

By-Pass Trust



JHAY0326

Information and completion notes

Note when completing this form it is recommended that you refer to the margin notes.

Please ensure that the boxes on pages 3, 4, 5 and 6 are completed as appropriate.

Once signed, the Trust form must be returned to James Hay Partnership for noting and return. Please complete this form in BLOCK CAPITALS and black ink and return it to: James Hay Partnership, Dunn's House, St Paul's Road, Salisbury, SP2 7BF. When returned to you, it should be kept with the policy document and other Trust papers.

The Settlor is the beneficial owner of (that is the assured or proposer under) the Policy and wishes to declare Trusts on which the Policy is held, and to appoint him/herself to be a Trustee, and the "Non-Professional Trustee(s) and the Professional Trustee" (such parties together referred to as "the Trustees") to be additional Trustees of the policy.

This form is intended for use with the James Hay Partnership SIPP products. The form and the notes in relation to its use are for general guidance only and are based on current understanding of United Kingdom law and HM Revenue & Customs practice. No responsibility is taken by James Hay Partnership or any associated company, for the interpretation of the law (including tax legislation), future changes in the law or revenue practice. Tax liabilities and the ability of the Settlor in law to set up a trust are dependent on individual circumstances and no assurance can be given that the use of this form is suitable for your circumstances. We strongly recommend that you seek separate legal and taxation advice prior to signature and during the life of the Trust.

HMRC Trust Registration Service

New or existing trusts are required to register if they generate a tax consequence of any kind. This could include income tax, capital gains tax, inheritance tax, stamp duty land tax and stamp duty reserve tax.

Also where a trust is already registered details need to be updated any year there is a tax consequence.

Bare Trusts do not need to register.

Operative clauses

1 Definitions

The terms defined in the Schedule annexed to this deed (the 'Schedule') shall, when used in this deed or in the Schedule, have the meanings set out in the Schedule.

2 Declaration of Trust

The Settlor hereby declares that:

- a. all benefits arising from the Policy, except Death Benefits, shall be held by the Trustees on Trust for the Settlor absolutely, or in the case of an annuity payable to the widow or widower, or surviving civil partner of the Settlor (as the case may be), or other Dependant, in Trust for the absolute benefit of that widow, widower or other Dependant, and
- b. Death Benefits shall be held by the Trustees as the Trust Fund and on the Trusts outlined.

3 Power of Appointment

The Trustees shall hold the capital and income of the Trust Fund upon trust for the benefit of such of the Discretionary Beneficiaries, at such ages or times in such shares upon such trusts (including discretionary or protective trusts) as the Trustees shall in their discretion appoint, **PROVIDED ALWAYS** that the said power shall not be exercised so as to invalidate any prior payment or application of the capital or income of the Trust Fund.

4 Default Trusts

Subject to and in default of any appointment under clause 3, the Trustees shall hold the capital and income of the Trust Fund upon the following trusts:

- a. Upon trust to pay or apply the whole or such part as the Trustees think fit of the capital for, or towards the advancement, maintenance, education or benefit of any Discretionary Beneficiary on such terms as the Trustees think fit
- b. The Trustees may (but only during the period of 21 years from the date of death of the Settlor unless section 13 of the Perpetuities and Accumulations Act 2009 applies to the Trust Fund), accumulate the income of the Trust Fund which has not been applied for the benefit of any of the Discretionary Beneficiaries by investing it in investments authorised by this deed or by law and shall treat such accumulations as an accretion and augmentation to the Trust Fund, and
- c. Subject to (b) above, the Trustees shall pay or apply the income of the Trust Fund to or for the benefit of such of the Discretionary Beneficiaries in such shares and in such manner as the Trustees shall think fit.

5 Exercise of Trustee Powers

The Trustees shall consider exercising their powers under clauses 3 and 4 above with a view to distributing the Trust Fund if the Trustees in their absolute discretion decide that it is appropriate and before the end of each successive ten year period from the date when the Settlor took out the Policy.

6 Additional Trustee Powers

The Trustees may:

- a. appropriate all or any part of the Trust Fund as the Trustees think fit in or towards the satisfaction of any interest of a Discretionary Beneficiary and for such purpose place such value on any property as they see fit, and
- b. lend with or without security to any Discretionary Beneficiary the whole or any part of the Trust Fund upon such conditions as to interest (if any) and repayment and generally upon such terms as the Trustees in their absolute discretion think fit.

PROVIDED ALWAYS that these powers may only be exercised in conformity with the beneficial trusts.

PROVIDED that where an option, power or privilege in relation to the Scheme is (or was immediately prior to this Trust being effected) vested in the Settlor as proposer or policyholder or in any Dependant as such (or in regard to any future option, power or privilege granted would be so vested in the absence of this Trust) such option, power or privilege shall be, or continue to be exercisable, or not, by such person and without the consent of, or reference to, the Trustees.

7 Administrative provisions

- a. The Trustees may make any kind of investment that they could make if they were absolutely entitled to the Trust Fund

PROVIDED ALWAYS that the Settlor during his/her life shall retain the power to make investment decisions under any self-investment provisions of the Policy

- b. The Trustees may acquire land or chattels for occupation or use by a Discretionary Beneficiary
- c. The Trustees may delegate to any person, all or any of their functions on such terms as to remuneration and other matters as they think fit
- d. The Trustees may appoint (on such terms and conditions including remuneration as they see fit) a person to act as their nominee in relation to such of the assets of the Trust as they may determine
- e. Where income or capital of the Trust Fund is to be paid, or transferred to a minor, the receipt of that minor's parent or guardian shall be a sufficient discharge for the Trustees
- f. If in the administration of the Trust Fund any transaction is in the opinion of the Trustees expedient but the same cannot be effected by reason of the absence of any sufficient power for that purpose conferred by deed or by law (or by any earlier exercise of the present power), then the Trustees may by deed confer upon themselves either generally or for the purpose of any particular transaction or transactions the necessary power, and from the execution of such a deed the Trustees shall have such power as if it had been conferred by this deed.

8 Appointment of Trustees

- a. The Settlor hereby appoints him/herself as Trustee, and the Non-Professional Trustee(s) and the Professional Trustee as additional Trustees to act with the Settlor in the trusts of this deed
- b. There shall at all times be at least two Trustees, unless a trust corporation is a Trustee
- c. The power of appointing a new Trustee or Trustees shall vest with the Settlor while alive and thereafter with the continuing Trustees
- d. The Settlor (or any widow or widower or surviving civil partner of the Settlor if the Settlor is dead) may remove one or more of the Trustees in the manner specified in (e) below provided that at all times there remain at least two Trustees or a trust corporation
- e. A Trustee shall be removed when the Settlor (or the widow or widower or surviving civil partner of the Settlor as the case may be) sends notice of the removal in writing to the Trustee at his/her last known address. The sending of the notice by recorded delivery post will be deemed due service of the removal notice. The removed Trustee shall co-operate (without expense to him or her) in executing any documents or consents required in order to terminate effectively his/her Trusteeship and to vest the Trust Fund in the continuing Trustees
- f. Any person may act as a Trustee even though personally interested in the Trust or any transactions entered into or decisions taken in relation to it
- g. A Professional Trustee may charge for work done by him/her or his/her firm in the execution of the trusts of this deed
- h. The Trustees may act by majority provided that at least one of the Trustees in the majority is not interested in the decision save as Trustee.

9 Liability of Trustees

No Trustee shall be liable for the consequences of any act or omission unless it is proved to have been made, given, done or omitted in the personal conscious bad faith of the person sought to be made liable or, in the case of the Professional Trustee, negligently.

10 Ultimate Default Trust

From and after the end of the Trust Period the Trustees shall hold the capital and income of the Trust Fund for the Ultimate Default Beneficiary absolutely.

11 Governing Laws

The Trust shall be governed by the Law of England and Wales unless the address of the Settlor as appears in the Schedule is in Scotland in which case the Trust shall be governed by the Law of Scotland.

1 Schedule of Trust Deed

Applicant to complete

The date to be inserted here is the date the last person signs.

Please complete as appropriate.

'Date of Declaration'

D	D	M	M	Y	Y	Y	Y
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'Death Benefits' means those lump sum benefits payable or prospectively payable on the death of the Settlor, or (where applicable) after the death of both the Settlor and one or more Dependants, where in respect of each such Dependant a benefit was immediately payable prior to that Dependant's death under the Policy, but excluding:

- i. any payment under a pension guarantee (save for any lump sum payment by the insurer after the Settlor's death in commutation of pension otherwise prospectively payable) or any other benefit which under the terms of the Policy must be paid to another individual, or to the estate of the Settlor, or of any other individual who dies after the Settlor, and
- ii. any benefit which, following the Settlor's death, a Dependant takes as a lump sum in lieu of annuity (or income withdrawal).

In this definition, **'Dependant'** means the Settlor's spouse/civil partner or an individual who is, or who immediately before the Settlor's death was, financially dependent on the Settlor. It includes a Settlor's child or adopted child who has not attained age 18 or has not ceased to receive full time educational or vocational training.

'Discretionary Beneficiaries' means:

- a. Any child, grandchild, or remoter issue of the Settlor
- b. Any brother or sister of the Settlor (whether of the whole blood or of the half blood) and the issue of such brother or sister
- c. Any parent of the Settlor
- d. Any widow (or widower or surviving civil partner) of the Settlor (or of any beneficiary under (a), (b) or (c) above) whether or not remarried and any spouse/civil partner of any beneficiary under (a), (b) or (c) above
- e. Any person or class of persons (i) named or identified as a member of the class of Discretionary Beneficiaries in the Settlor's will or other testamentary writing effective on his/her death and/or (ii) named or identified as a member of the said class in any instrument executed by the Settlor and intimated to the Trustees prior to the Settlor's death
- f. Any person or class of persons named or identified below.

(but always excluding from (e) and (f) above the Settlor and his/her estate).

And **'Discretionary Beneficiary'** has a corresponding meaning.

References to a child or issue shall include an adopted, illegitimate or step child. You may continue on a separate sheet if necessary.

'Non-Professional Trustee' means:

Full name

--

Address

Postcode

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As settlor, you are automatically a trustee and do not need to include your details here. Insert the names and addresses of the persons who have agreed to act with you as trustees. You must appoint at least one additional trustee.

and
Full name

Address

You may appoint additional Trustees – you may continue on a separate sheet if necessary or appoint by separate deed after the trust is established.

'Policy' means the James Hay Partnership member number

'Professional Trustee' means:

Full name

Address

and who acts in the course of a profession or business which consists of, or includes the provision of services in connection with:

- a. the management, or administration of Trusts generally, or a particular kind of trust, or
- b. any particular aspect of the management or administration of Trusts generally or a particular kind of Trust, and the services they provide to the Trust fall within that description.

'Settlor' means:

Full name

Address

'Trust' means the trust established by this deed.

'Trustees' means the Settlor, the Professional Trustee, and the Non-Professional Trustee(s) together, and such expression shall include their successors as Trustees.

'Trust Fund' means the death benefits payable under the Policy, and such expression shall include income and investment growth on the initial sum. If there is more than one Policy, there shall be one Trust Fund in respect of each Policy. Any other property passed to the Trustees shall also constitute a separate Trust Fund.

'Trust Period' means in respect of each Trust Fund the period ending:

- a. 21 years from the date of the death of the Settlor, or
- b. 21 years from the date of death of the last survivor of all the lineal descendants of His Late Majesty King George the Fifth who shall be living at the Date of Declaration, whichever date is the later and this shall be the perpetuity period applicable to the Trust,

unless section 5(1) of the Perpetuities and Accumulations Act 2009 applies, in which case it means the period therein specified.

We recommend that you appoint a Professional Trustee, however, this is not a legal requirement.

The settlor is the person who creates the Trust. The Bypass Trust can be established on a single settlor basis only. You should insert your full name and address.

1 Schedule of Trust Deed (cont.)

Applicant to complete

Insert the name of the person whom you wish to benefit in the event that trust capital remains undistributed at the end of the trust period.

'Ultimate Default Beneficiary' means:

Full name

Address

Postcode

2 IN WITNESS whereof this document is executed and signed as a deed on the Date of Declaration

To complete

Please ensure that all signatures are witnessed by an independent person over 18 years of age. The witness should not be a spouse, partner or other relative. The same person may witness all signatures.

Signed and delivered as a deed by the Settlor

Full name

Signature

In the presence of

Name of witness

Signature of witness

Address of witness

Postcode

Signed and delivered as a deed by the Professional Trustee

Full name

Signature

In the presence of

Name of witness

Signature of witness

Address of witness

Postcode

Signed and delivered as a deed by the Non-Professional Trustee

Full name

Signature

In the presence of

Name of witness

Signature of witness

Address of witness

Postcode

Signed and delivered as a deed by the Non-Professional Trustee

Full name

Signature

In the presence of

Name of witness

Signature of witness

Address of witness

Postcode

We are able to provide literature in alternative formats. For a Braille, large print or audio version of this document call us on 03455 212 414 (or via the Typetalk service on 18001 03455 212 414).

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