

# Declaration and Deed of Trust (non-statutory)

**for use with an application for a National Friendly policy or  
with an existing National Friendly policy**

**This Trust may be used with single or joint applications/ policies and with new applications or existing policies.**

Standard trust forms are designed to be suitable for the majority of people wishing to establish such trusts, but it must be recognised that they cannot be suitable for all, and, therefore, prospective settlors or donors are encouraged to seek independent legal advice before establishing such schemes.

*NB In this Trust form and accompanying notes,*

- (i) use of the singular includes the plural, and vice versa*
- (ii) use of any gender includes the other genders*

### **Points to be considered**

Before writing a policy in trust, you must ensure that the trust provisions meet the requirements and intentions of the Settlor as it may be difficult, impossible or expensive to vary the provisions at a later date. The person applying for the policy (or the current policyholder, if the policy has already been issued) will be the Settlor.

It should be borne in mind that a policy held in trust has certain limitations. Only the Trustees (one of whom can be the Settlor), with the powers given to them under the Trust and under general law, may:

- (a) take a loan from the policy
- (b) use the policy as security for a loan
- (c) surrender the policy
- (d) deal with the policy in any way within the conditions laid down in the policy contract

### **Advantages**

However, there are many advantages of having a policy issued under a trust. For example:

- (a) claims can be settled more quickly (provided that the Settlor, who is also the life assured, is not the sole Trustee), as payment of the claim can be made before the granting of Probate or issuing of Letters of Administration
- (b) the proceeds from the policy are not aggregated with the estate of the Settlor on death and are therefore not subject to inheritance tax when paid
- (c) a policy held in trust will usually be safe from creditors unless the Settlor effected the policy whilst insolvent or knowing of his potential insolvency

## Beneficiaries

The class of persons who can benefit under this Trust (called the Beneficiaries) is not restricted by legislation as is the case with statutory trusts.

The Settlor has a choice of the beneficial trust provisions under this Trust: the policy can be held for the absolute benefit of named individuals (in which case the Settlor must name the Beneficiaries and, if more than one, their respective shares) or on discretionary trusts. In the latter case the Settlor, during his or her lifetime, and, after his or her death, the Trustees, will decide the person(s) from the class of Beneficiaries specified in the Trust who will receive the benefits.

## Trustees - selection and qualification

It is recommended that more than one Trustee is appointed. Trustees are appointed at outset and may include:

- (a) the Settlor (both Settlers in joint cases)
- (b) the Settlor's spouse or registered civil partner
- (c) any other person aged 18 or over who is prepared to accept the responsibility of seeing that the benefits of the policy are applied in accordance with the provisions of the Trust
- (d) a bank, solicitor, accountant or other corporation. They may, however, charge for the service.

Further Trustees can be appointed by the Settlor and, after his or her death, the Trustees. The Settlor can also remove a Trustee provided at least two Trustees remain and at least one is a person other than the Settlor and his or her spouse.

To achieve the aims of the Trust efficiently, all Trustees should be UK resident. It is unwise for a Settlor to appoint his or her spouse as the only other Trustee, as if both were to die together, for example, in a car accident, the benefits could not be dealt with by anyone except the Executors (if a valid Will exists) or the Administrators of the deceased's estate, and only then after the Grant of Probate or Letters of Administration, as appropriate, have been obtained. This may defeat one of the primary objects of setting up the Trust. Trustees appointed should be those whose chances of surviving the Settlor (if the Settlor is also the life assured) are good. If there are no surviving Trustees on the death of the Settlor, time will be lost before the proceeds can be paid to the Beneficiaries.

**Important note** – Under no circumstances can a National Friendly employee allow himself or herself to be named as a Trustee except in own life or immediate next of kin (spouse, registered civil partner or close blood relative) cases. Such an appointment would be wholly undesirable from the point of view of the Society.

## Guidance to completion of the Trust Deed

### Part 1 - Declaration

- Insert the name and address of the Settlor (or both of them in joint cases) at the top of the page.

#### Section (iii) - Discretionary Trust or Absolute Trust

- If the Discretionary Trust option is chosen the Settlor(s) should initial the box(es) in section A.
- If the Absolute Trust is chosen the Settlor(s) should initial the box(es) in section B. If there are two Settlers, both must initial the boxes in the same section.

### Part 2 - Policy subject to Trust

- For a new policy insert the type of policy, the full name(s) of the life/ lives assured and, in box A, the date of application.
- For an existing policy insert the type of policy, the full name(s) of the life/ lives assured and, in box B, the policy number.

### **Part 3 - Definitions**

#### ■ Definition (iv) "Default Beneficiary(ies)"

This applies *only if the Discretionary Trust basis has been chosen in Part 1 (iii)*. The full name(s) of the Beneficiary(ies) who will benefit in the absence of any appointment being made by the end of the Trust Period should be inserted. If more than one, then the percentage shares should also be inserted. Please ensure that the shares add up to exactly 100%. At least one name must always be included in this Part.

#### ■ Definition (v) "Absolute Beneficiary(ies)"

This applies *only if the Absolute Trust basis has been chosen in Part 1 (iii)*. The full name(s) of the Beneficiary(ies) should be inserted. If more than one, then the percentage shares should be inserted. Please ensure that the shares add up to exactly 100%. At least one name must always be included in this Part.

### **Part 6 - Appointment of First Trustees**

Delete the words: "The Settlor and" if you do not wish to be appointed as a Trustee.

You should then insert the full names, addresses and occupations of the additional Trustees.

The Trustees must sign to evidence their agreement to their appointment and insert the date they sign.

### **Part 9 - The law of the Trust**

If the Settlor(s) normally live(s) in Scotland or Northern Ireland he/she/they should initial the appropriate box. In joint cases, both Settlers must initial the same box. In Scotland, the location must also be stated. Otherwise the Trust will be governed by the law of England.

### **Part 10 - Signatures and date**

The Settlor(s) should sign the Trust form and insert the date of signature in words and figures (eg. 8th day of July 2010). The date should be the date the Trust form is signed. Where a new policy is being taken out this date must not be later than the commencement date of the policy. When an existing policy is being placed in trust, the date must not be before the commencement date of the policy.

Each signature must be witnessed. All witnesses must be over the age of 18 and independent of the Trust (i.e. not a Settlor, an additional Trustee or a Beneficiary).

If the Settlor is domiciled in Scotland, the location must also be stated.

## PART 1 DECLARATION

THIS TRUST DEED is made by

	<input type="text"/>
of	<input type="text"/>
and	<input type="text"/>
of	<input type="text"/>

(hereinafter called the Settlor which expression, where two persons are named above, includes both of them)

**AS FOLLOWS:**

**(i)**

**A. WHERE NEW POLICY APPLIED FOR (PART 2A BELOW COMPLETED)**

The Settlor being the Proposer(s) for the Policy (as defined in Part 2 below) to be issued by **National Friendly (the "Society")** hereby declare(s) that they are effecting the Policy proposed upon an irrevocable Trust for the person or persons specified herein and in accordance with the respective rights and interests as stated herein and the Settlor hereby requests and directs that the Policy be issued by the Society in such manner that the Policy immediately on its being so effected shall vest in the Trustees (as hereinafter defined) to hold the same irrevocably on the trusts and subject to the powers and provisions hereof.

**B. WHERE POLICY IN FORCE (PART 2B BELOW COMPLETED)**

The Settlor being the legal and beneficial owner of the Policy (as defined in Part 2 below) issued by **National Friendly (the "Society")** hereby declares that from the date hereof the Settlor and the additional Trustees named in Part 6 hereof (if any) hold the Policy as the Trustees (as hereinafter defined) thereof irrevocably on the trusts and subject to the powers and provisions hereof.

**(ii)**

The Settlor declares that no lien or charge shall be created on the said Policy by payment by the Settlor of any premium thereon and that it shall not be possible for the Settlor to benefit under this Trust in any circumstances whatsoever.

**(iii)**

**Discretionary Trust or Absolute Trust:**

This trust is to be

Settlor's(s) initials

**A.** A Discretionary Trust in accordance with Part 4A

<input type="text"/>	<input type="text"/>
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**OR**

**B.** An Absolute Trust in accordance with Part 4B

<input type="text"/>	<input type="text"/>
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## PART 2 POLICY SUBJECT TO TRUST

The policy subject to this Trust (**the "Policy"**) means the one or more contracts of life assurance the details of which including the policy numbers or the date of proposal (as appropriate) are specified below.

Policy type

On the life or lives of

**A.** Date of proposal for the new Policy  
(i.e. if A in clause (i) of Part 1 above applies)

or

**B.** Policy number(s) of the existing  
Policy(ies) (i.e. if B in clause (i) of  
Part 1 above applies)

## PART 3 DEFINITIONS

In this Trust the following expressions shall have the following meanings and unless the context does not permit the singular shall include the plural and vice versa and words denoting any gender shall include all genders

- (i) "Appointor" means the Settlor during his life or if two persons are the Settlor both of them jointly during their joint lives and thereafter the survivor of them and subject thereto the Trustees
- (ii) "Beneficiaries" means the Default Beneficiary(ies) and the Discretionary Beneficiaries where this Trust is a Discretionary Trust in accordance with Part 4A and the Absolute Beneficiary(ies) where this Trust is an Absolute Trust in accordance with Part 4B
- (iii) "Discretionary Beneficiaries", where Part 4A applies, means:-
  - (a) any spouse, former spouse, widow or widower of the Settlor provided that if two persons are the Settlor such person is not one of them
  - (b) the children and remoter issue of the Settlor (or either of them) whenever born
  - (c) every spouse former spouse widow or widower of any such child or remoter issue
  - (d) the brothers and sisters of the Settlor (or either of them) and their issue
  - (e) any one or more persons (other than a Settlor) beneficially entitled under the Will (or any codicil thereto) of the Settlor or who would be entitled to an interest in the Settlor's estate if the Settlor had died intestate and where the Settlor is two persons this provision shall operate with like effect on the death of each of those persons
  - (f) any person (other than the Settlor (or either of them)) nominated in writing to the Trustees by the Settlor as a Discretionary Beneficiary, such power of nomination to be exercisable if the Settlor is two persons by them jointly during their joint lives and thereafter by the survivor of them
  - (g) the Default Beneficiaries (as hereinafter defined)
  - (h) any charity

- (iv) **“Default Beneficiary(ies)”**, where **Part 4A applies**, means the one or more persons named in the boxes below or such other person or persons as are appointed by the Appointor under the power conferred by paragraph A1 of Part 4 below to be Default Beneficiaries in place or in addition to those named below.

FULL NAME		% SHARE IF MORE THAN ONE
<input type="text"/>	→	<input type="text"/>
<input type="text"/>	→	<input type="text"/>
<input type="text"/>	→	<input type="text"/>
<input type="text"/>	→	<input type="text"/>

- (v) **“Absolute Beneficiary(ies)”**, where **Part 4B applies**, means the one or more persons named in the boxes below

FULL NAME		% SHARE IF MORE THAN ONE
<input type="text"/>	→	<input type="text"/>
<input type="text"/>	→	<input type="text"/>
<input type="text"/>	→	<input type="text"/>
<input type="text"/>	→	<input type="text"/>

- (vi) **“Trustees”** means the trustee or trustees as appropriate for the time being of this Trust
- (vii) **“Trust Fund”** means the Policy the full benefit thereof any assets at any time added thereto by way of further settlement, capital accretion, accumulation of income or otherwise and all assets from time to time representing the same and includes where the context so admits any part or parts thereof
- (viii) **“Trust Period”** means the period of 125 years from the date of this Trust Deed
- (ix) In this Trust **“child” “children”** and **“issue”** includes any illegitimate step adopted or legitimated (whether adopted or legitimated before or after the date hereof) child, children or issue
- (x) **“Spouse”** includes any civil partner registered under the Civil Partnership Act 2004 and widow(er) includes any surviving civil partner so registered. Any references to marriage include registered civil partnership.

## **PART 4      PRINCIPAL TRUST TERMS**

### **A      Where the Trust is a Discretionary Trust:**

- A1. During the Trust Period the Appointor shall have power by deed or deeds revocable (whether by the person(s) making the deed or some other person(s)) during the Trust Period or irrevocable to appoint the whole or any part or parts of the Trust Fund and the income thereof for such one or more of the Discretionary Beneficiaries in such one or more shares and for such interests and subject to such trusts powers and provisions (including protective trusts, discretionary trusts or powers operative or exercisable at the discretion of the Appointor or any other persons) as the Appointor shall in their absolute discretion think fit and without prejudice to the generality of the foregoing this power shall include the power to appoint any one or more of the Discretionary Beneficiaries to be new or additional Default Beneficiaries in place of or in addition to those named by the Settlor in paragraph (iv) of Part 3 above with such adjustment of the shares of the Default Beneficiaries as the Appointor shall direct. Provided Always that no such appointment shall infringe the rule against perpetuities (where this is relevant) or affect the entitlement of any person to any payment made or asset transferred to him.
- Provided also that where the Appointor are the Trustees no appointment shall be made in favour of a Beneficiary who is one of the Trustees unless there is at least one other Trustee who does not benefit directly or indirectly from the appointment.
- A2. Subject to paragraph A1 of this Part 4A :
- (i) The Trustees may accumulate the whole or part of the income of the Trust Fund during the Trust Period. Such income shall be added to the Trust Fund.
  - (ii) The Trustees shall pay or apply the remainder of the income to or for the benefit of such of the Discretionary Beneficiaries as the Trustees think fit during the Trust Period.
- A3. To the extent that any part of the Trust Fund and its income shall not have been appointed or otherwise disposed of by the Trustees during the Trust Period, the Trust Fund shall be held for the absolute benefit of the Default Beneficiaries and if more than one in the shares specified and if no shares are specified in equal shares.
- A4. During the Trust Period
- (i) The Trustees shall have power to pay transfer or apply the whole or any part or parts of the Trust Fund to or for the benefit of any Beneficiary entitled to such whole or part.
  - (ii) The Trustees shall have power to lend with or without security to any 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 any such loan must be repayable before the end of the Trust Period.

## **B. Where this Trust is an Absolute Trust**

- B1. The Trustees shall hold the Trust Fund and the income thereof absolutely for the Beneficiary(ies) and if more than one in the shares specified in paragraph (v) of Part 3 above and if no shares are specified and there is more than one Beneficiary in equal shares absolutely.
- B2. Where this Trust is subject to the law of England Section 31 of the Trustee Act 1925 shall not apply to this Trust and where this Trust is subject to the law of Northern Ireland Section 32 of the Trustee Act (Northern Ireland) 1958 shall not apply but regardless of the law to which this Trust is subject so long as the Beneficiary is under the age of legal capacity the Trustees shall have power to pay or otherwise apply for or towards his maintenance education or benefit so much of the income from his share in the Trust Fund as the Trustees may in their absolute discretion think fit. The Trustees shall retain the balance of any such income on trust for that Beneficiary absolutely and until he shall attain the age of legal capacity the Trustees shall invest the same and the resulting income thereof in investments hereby or by law authorised and shall hold the same as an accretion to the said balance Provided Always that so long as the said Beneficiary is under the age of legal capacity, the Trustees may pay or apply as aforesaid any such balance or accretion as if it were income arising in the then current year.
- B3. The Trustees shall in place of any other power to pay or apply capital for the benefit of a Beneficiary have the power, subject to the consent of an adult Beneficiary having legal capacity but otherwise in their absolute discretion, to pay, transfer or apply the whole or any part or parts of any of the Trust Fund to which any Beneficiary is entitled to or for the outright benefit only of such Beneficiary.

## **PART 5 ADMINISTRATIVE POWERS OF THE TRUSTEES**

In addition to any powers conferred upon them by law the Trustees shall have the following powers:

- (i) All the powers of an absolute owner in respect of the Policy (or any life assurance policy forming part of the Trust Fund) including the power to exercise any option or to sell or realise any such Policy or policy or to convert the same to any other form of assurance.
- (ii) Power to borrow money on the security of the Policy (or any life assurance policy as aforesaid) in order to pay any overdue or future premiums or any other sum necessary for maintaining the Policy or policy in force.
- (iii) Power to mortgage, surrender or otherwise deal with the said Policy (or any life assurance policy as aforesaid) in such manner as the Trustees shall in their discretion consider appropriate.
- (iv) Power to invest or apply the Trust Fund in the purchase or acquisition of either income or non-income producing assets, including other life assurance policies or such stocks, funds, shares, securities or other investments or property, of whatever nature and wherever situated and whether involving liabilities or not with or without security, as the Trustees in their absolute discretion shall think fit with the intention that the Trustees shall have the same powers as absolute owners who are beneficially entitled.
- (v) Without prejudice to the generality of the foregoing, the Society shall not be concerned to inquire for what purpose any money may be borrowed under the provisions of the Policy or otherwise or to see to the disposal or application of any money paid to the Trustee or Trustees for the time being.

## PART 6 APPOINTMENT OF FIRST TRUSTEES

The Settlor hereby appoints the following persons to be Trustees of the Trust Fund:

**The Settlor and**

**We the undersigned hereby  
agree to accept the duties of  
Trustees**

(i) Full name	Signature	
Address		Date
		Location <b>(only required in Scotland)</b>
Occupation		

(ii) Full name	Signature	
Address		Date
		Location <b>(only required in Scotland)</b>
Occupation		

(iii) Full name	Signature	
Address		Date
		Location <b>(only required in Scotland)</b>
Occupation		

## **PART 7 APPOINTMENT OF ADDITIONAL TRUSTEES AND DISMISSAL OF TRUSTEES**

- (i) The power of appointing new or additional Trustees shall be vested in the Appointor and every appointment of a new or additional Trustee or Trustees shall be by deed and notice in writing thereof shall forthwith be given to the Society.
- (ii) The Settlor during his lifetime (and where two persons are the Settlor both of them jointly and then the survivor) will also have power by deed to dismiss any Trustee provided at least two Trustees remain after such dismissal, one of whom is not the Settlor or the spouse of the Settlor for the time being.

## **PART 8 REMUNERATION AND LIABILITY OF TRUSTEES**

- (i) Any Trustee (other than the Settlor or a spouse of the Settlor for the time being) being a solicitor or other person engaged in any profession or business shall be entitled to charge and to be paid all usual professional or other charges for business done by him or his firm in connection with this Trust whether in the ordinary course of his profession or business or not.
- (ii) In the execution and administration of this Trust no Trustee shall be liable for any loss to the Trust Fund arising by reason of any investment made in good faith by any Trustee or by reason of any other matter or thing except wilful fraud or wrongdoing committed by the Trustee who is sought to be made liable and, in the case of a paid Trustee, negligence.

## **PART 9 THE LAW OF THE TRUST**

The Trust hereby declared shall be governed by the law of England unless indicated otherwise in the boxes below, in which case the law of the stated country will apply.

Settlor's (s') initials

Scotland

Northern Ireland

## PART 10 SIGNATURES AND DATE

In **Witness Whereof** the Settlor executed this document as a Deed on:

this  day of  20

### Signed as a Deed and delivered by the Settlor:

Signature

Place of signing  
(only required in Scotland)

Name

Address

Postcode

### Signed as a Deed and delivered by the second Settlor:

(if there are two Settlers):

Signature

Place of signing  
(only required in Scotland)

Name

Address

Postcode

### In the presence of the Witness named below:

Signature

Name

Address

Postcode

### In the presence of the Witness named below:

Signature

Name

Address

Postcode



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