



**Law
Commission**

Reforming the law

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Trustee Exemption: Law Commission recommends Regulation not Legislation

The Law Commission today publishes its Report on Trustee Exemption Clauses.

The Report recommends that the trust industry adopt a non-statutory rule of practice and that this should be enforced by the regulatory and professional bodies who govern and influence trustees and the drafters of trusts. The Law Society and the Institute of Chartered Accountants in England and Wales have both already moved towards introducing regulation for their members. The Society of Trust and Estate Practitioners is today launching a version of the rule that will bind its members in England and Wales.

The recommended rule of practice governs the disclosure and explanation of clauses in trust instruments which have the effect of limiting or excluding liability for negligence. The rule requires paid trustees to take reasonable steps to ensure that settlors understand the meaning and effect of such clauses before including them in trust instruments. The Report recommends that the drafters of trusts should also be subject to the rule.

Stuart Bridge, the Commissioner leading the project, says:

The recommendations in our Report have been heavily influenced by the comments we received from a large number of consultees. We have settled on a non-statutory approach to regulation, which we believe represents a proportionate response to the problems presented by the current use of trustee exemption clauses. We are confident that our recommended rule of practice will prevent the most serious abuse of such clauses while allowing trusts to continue to operate flexibly for the benefit of beneficiaries.

The Law Commission's approach has been welcomed by the Better Regulation Executive who say:

With complex and important issues such as trustee exemption clauses it is all too easy to play it safe and legislate. We are glad to see that the Law Commission has listened to people on all sides of the debate and developed a proportionate risk-based approach to the issue.

[Notes for Editors over]

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1. The Law Commission is a non-political independent body, set up by Parliament in 1965 to keep all the law of England and Wales under review, and to recommend reform where it is needed.
2. A trustee exemption clause is a provision in a trust instrument which excludes or restricts a trustee's liability for breach of trust, either by expressly excluding liability or by modifying the trustee's powers and duties. Case law has established that such clauses are able to relieve the trustee from liability for anything except dishonest conduct.
3. The Law Commission published a consultation paper on Trustee Exemption Clauses in January 2003 which provoked a debate on the appropriateness of the use of exemption provisions in trusts and the possible consequences of statutory regulation.
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