

INHERITANCE AND TRUSTEES' POWERS ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 8: power to apply income for maintenance

38. **Section 8** amends the statutory power of trustees to use the income of trust funds for the maintenance, education or benefit of a beneficiary who is under 18 and has an interest in those funds. For example, if a trust fund invested in shares is held for the benefit of such of W's young children X, Y and Z as they reach the age of 18, in equal shares, the trustees may use the power under section 31 to pay a maximum of one-third of the income (the dividends on the shares) for the maintenance, education or benefit of each child.
39. Paragraph (a) concerns the assessment of the amount of income to be used under the power. Section 31(1)(i) of the Trustee Act 1925 stated that the power is exercisable in respect of the trust property in which the beneficiary in question has an interest, and that it extends to "the whole or such part, if any, of the income of that property as may, in all the circumstances, be reasonable". Paragraph (a) amends that condition to make it clear that the amount of the income used is a matter for the trustees' discretion, and is not limited by an objective standard of reasonableness. The general law on trustees' decision-making applies; the decision must be taken in good faith after due consideration of the circumstances.
40. Paragraph (b) removes the proviso to section 31(1) of the Trustee Act 1925. This proviso listed factors to which the trustees are to have regard in exercising their discretion – the beneficiary's age and requirements, and the circumstances generally – and imposed a specific restriction on the amount of income which may be paid out. That restriction applied where the trustees had notice that the income of one or more other trust funds was also applicable for the maintenance, education or benefit of the beneficiary in question, and limited the payments to a proportionate part of the income, so far as practicable (unless the whole of the income was paid out, or the court directed otherwise). The removal of this proviso leaves trustees free to pay out as much of the income as they think fit; the requirement of the general law to consider all relevant factors before exercising their discretion is unaffected.
41. These amendments apply in accordance with section 10.