INHERITANCE AND TRUSTEES' POWERS ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 9: power of advancement

42. Section 9 amends section 32 of the Trustee Act 1925, which confers on trustees the power to make payments of capital for the advancement or benefit of a beneficiary who has a requisite type of entitlement to the capital of the trust fund. This is known as the statutory power of advancement. For instance, the trustees of the trust described at paragraph 38 above could use this power to make payments of capital for the benefit of X, Y and Z. Each of those beneficiaries is contingently entitled to one-third of the capital of the trust fund on reaching the age of 18 (see paragraph 33 above). The trustees could sell some of the shares which represent the capital of the trust fund and use this statutory power to make payments from the proceeds for the benefit of X, Y and Z; for example, to pay for an educational trip.

43. The terms of section 32 limited this power of advancement to a maximum of one half of the beneficiary's prospective share. Subsection (3)(b) of section 9 removes that one half limit, so that the power enables trustees in the exercise of their discretion to pay out up to the whole of the capital of a beneficiary's prospective share for his or her advancement or benefit.

44. Subsection (2) amends the statutory power of advancement to make it clear that the trustees are able not only to pay out cash in the exercise of the statutory power of advancement but also to transfer or apply property. For example, the trustees might wish to create another trust in favour of one of the beneficiaries and his or her family; they could transfer the shares direct to the trustees of the new trust. This clarifies and extends the effect of existing case law (Re Collard's Will Trusts [1961] Ch 293).

45. Subsection (3)(a) amends section 32(1)(a) of the Trustee Act 1925 to make it clear that advancements under the power, whether in money or other property, may not exceed the beneficiary's prospective share of the capital of the trust fund.

46. Subsection (4) carries this reform through to section 32(1)(b) of the Trustee Act 1925 to require that any non-cash assets advanced under the power are brought into account, in the same way as a cash payment, as part of the beneficiary's share if and when he or she becomes absolutely entitled to it. Paragraph (c), which makes the exercise of the power of advancement subject to the consent of other trust beneficiaries in certain circumstances, is also amended to apply equally to cash and non-cash advancements: subsection (5).

47. These amendments apply in accordance with section 10.

48. Subsection (6) makes it clear that if trustees have exercised their power of advancement under section 32(1) of the Trustee Act 1925, the money or other property advanced to a beneficiary may be treated as a percentage of the overall value of the trust (as

opposed to strictly according to their monetary value) when it is brought into account. Trustees may exercise their choice to treat advancements in this way either expressly, for example in writing in the trust deed itself or in an implied way, for example through the act of dividing up the trust fund amongst the beneficiaries.