

*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

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## EXPLANATORY NOTES

### COMMENTARY ON CLAUSES

#### Part V: Remuneration

##### *Section 28: Trustee's entitlement to payment under trust instrument*

*Section 28* introduces new rules for the construction of express professional charging clauses in favour of trust corporations and trustees acting in a professional capacity. *Section 28(5)* explains that to satisfy the condition that a trustee (other than a trust corporation) is acting in a professional capacity, there must be a close nexus between the profession or business of the trustee and the services actually provided as trustee.

Firstly, a difficulty about remuneration for “ordinary” services that do not demand any special professional expertise is removed. Unless the trust instrument states otherwise, by *section 28(2)*, such a clause is taken to mean that the trustee is entitled to payment even for services that could have been provided by a lay trustee (as defined in *section 28(6)*). This applies also to a trust corporation of a charitable trust but for other charitable trustees to enjoy this benefit they must not be sole trustees and the majority of their fellow trustees must agree that the right of payment should apply. Secondly, two problems arising in the administration of estates are resolved. Payment to trustees is to be treated as remuneration for services and not as a gift for the purposes of Article 8 of the Wills and Administration Proceedings (Northern Ireland) Order 1994: that means that trustees can be paid for work done in connection with trusts set up in a will even where they witness the will in question, without the risk that it will be said that as a witness is receiving a gift, the purported “gift” is rendered void. The same approach applies to *section 30(3)* of the Administration of Estates Act (Northern Ireland) 1955, which is concerned with determining the priority of payments due from the deceased's estate.