

# Law Commission Consultation on 1925 and s32 Trustee Act 1925

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**The Law Commission has published a consultation paper on s31 and s32 Trustee Act 1925.**



The new consultation paper proposes that the s32 power should be extended for all trusts to the whole, rather than one-half, of a beneficiary's share in a trust fund.

The consultation paper also makes certain proposals in relation to s31 as follows:

1. The second part of the proviso to section 31(1) (the requirement that trustees should only pay a proportionate part of the income where they have notice that the income of another fund is applicable for the same purposes) should be removed.

2. It asks consultees whether further changes should be made to the power to pay or apply income for a beneficiary's maintenance, education or benefit contained in section 31(1) and in particular whether it would be beneficial to make one or both of the following amendments:

- (1) delete the first part of the proviso to section 31(1) (the requirement for the trustees to have regard to the age of the beneficiary and his requirements and generally to the circumstances of the case);
- (2) redraft section 31(1)(i) so as to remove the words "as may, in all the circumstances, be reasonable" and substitute an unfettered discretion.

3. The reforms to sections 31 and 32 should apply (subject to section 69(2) of the Trustee Act 1925) in relation to interests arising under instruments which take effect after the commencement of the implementing legislation. This includes:

- (1) interests arising under wills that take effect on the death of the testator after commencement; and
- (2) interests arising by the exercise, after commencement, of general powers of appointment, special powers of appointment and powers of advancement contained in instruments which had already taken effect before commencement.

The consultation closes on 21 July 2011.

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