Important: The information in this guide is based on our understanding of current United Kingdom law and HM Revenue & Customs practice, which is subject to change. We cannot accept responsibility for any liability that may arise as a result of any action taken or not taken as a result of this information. This guide does not constitute legal or tax advice. In addition, tax benefits depend on individual circumstances.

It should be noted that trusts create binding legal commitments which in most cases result in a permanent change in ownership of your plan. To be fully aware of the implications of a trust, please seek advice from a qualified Financial Adviser. Scottish Provident’s trusts are only available from Financial Advisers or Solicitors.

We strongly recommend you get independent advice before you take any action. You should also speak with a Financial Adviser for full details of all the products mentioned in this document.

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Fast facts

Trusts can:

• Allow your family to benefit from your life assurance instead of the taxman;
• Allow you to choose who you want to benefit;
• Allow you to change who should benefit;
• Give your family access to benefits without delay.

But they don’t:

• Mean you give up control of your assets;
• Have to be expensive or difficult to set up with help from your adviser.

Could you use a trust?

What is a trust?

A trust is a way of choosing who will receive the benefit of certain assets, without giving your beneficiaries full and immediate control over them. In this case, the asset of the trust will be your plan with us. A trust is usually created by a document – the trust deed – which names the people involved and sets out the terms of the trust. A trust can also be created by your will. The trusts we offer are for setting up during your lifetime and we list them later in this guide.

Who is involved in setting up a trust?

You, as the person creating the trust, are known as the settlor or donor. If you take out a joint policy, then both of you will be donors. The people who manage the trust are known as the trustees. With the trusts we offer, the donor(s) are automatically trustees. Our trusts need at least two trustees in place all the time and you should therefore choose additional trustees to administer the trust with you. These people may need to deal with the trust after your death so you need to choose them carefully.

The beneficiaries are the people who you want to benefit from the trust. If the trustees break the terms of the trust, the beneficiaries may take legal action against them. Under our trusts, the intended beneficiaries should be identified when completing the trust, together with their respective percentage share.
What are the benefits?

Can I benefit from the trust?
Some trusts do allow you to benefit but others will not. You may only benefit from the trust if it is specifically provided for within the trust. Your adviser can tell you whether you can benefit from the trust suitable for your circumstances.

Can I change my beneficiaries?
The Finance Act 2006 introduced significant changes affecting the way in which trusts are treated for Inheritance Tax (IHT) purposes. Trusts that allow flexibility to change beneficiaries, for example discretionary trusts, are taxed differently to those that don’t. Most of the trusts we offer allow you to choose to have the trust written on a discretionary basis if you want to give the trustees the power to change beneficiaries in future, or if you would prefer to have your beneficiaries fixed, you can choose the bare trust option instead.

If the discretionary trust option is selected, the trustees can appoint benefits in a different manner to those originally indicated on the trust. The trustees have a power of appointment which means that they can appoint funds to either the named beneficiaries or to anyone who falls within the definition of discretionary beneficiaries. There is a pre-printed class of discretionary beneficiaries in the trusts that includes children, grandchildren, brothers, sisters and so on. The donor can add to this class when setting up the trust – or at a later date if they prefer.

Your adviser can tell you which option may be most suited to your needs and can tell you about any possible tax implications.

Further information on the different types of trust we offer can be found later in the guide.

Who do I appoint as additional trustee(s)?
As the word suggests, a trustee should be someone you trust. For example, your partner, spouse, another family member, a close friend, or your family solicitor. Trustees must be over 18, mentally able and must not be a bankrupt. Trustees should sign the trust form to acknowledge their appointment. In accepting their appointment, trustees must carry out certain obligations and duties. The position shouldn’t be taken lightly. Other than our Business Trust, we strongly recommend that one of the trustees is independent i.e. someone who is not a beneficiary or donor of the trust.

What are the duties of trustees?
In recent years, legislation has been introduced across the UK to modernise trust law. In February 2001, the Trustee Act 2000 came into force in England and Wales. This was followed in July 2002 with the Trustee Act (Northern Ireland) 2001. Finally, the Charities and Trustee Investment (Scotland) Act 2005 was introduced with effect from 1 January 2006.

Typically, trustees’ main duties start if and when the plan inside the trust pays out. The trustees will then need to decide whether it’s appropriate to pay those proceeds to beneficiaries of the trust, or whether to keep funds inside the trust for the moment. If proceeds are kept inside the trust, then our trust deeds provide the trustees with wide powers of investment. If the trust is flexible, there is the added responsibility of deciding which individuals should benefit.

Trustees may delegate powers of investment and management to someone else. This means they can ask someone else to act on their behalf to invest the trust property. However, they can’t allow anyone else to make decisions or distribute income or capital to beneficiaries.

Trustees should get and consider proper advice before exercising powers of investment. This requirement doesn’t apply if it is deemed unnecessary or inappropriate to do so. For example, if the trust fund were small and the cost of advice outweighed the benefits, or if the trustee was already suitably qualified.

Trustees’ responsibilities
Trustees must keep records, as they may need to prove they are managing the trust fund properly. For example, records must be kept of any changes made to the investments in the trust fund – and any money paid or loaned to a beneficiary. It’s also recommended that proof is kept of any professional advice received on investments etc.
What other powers do trustees have?
The law gives trustees some powers. These include the following:

- The power to use income from the trust for the education or maintenance of a beneficiary who is under the age of 18.
- The power to give capital to a beneficiary before they become entitled to demand it.
- The power to sell trust property.
- The power to give receipts.
- The power to insure trust property.

Other more specific powers may be set out in the trust form. The range of powers in each trust can vary depending on the aims of the trust. Trustees should make themselves familiar with the powers they have.

Our standard trust range gives the following powers:

- The power to exercise any options within any life assurance policy.
- The power to pay benefits to the parent or guardian of a beneficiary who is not yet 18.
- The power to lend money to any of the beneficiaries.
- The power to borrow using the trust fund as security.
- The power to release or restrict any of the powers given to you by the trust.

Is agreement of the trustees necessary?
With most of the trusts we currently offer, the trustees may act by majority, with the exception being the Business Trust where the trustees act unanimously. This therefore decides which trustees need to sign whenever any action is taken in relation to the plan, for example, if a plan is to be cancelled or if there is a claim because the life assured has died.

Can I change my trustees?
The power of appointing or removing trustees belongs to the donor(s) while alive. To help with this, we provide standard paperwork. If the donor wishes to remove a trustee and that person is unwilling or not available to sign the form, then the donor can remove that person by sending a notice of removal in writing to the trustee at their last known or usual address. In all cases, the donor must remember that, with the exception of the Business Trust, our trusts require at least two trustees. So if a trustee retires or is replaced, a new trustee may need to be appointed.

Getting the money when it’s needed most
If an asset is not under trust, your personal representatives (the people you have asked to deal with your estate after you die) will need to get the appropriate 'Grant of Representation' before they can deal with that asset. This process is known as ‘probate’ or ‘confirmation’ in Scotland.

Probate is the legal process of confirming who can deal with the estate of a person who has died before the assets of the estate can be distributed according to the terms of their will. If someone dies without leaving a will they are said to have died ‘intestate’. Their estate will be divided according to rules known as the ‘laws of intestacy’. This can be a long process and can take several months. In the meantime, your family could be suffering financial hardship following your death.

By placing your plan under trust, the need for probate will be avoided as long as there is at least one surviving trustee when you die. This is because the trustees are the legal owners of the plan, and can deal with the trust property immediately, making sure your chosen beneficiaries do not suffer financially after you die. One of the most common reasons for taking out life assurance is to provide for your family after you die. By writing the plan in trust you can make sure that the proceeds of the plan are paid to them without delay.

Tax Planning
Trusts can also be used for Inheritance Tax (IHT) planning reasons. IHT can be avoided using an appropriate trust. Currently IHT is payable at a rate of 40% on estates valued over £325,000, although gifts to your husband or wife are not included. This means estates, when they have the value of any life assurance plan added, that takes them over the £325,000 limit, may have to pay IHT. It is possible for a married couple to combine their IHT thresholds when the second person dies if the first person to die did not take full advantage of his/her own threshold, for example if the estate was left to their surviving spouse. Any unused allowance can be transferred to a surviving spouse. From 5 December 2005, it is now possible for same sex couples to enter into a Civil Partnership and be treated, for tax purposes, in the same way as a married couple. In other words, a civil partner can make gifts to their partner exempt from IHT.

As well as avoiding IHT, you can use a trust and life assurance plan to make sure your family has funds available to pay any liability that can’t be avoided. This will stop them having to take an expensive loan or even sell the family home to pay any owed tax after you die.

Your adviser can tell you more about the types of trust available and the tax effects each of them will have.
What sort of life assurance plans can be put under trust?
Generally, all our plans can be put in trust although it may not always be appropriate to do so. For example, a plan written purely to repay a mortgage would not be written in trust if it was to be assigned to the lender. However, you may be able to transfer a benefit to the lender where the plan contains several benefits and you only intend to use one of them to repay the mortgage. The right trust to use will depend on the type of plan, why you were taking it out and who you want to benefit from it. Your adviser can explain what trust to use in different circumstances.

Do I have to take out a new plan to put it under trust or can I use an existing one?
You can put both new and existing plans under trust. However, you may want to review your plans to make sure they are still right for you. Your adviser can carry out a review of your plans and recommend appropriate trusts for them. Your adviser can also look at the tax implications of putting your plan into trust.

How do I put a plan under trust?
Once you and your adviser have decided the most suitable plan for you, you can consider the trusts which best match the plan and your particular circumstances. With help from your adviser, all you need to do is fill in the appropriate trust form. Our trust wordings are provided free of charge and have been drafted to be used specifically with our plans. Each trust is designed to do different things. Alternatively, you can arrange for your own trust to be drafted to meet your own specific needs. For this you will need to contact a solicitor who will charge for this service. In any case, if you are not sure whether the trust is suitable to your particular circumstances, we strongly recommend you get professional legal advice.
What trusts do we offer?

We offer several trusts to use in different circumstances.

The Split Trust

The Split Trust is for Self Assurance term plans where you want to keep any critical illness benefit, disability income benefit or unemployment benefit, but place any death benefit (including terminal illness benefit) in trust for your intended beneficiaries and avoid IHT. This trust can be written either as a bare trust if you are happy to have the beneficiaries fixed or as a discretionary trust if you want to change them in the future. Our Split Trust also allows specific benefits to be left out of trust. These benefits are then free to be assigned to a third party. For example, a mortgage lender. This trust is not suitable for the Pegasus Whole of Life contract. Unfortunately there is no comparable trust for that contract.

The Gift Trust

This is the basic type of trust for family protection or IHT planning. As the holder of the plan, you can’t be the beneficiary. At the start you must choose the beneficiaries, and again you can choose to have the trust written as either a bare trust with fixed beneficiaries or as a discretionary trust with flexibility to allow you and your co-trustees to alter beneficiaries if you change your mind or if your circumstances change. The trustees will similarly have this power after your death where the discretionary trust is chosen.

The Probate Trust

The primary aim is to allow payment of the plan proceeds to the trustees without the need for probate (confirmation). There is no IHT saving by using this trust. As the plan holder, you will be the beneficiary of any proceeds paid while you are alive and on your death the proceeds can be dealt with by your trustees in accordance with your will, if you have one. If you do not have a will, the laws of intestacy will apply to your estate as outlined on page 5 of this guide.

Trusts for joint life policies

Both the Split Trust and the Gift Trust are designed for IHT planning purposes on the death of the plan holder. However, where a policy is jointly owned and will pay out on first death, neither of you can benefit from the policy proceeds as you are both plan holders and therefore specifically excluded from benefiting from the trust. These trusts are therefore not generally suitable for use with joint life policies payable on first death unless the surviving plan holder doesn’t need access to the funds.

Where access is required, we offer two trusts that do specifically allow the survivor to receive the proceeds on first death while still being suitable for IHT planning. The Gift Trust for joint life, first death policies is similar to the Gift Trust as detailed above and is used for basic IHT planning. The difference however, is that this trust allows the surviving life assured to receive the proceeds if they are still alive 28 days after first death. If both lives assured die at the same time or within 28 days of each other, the proceeds will pass to the beneficiaries of the trust and will not be part of either of your estates for IHT purposes. Placing your plan into this trust ensures that the proceeds will only pass to your beneficiaries if you and your spouse/partner die around the same time. If critical illness or any other benefits you may wish to retain are included on the plan, the Split Trust for joint life, first death policies may be suitable. Your adviser should be able to confirm which trust is most appropriate for you.

The Business Trust

The Business Trust is specifically designed for business protection plans (partner and shareholder protection). The partner’s or shareholder’s plan can be written under trust, with the beneficiaries being the other partners or shareholders in the business. This makes sure surviving partners or shareholders have the funds to buy a deceased or ill person’s share in the business and don’t end up with an unsuitable partner or shareholder. This could be the surviving spouse, children, or unwelcome third party. In other cases, they may reintroduce the funds back into the business. We take a detailed look at the subject of business protection in our Business Protection Toolkit.
How can I find out more?

For more information you should speak to your usual adviser. If you do not have an adviser, you may want to use the services of **IFA Promotions (IFAP)**. IFAP is an organisation that was set up to help the public get independent financial advice. You can visit IFAP at www.unbiased.co.uk where you can view details of Independent Financial Advisers in your area. This is a **free service** and your name will not be passed on as a result of your enquiry.

**Notes**

The above information and our understanding of legislation and HM Revenue & Customs practice is current at the time of going to print. Whilst every care has been taken, it should be remembered that all legislation, particularly that relating to taxation, is open to differing interpretations and change, and the suitability of tax planning arrangements is always dependent on personal circumstances. For these reasons, it will be appreciated that we cannot accept responsibility for any legal, taxation or other consequences of entering into the arrangement described above. Therefore, individual legal and taxation advice should be taken in all cases.