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 II: Investment

Section 7: Existing trusts and statutory powers

Section 7 provides for the application of this Part of the Act to trusts in existence at the time these provisions on investment come into force (see *section 45* – on a day to be appointed). *Section 7(1)* provides that these provisions apply to trusts created before or after its commencement. So the date of creation of the trust is not crucial and both old and young trusts can enjoy the new general power of investment. However, there are certain exceptional cases to be noted. By *section 7(2)* the rule laid down in *section 6(b)* that the general power of investment is to be subject to any restriction or exclusion imposed by the trust instrument is not to apply as regards any trust instrument made before 3 August 1961. The significance of that date is that it is when the Trustee Investments Act 1961 came into force. The effect of *section 7(2)* then is to ensure that old limitations on investment which were originally set aside on that date by the Trustee Investments Act 1961 are not now revived or reactivated to frustrate the general power of investment. On the other hand, it is not proposed to override the intentions of persons setting up trusts after that 1961 cut-off date by imposing a general power of investment against their expressed wishes. For example, a settlor may have been motivated by ethical concerns to limit the range of investments available to the trustees and those wishes, if they date from 3 August 1961 onwards, were respected by the 1961 Act in its day and should continue to be respected.

By *section 7(3)* the general power of investment is conferred where a trust instrument is drafted in such a way that the trustees have power to invest in accordance with the Trustee Investment Act 1961. It may be that the instrument says directly that the 1961 Act is to apply or maybe it uses a phrase like "such powers of investment as may for the time being be authorised by law". In either case *section 7(3)* confers the general power of investment, in effect as an automatic enlargement.

Section 7(4),*(5)* and *(6)* deal with the situation where bodies have existing powers of investment, derived from Northern Ireland legislation, based on trustee powers although they are not themselves trustees. In a sense this scenario parallels the case of the trustees just mentioned. Typically, a statute might say that a body is to have powers to invest its funds in “trustee investments” or to invest “in any securities in which a trustee is for the time being authorised to invest”. Such bodies are now to have the general power of investment, suitably modified and subject to the requirements of *sections 4* and *5* in relation to standard investment criteria and advice. Essentially, this is a safety net measure, intended to confer the general power of investment on non-trustee bodies which might well have assumed that their “trustee related” investment powers would change as trustee legislation changed. In addition *section 7(6)* gives these bodies the power to acquire land as an investment, alongside their general power of investment. Schedule 2 to the Act contains specific amendments of Northern Ireland legislation which has been identified as being of this nature.