



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]

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”.

Modifications etc. (not altering text)

- C1 [S. 1\(1\)](#) applied (18.2.2011) by [Charities Act \(Northern Ireland\) 2008 \(c. 12\)](#), [ss. 89\(2\)](#), [185\(1\)](#); [S.R. 2011/11](#), [art. 2](#), [Sch.](#)

Changes to legislation: Trustee Act (Northern Ireland) 2001 is up to date with all changes known to be in force on or before 31 August 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

C2 S. 1(1) applied (18.2.2011) by [Charities Act \(Northern Ireland\) 2008 \(c. 12\), ss. 93\(5\), 185\(1\); S.R. 2011/11, art. 2, Sch.](#)

Application of duty of care

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

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.

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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.

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(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.

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.

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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.