

# Financial Planning

## Flexible Trust Deed

### Please read these notes before filling in your application

This draft trust has been drawn up based on our understanding of current law and HM Revenue and Customs practice. The Trust is presented as a draft only and anyone intending to make a policy subject to a trust is strongly advised to consult their own legal advisers to ensure that the draft trust meets their requirements. This is of particular importance if benefits other than life protection benefits have been selected. Accordingly AEGON Scottish Equitable cannot accept any responsibility for the consequences arising from the use of this draft.

# 1. Declaration

Complete **i** New Policy below if the trust relates to a new application for a policy not yet issued.

**i** New Policy

I/We
of

(**the Settlor**, which expression, where the context requires, shall include either or both of us)

have applied to the Company for a life protection Policy or Policies (**the Policy**) in terms of an Application dated (dd/mm/yyyy)

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The Settlor **irrevocably declares** that the said Application with this trust deed (which forms an integral part of, and is treated as, incorporated therein for all purposes) is made with the intention that the Policy should, from its inception, be held in trust for the Beneficiaries named in section 3 overleaf.

The Settlor **directs** that in the Policy the Settlor shall be expressed to be the Policyholder of the Company and that the Policy shall be issued to the Settlor and the Additional Trustee or Trustees named in section 2 below to hold the Policy upon the terms and powers set out in this trust deed.

Complete **ii** Existing Policy below if the trust relates to (an) existing in force policy(ies) already issued.

**ii** Existing Policy

I/We
of

(**the Settlor**, which expression, where the context requires, shall include either or both of us)

effected with the Company, the following life protection Policy or Policies (**the Policy**)

Policy number(s)

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Policy start date (dd/mm/yyyy)

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The Settlor **now intends** that the Policy shall constitute a trust for the Beneficiaries named in section 3 below. The Settlor **hereby assigns** the Policy to the Settlor and the Additional Trustee or Trustees named in section 2 below to hold the Policy upon the terms and powers set out in this trust deed.

# 2. Appointment of Additional Trustees

The Settlor appoints
of
and
of

as Trustee(s) to act jointly with the Settlor as Trustees of this Trust.

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### 3. Definitions

- i **Beneficiary(ies)** means any person who is a ‘Possible’ or ‘Default’ Beneficiary.
- ii **Possible Beneficiaries** means the following persons:
  - a any person to whom the Settlor shall be or shall have been married and any widow or widower of the Settlor. However, it is not possible for a person who is also a Settlor to be a Beneficiary in this class;
  - b any children of the Settlor (or either of them) whenever born;
  - c any grandchildren or remoter issue of the Settlor (or either of them) whenever born;
  - d any person to whom any Beneficiary in classes **b** or **c** above shall be or shall have been married;
  - e any person(s) (other than the Settlor), including Trustees, nominated by the Settlor and whose name(s) has/have been notified to the Trustees in writing by the Settlor as being a possible recipient of the Trust Fund;
  - f any person other than the Settlor (or either of them) beneficially entitled under his Will/the Will of either of them or in accordance with the rules relating to intestacy to any interest in his/their estate;
  - g any Default Beneficiary;
  - h
- iii **Default Beneficiary(ies)** is/are the person(s) named below:

Name	Share (%)
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
- iv **Trust Fund** means the Policy, the full benefit of the Policy and all property at any time held by the Trustees upon the trusts created by this Deed whether by way of further settlement, accumulation of income, capital accretion or otherwise and all property from time to time representing the foregoing respectively but excluding any rights to the Retained Benefits (as defined below) and any property from time to time representing the Retained Benefits.
- v **Retained Benefits** means such one or more of the following benefits (if any) which are provided under the Policy in accordance with its terms and conditions: critical illness protection, critical illness family income benefit, total and permanent disability benefit, reducing critical illness protection, children’s critical illness protection and income protection.
- vi **Gifted Benefits** means any benefits arising under the Policy other than any Retained Benefits.
- vii **Trustees** means the Settlor and the Additional Trustee(s) appointed in section 2 on the previous page and such other Trustees (if any) as are appointed in writing and in accordance with the terms of this Trust.
- viii **Additional Trustees** means the persons named in section 2 on previous page.
- ix **Trust Period** means the period of seventy-nine years from the date of this Deed (which period shall be the perpetuity period for the purpose of this Trust).
- x **Company** means Scottish Equitable plc.
- xi Children and grandchildren shall include adopted children whether adopted before or after the date of this Deed and illegitimate children.
- xii Where the context of the Trust permits, words importing the singular shall include the plural and the masculine shall include the feminine and vice versa.

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### 4. Principal Trusts

#### A. Retained Benefits

The Retained Benefits and the income from them shall be held upon trust for the absolute and indefeasible benefit of the Settlor (or, if there are two Settlers, for the benefit of the Settlor in respect of whose illness or disability or incapacity the benefit is payable. Any children’s critical illness protection will be held for both Settlers equally).

## B. Gifted Benefits

- i The Trustees shall hold the Trust Fund, and the income from it, on such trusts and subject to such powers and provisions in favour of such one or more of the Possible Beneficiaries as the Trustees may appoint during the Trust Period. The trusts, powers and provisions may include protective and discretionary trusts and powers operative or exercisable at the discretion of the Trustees or any other person(s). The appointment of benefits from the Trust Fund by the Trustees must be by deed (or deeds) and may be revocable (whether by the person(s) making the Deed or some other person(s)) or irrevocable.
- ii Until and subject to and in default of any appointment made under paragraph i of this section 4B or so far as any such appointment shall not extend or fail for any reason, the Trustees shall hold the Trust Fund and the income thereof absolutely for the Default Beneficiaries and if more than one in the shares specified in paragraph iii of section 3 and if no shares are specified in equal shares absolutely.
- iii The Settlor (or either of them) shall not be capable of benefiting from the Trust Fund in any circumstances whatsoever.

## C. Trust Income

It is hereby further declared that:

- i Section 31 of the Trustee Act 1925 shall not apply to the trusts declared in section 4B of this Trust;
- ii The trusts of the Gifted Benefits set out in section 4B shall carry any intermediate income;
- iii Whilst any Beneficiary who is entitled to income under this Trust (including under any appointment) is a minor, the Trustees shall receive and take such Beneficiary's income to pay or apply the whole or such part (if any) as they think fit for or towards the maintenance, education or benefit of such Beneficiary until that Beneficiary attains the age of majority. The Trustees shall accumulate the surplus (if any) of such income and the resulting income and shall hold such income for the sole benefit of the Beneficiary absolutely.

## 5. Appointment, removal and resignation of Trustees

- i The Settlor shall, during his lifetime, have the power to appoint new or Additional Trustees. If there are two Settlers, they must exercise this power of appointment jointly and the survivor of them shall continue to have the power if one of them dies. After the Settlor's death (or the death of the surviving Settlor if there are two), the Trustees shall have the power to appoint new or Additional Trustees.
- ii The Settlor shall also have the power to remove a Trustee, as long as there are at least two remaining Trustees after such removal, one of whom not being a Settlor. Any such removal must be carried out by deed. If there are two Settlers, they must exercise this power of removal jointly. The survivor may exercise the power alone after the death of one of the Settlers.
- iii Any Trustee may resign office at any time notwithstanding any benefit under the trusts provided that no such resignation shall take effect unless immediately after it (whether by virtue of a new appointment by the same or simultaneous instrument or otherwise) there will be either a Trust Corporation or at least two individuals to act as Trustees hereof.  
  
Any such appointment of new or Additional Trustees, or removal of a Trustee or resignation of a Trustee must be in writing. The Company shall not be bound by any change, addition, appointment or resignation of a Trustee until notice in writing of such change, addition, appointment or resignation is received at its Head Office.

## 6. Trustees' powers

The Trustees shall have the following powers and any money received by the Trustees as a result of the exercise of their powers must be held by them subject to the terms of this Trust.

- i The Trustees shall have the power to exclude any person or persons from being a Possible Beneficiary under this Trust. Once excluded, such persons shall cease to be and shall not be able to become a Possible Beneficiary either by nomination by the Settlor, or under the Will or under the intestacy of the Settlor, or by being the spouse of the Settlor. Any such exclusion of a Possible Beneficiary must be carried out by deed (or deeds) revocable during the Trust Period or irrevocable. Any such deed or revocation of it can only be made by the Trustees if at least one Possible Beneficiary will remain after it has taken effect. No such deed or revocation of it shall affect the entitlement of any person so excluded from being a Possible Beneficiary to any benefit previously conferred on him.
- ii The Trustees may exercise full powers of:
  - a borrowing upon the security of;
  - b cashing in or converting into a paid-up Policy (if the Policy has a cash in or paid-up value);
  - c otherwise dealing with the Policy or other assets including the exercise of any options under the Policy held on trust, in all respects as if they were the absolute beneficial owners of the Policy.
- iii The receipt by the Trustees of any money payable under (or deriving from) any dealing with the Policy shall be a full and sufficient discharge to the Company who shall not be concerned to see to the application of any such money.
- iv Any money for the time being representing the Trust Fund may be invested or applied in the purchase of or at interest upon the security of such stocks, funds, shares, securities or other investments or property of whatsoever nature and wheresoever situate and whether producing income or not, including investment in life assurance policies and the purchase or improvement of real property, and whether involving liability or not or upon such personal credit with or without security as the Trustees may in their absolute discretion think fit to the intent that the Trustees shall have the same full and unrestricted powers of investing and varying investments in all respects as if they were absolutely and beneficially entitled in the Trust Fund.
- v The Trustees may at any time or times advance or apply, freed from the trusts in this Deed, any part or parts or the whole of the Trust Fund or property otherwise held on these trusts to any Beneficiary who is entitled absolutely or contingently to such part or parts or the whole and section 32 of the Trustees Act 1925 shall have effect as if:
  - a the words 'one half of' were omitted from proviso a to subsection 1 of that Act; and
  - b the whole of proviso c was omitted from subsection 1.
- vi The Trustees shall at their discretion have power to pay the parents (or either parent) or any guardian of any minor Beneficiary any sum of income intended to be applied for the maintenance or education or benefit of that minor or any sum of capital to be applied for the advancement or benefit of that minor, so that the receipt of such parent or parents or guardian shall be a complete discharge to the Trustees.
- vii The Trustees shall have power to lend any monies comprising part of the Trust Fund to any one or more of the Beneficiaries under section 3 ii or iii hereof either interest-free or at such rate of interest as they determine and upon such terms and conditions as to security (if any) repayment and otherwise as they think fit. For the avoidance of doubt it is hereby declared that no loan may be made to or for the benefit of the Settlor.
- viii The Trustees shall have power, revocably or irrevocably, to delegate any power or powers in making, managing, realising or otherwise dealing with any property comprised in the Trust Fund to any person or persons (other than the Settlor) upon such terms as to remuneration or otherwise as the Trustees may think fit. No Trustee shall be responsible for the default of any such agent if the Trustee in question employed or incurred expense in employing him in good faith.
- ix The Trustees shall have power to transfer any part of the administration of this Trust outside the United Kingdom and persons who are resident outside the United Kingdom may be appointed Trustees of this Trust.

## 7. Trustees' remuneration and liability

- i Any Trustee, other than the Settlor (or either of them), who shall be a solicitor or an accountant or engaged in any profession or business shall be entitled to and be paid all usual and proper professional and other reasonable charges for any business or work done by him or his firm in relation to the trusts in this Deed.
- ii No Trustee shall be liable for any loss to the Trust Fund arising by reason of any investment made in good faith or by reason of any mistake or omission made in good faith by any Trustee or by reason of any other matter or thing except wilful and individual fraud or wrongdoing on the part of the Trustee who is sought to be made liable.

This Trust shall be irrevocable and shall be governed by and construed in accordance with the law of England and Wales.

**In witness whereof** the parties have executed this Deed on (dd/mm/yyyy)-

and hereby certify that this Deed falls within Category L/N of the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987.

Signed as a Deed by the Settlor

in the presence of:  
Signature of Witness

Name of Witness

Address of Witness

Postcode

Signed as a Deed by the Settlor

in the presence of:  
Signature of Witness

Name of Witness

Address of Witness

Postcode

Signed as a Deed by the Additional Trustee

in the presence of:  
Signature of Witness

Name of Witness

Address of Witness

Postcode

Signed as a Deed by the Additional Trustee

in the presence of:  
Signature of Witness

Name of Witness

Address of Witness

Postcode