

*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

COMMENTARY ON CLAUSES

Part I: The Duty of Care

Sections 1 and 2 form Part I of the Act. The sections create a new uniform statutory duty of care applicable to trustees when carrying out their functions under the Act or equivalent functions derived from the trust instrument or other sources. The new duty will bring certainty and consistency to the standard of competence and behaviour expected of trustees across a range of situations. It will be a safeguard for beneficiaries and so balance the wider powers given to trustees elsewhere in the Act. The duty will apply in addition to the existing fundamental duties of trustees (for example, to act in the best interests of the beneficiaries and to comply with the terms of the trust) but it will exclude any common law duty of care which might otherwise have applied. The duty is a default provision in that it may be excluded or modified by the terms of the trust. In other words, in line with the basic approach of the Act, it will not apply where the person setting up the trust (the settlor) indicates that it is not wanted.

Section 1: The duty of care

Section 1 defines the new statutory duty of care, using familiar words drawn from case law. A trustee must show such care and skill as is reasonable in the circumstances of the case, taking into account any special knowledge, experience or professional status he or she might possess or claim. So there is flexibility built in here and a higher standard may be demanded of an “expert” acting as trustee than a person of “ordinary” talents, depending on the context. In determining what constitutes reasonable care, the nature, composition and purposes of the trust will also be taken into consideration.

Section 2: Application of the duty of care

Section 2 defines the circumstances in which the new duty will apply by reference to Schedule I to the Act. In broad terms, the duty will apply when a trustee is exercising powers of investment, acquisition of land, appointment of agents, nominees and custodians, and certain powers under the Trustee Act (Northern Ireland) 1958, such as the insurance of trust property. The duty of care will not apply where it is excluded or modified by the trust instrument. Subject to

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that, it can apply to the exercise of relevant powers conferred by this legislation, other statutory provisions, the trust instrument, court orders, or other sources.