. In Schedule 2, in paragraph 3 for “securities” substitute “investments”.

The Housing (Northern Ireland) Order 1981 (NI 3)

26. In Article 21(9) for the words from “in any investment” to the end substitute “in any investments in which trustees may invest under—

- (a) the general power of investment in section 3 of the Trustee Act (Northern Ireland) 2001 (as restricted by sections 4 and 5 of that Act); or
- (b) section 8(1)(a) of that Act (land).”.

The Agricultural Marketing (Northern Ireland) Order 1982 (NI 12)

27. In Article 18, omit paragraph (a).

The Credit Unions (Northern Ireland) Order 1985 (NI 12)

28. In Article 26(2) for the words from “Part I or Part II” to the end substitute “regulations under Article 33(1)”.

29. In Article 33(5), omit sub-paragraph (b).

Section 44.

SCHEDULE 3

TRANSITIONAL PROVISIONS AND SAVINGS

Part II of this Act

1. Nothing in Part II affects any power of a court to enlarge the investment powers of trustees.

Part IV of this Act

2.—(1) Sub-paragraph (2) applies if, immediately before the day on which Part IV of this Act comes into operation, a bank holds any bearer securities deposited with it under section 7(1) of the 1958 Act (investment in bearer securities).

(2) On and after the day on which Part IV comes into operation, the bank shall be treated as if it had been appointed as custodian of the securities under section 18.

3. The repeal of section 8 of the 1958 Act (loans and investments by trustees not chargeable as breaches of trust) does not affect the operation of that section in relation to loans or investments made before the coming into operation of that repeal.

4. The repeal of section 9 of the 1958 Act (liability for loss by reason of improper investment) does not affect the operation of that section in relation to any advance of trust money made before the coming into operation of that repeal.

5.—(1) Sub-paragraph (2) applies if, immediately before the day on which Part IV of this Act comes into operation, a bank holds any documents deposited with it under section 22 of the 1958 Act (deposit of documents for safe custody).

(2) On and after the day on which Part IV comes into operation, the bank shall be treated as if it had been appointed as custodian of the documents under section 17.

6.—(1) Sub-paragraph (2) applies if, immediately before the day on which Part IV of this Act comes into operation, a person has been appointed to act as or be an agent under section 24(1) or (3) of the 1958 Act (general power to employ agents).

(2) On and after the day on which Part IV comes into operation, the agent shall be treated as if he had been authorised to exercise functions as an agent under section 11 (and, if appropriate, as if he had also been appointed under that Part to act as a custodian or nominee).

7. The repeal of section 24(2) of the 1958 Act (power to employ agents in respect of property outside the United Kingdom) does not affect the operation after the commencement of the repeal of an appointment made before that commencement.

General

8. A provision of this Act does not affect the validity or legality of anything done before it comes into operation.

9. In this Schedule “the 1958 Act” means the Trustee Act (Northern Ireland) 1958 (c. 23).

SCHEDULE 4

Section 44.

REPEALS

Short Title	Extent of repeal
The Settled Land Act 1882 (c.38)	Section 41. Section 43.

SCH. 4

Short Title	Extent of repeal
The Administration of Estates Act (Northern Ireland) 1955 (c.24)	In section 38(2) the words from “which may be retained” to the end.
The Trustee Act (Northern Ireland) 1958 (c.23)	Part I. In section 20(1) the words “whether by fire or otherwise”. Section 22. In section 23 (3) the words “in good faith” Section 24. Section 31.
The Trustee (Amendment) Act (Northern Ireland) 1962 (c.10)	The whole Act.
The Agricultural Marketing (Northern Ireland) Order 1982 (NI 12)	Article 18(a).
The Credit Unions (Northern Ireland) Order 1985 (NI 12)	In Article 33(5), sub-paragraph (b) and the word “or” immediately before it.
The Electricity (Northern Ireland) Order 1992 (NI 1)	Article 85.
The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1995 (NI 5)	Article 1(3). Article 5.

© Crown copyright 2001

Printed and published in the UK by the Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office, being the Government Printer for Northern Ireland and the officer appointed to print the Acts of the Northern Ireland Assembly

Published by The Stationery Office Limited

and available from:

The Publications Centre

(Mail, telephone and fax orders only)

PO Box 276, London SW8 5DT

General enquiries 0870 600 55 22

Order through the Parliamentary Hotline *Lo-Call* 0845 7 023474

Fax orders 0870 600 5533

Email orders bookorders@theso.co.uk

The Stationery Office Bookshops

123 Kingsway, London WC2B 6PQ

020 7242 6393 Fax 020 7242 6394

68-69 Bull Street, Birmingham B4 6AD

0121 236 9696 Fax 0121 236 9699

33 Wine Street, Bristol BS1 2BQ

0117 926 4306 Fax 0117 929 4515

9-21 Princess Street, Manchester M60 8AS

0161 834 7201 Fax 0161 833 0634

16 Arthur Street, Belfast BT1 4GD

028 9023 8451 Fax 028 9023 5401

The Stationery Office Oriel Bookshop

18-19 High Street, Cardiff CF1 2BZ

029 2039 5548 Fax 029 2038 4347

71 Lothian Road, Edinburgh EH3 9AZ

0870 606 5566 Fax 0870 606 5588

The Parliamentary Bookshop

12 Bridge Street, Parliament Square
London SW1A 2JX

Telephone orders 020 7219 3890

General enquires 020 7219 3890

Fax orders 020 7219 3866

Accredited Agents

(See Yellow Pages)

and through good booksellers

ISBN 0-10-595021-1



9 780105 950219