

*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 IV: Agents, Nominees and Custodians

Section 23: Liability for agents, nominees and custodians etc.

Section 23 governs the liability of a trustee for the acts or defaults of the agent, nominee or custodian, or any permitted substitute. This replaces the present unsatisfactory state of affairs under the Trustee Act (Northern Ireland) 1958 where different rules apply depending on the nature of the delegation. The basic approach of the new provision is that the trustee will not be liable unless he has failed to comply with the duty of care when entering into the initial arrangements or when reviewing arrangements. This includes the selection of the person involved, the determination of terms of appointment and the preparation of any policy statement. Similarly, in the case of liability for the acts of a substitute the test is failure to live up to the duty of care in agreeing to the term allowing the appointment of a substitute in the first place or carrying out the duty to keep the situation under review.