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

EXPLANATORY NOTES

BACKGROUND AND POLICY OBJECTIVES

4. At present the powers and duties of trustees are governed mainly by the Trustee Act (Northern Ireland) 1958, the Trustee Investments Act 1961, the Trustee (Amendment) Act (Northern Ireland) 1962 and the common law. There is, however, scope for the documents setting up the trust to confer wider powers than the general law would allow as regards the range of assets or securities trustees may invest in and how they are permitted to carry out their various functions. Modern trust deeds invariably take advantage of this freedom. This enables "privileged" trustees operating under professionally-drafted trust deeds to avoid many of the restrictions and inconveniences of the statutory framework and facilitates the proper administration of the trust.

5. The fundamental obligation of all trustees is to act in the best interests of the trust, its present and future beneficiaries, in the exercise of their trustee functions. The investment of trust funds is central to the proper administration of the trust. However, until now the law governing the powers and duties of trustees has not kept pace with social, economic and technological developments, particularly with changes in the conduct of investment business such as the introduction of the CREST system on the London Stock Exchange. The situation is such that trustees working under trust documents that make no, or no sufficient, provision for handling trust investments have faced obstacles in the way of satisfying that fundamental obligation.

6. It is intended through this Act to enable all trustees to enjoy these wider powers on a default basis; that is to say, the powers will be available to them automatically unless the trust instrument excludes them. At the same time there will be counterbalancing protection for beneficiaries, including a new statutory duty of care.

7. The core feature of the Act is a wider power of investment to replace the present statutory power. This general power of investment is complemented by new powers to appoint agents, nominees and custodians, to purchase land, to insure trust property and to pay professional trustees. These new powers are overseen by a statutory duty of care. There are also powers to appoint or replace trustees in certain circumstances. As under the present law, the new trustee powers will apply only to the extent that the trust instrument permits.