



# ***Trusts (Capital and Income) Bill [HL]:*** **Committee Stage Report**

Standard Note: SN/HA/6476  
Last updated: 20 November 2012  
Author: Catherine Fairbairn  
Section: Home Affairs Section

---

This is a report on the House of Commons Committee Stage of the [Trusts \(Capital and Income\) Bill \[HL\]](#) (the Bill). It complements [Research Paper 12/65](#) prepared for the Commons Second Reading.

The Bill is based substantially on a draft bill prepared by the Law Commission and is following the special procedure which applies to Law Commission bills. The Bill deals with technical and complex matters relating to trust law where trustees have to distinguish between capital and income in their management of the trust property. It is supported by the Opposition and by professional groups.

The Bill was considered by a Second Reading Committee on 5 November 2012 and by a Public Bill Committee in a single sitting on 13 November 2012. The Bill was reported without amendment.

The Bill would extend to England and Wales.

## **Contents**

<b>1</b>	<b>Introduction and background</b>	<b>2</b>
<b>2</b>	<b>Second Reading Committee debate</b>	<b>2</b>
<b>3</b>	<b>Public Bill Committee debate</b>	<b>3</b>
<b>4</b>	<b>Members of Committees</b>	<b>4</b>
4.1	Members of Second Reading Bill Committee	4
4.2	Members of the Public Bill Committee	4

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

This information is provided subject to [our general terms and conditions](#) which are available online or may be provided on request in hard copy. Authors are available to discuss the content of this briefing with Members and their staff, but not with the general public.

## 1 Introduction and background

The *Trusts (Capital and Income) Bill [HL]* (the Bill) is based substantially on a draft bill prepared by the Law Commission. It was introduced in the House of Lords on 29 February 2012 under the House of Lords procedure for Law Commission Bills, and was carried over to the 2012–13 Session. No amendments were made to the Bill by the House of Lords. The Bill completed its passage through the House of Lords on 23 October 2012 and was introduced into the House of Commons as Bill 81 of 2012-13 on the same day.

Under Standing Order No. 59, Law Commission Bills are automatically referred to a Second Reading Committee. The Bill was considered by a Second Reading Committee on 5 November 2012<sup>1</sup> and had its formal Second Reading (without debate) on 6 November 2012.<sup>2</sup> It was considered by a Public Bill Committee at a single sitting on 13 November 2012.<sup>3</sup> No amendments had been tabled and there was no disagreement to any of the clauses. The Bill was reported without amendment.

The Bill deals with technical and complex matters relating to trust law where trustees have to distinguish between capital and income in their management of the trust property. It is supported by the Opposition and by professional groups. The Government's [Explanatory Notes](#) published with the Bill include detailed commentary on the clauses. Further background and information about the Bill's provisions is included in [Library Research Paper 12/65](#), which was prepared for the Bill's Second Reading in the House of Commons.

In summary, the Bill would make changes to the current law in three areas and would deal with:

- technical rules requiring apportionment between capital and income
- the classification of shares received by trustees on a tax-exempt corporate demerger (whether direct or indirect)
- investment by charity trustees on a “total return” basis.

The Bill would extend to England and Wales.

## 2 Second Reading Committee debate

In Second Reading Committee, Helen Grant, Parliamentary Under-Secretary of State for Justice, referred to the Bill as a “short technical measure to amend the law of England and Wales relating to capital and income trusts”.<sup>4</sup> She outlined the process of consultation and policy development which had preceded the Bill:

The Bill will implement, with minor modifications, the reforms recommended by the Law Commission in its 2009 report, “Capital and Income in Trusts: Classification and Apportionment.” The Bill derives ultimately from comments made during debates in Parliament on the Bill that became the Trustee Act 2000. That led to the publication of a Law Commission consultation paper in 2004 and the Commission's report in 2009.

---

<sup>1</sup> [Second Reading Committee Deb 5 November 2012 cc1-8](#)

<sup>2</sup> [HC Deb 6 November 2012 c833](#)

<sup>3</sup> [PBC Deb 13 November 2012 cc3-4](#)

<sup>4</sup> [Second Reading Committee Deb 5 November 2012 c3](#)

The Ministry of Justice then carried out a public consultation in 2010 on the draft Bill published by the Law Commission in its report and published a response in 2011 explaining how it intended to finalise the measure. This extended process of detailed and responsive consultation has, I believe, created a measure with a broad consensus of support.<sup>5</sup>

Helen Grant said that the Bill would “simplify and modernise the law of trusts in modest but important respects”. She acknowledged that it was “certainly not an easy Bill to understand” but said that it would “bring benefits to private and charitable trusts, which will help a good number of people, including the more disadvantaged in society”.<sup>6</sup>

Robert Ffello, Shadow Minister for Justice, agreed that the Bill “is indeed a technical one; it is about a specialised area—a niche thing”.<sup>7</sup> He queried the wording of Clauses 3 and 4 and the cost-benefit analysis part of the impact assessment, and said that he intended to return to the detail of the Bill in Committee. He also confirmed the Opposition’s support for the principles of the Bill.<sup>8</sup>

Helen Grant said that she would write to Robert Ffello about some of the points he had raised.

### **3 Public Bill Committee debate**

The Public Bill Committee met for a single sitting on 13 November 2012. No amendments had been tabled and there was no disagreement to any of the clauses.

Robert Ffello confirmed that the Minister had written to him following the questions he asked in Second Reading Committee and had indicated the support of the Law Commission and the Law Society:

Although her reply contains no particularly new information, it confirms that the Government are relying on the Law Commission and the Law Society for technical support on the Bill. Given that both eminent organisations, as well as other learned lawyers, have expressed something between contentment and praise for the measure, there is little more that the Committee can add.<sup>9</sup>

Robert Ffello drew further attention to the impact assessment:

in view of the lack of detail in the impact assessment, I urge the Government to keep eyes and ears open for any future representations from those experiencing the effects of the Bill, and to be quick to return to Parliament with any amendments that might prove necessary.

He said that he looked forward to the Bill becoming law, “and the benefits that it will hopefully bring to practitioners and beneficiaries alike”.<sup>10</sup>

Julian Huppert, Liberal Democrat, agreed that the Bill “is extremely good and worthwhile”, and wished it “a speedy passage into law”.<sup>11</sup>

---

<sup>5</sup> [Second Reading Committee Deb 5 November 2012 c3](#)

<sup>6</sup> [Second Reading Committee Deb 5 November 2012 c6](#)

<sup>7</sup> [Second Reading Committee Deb 5 November 2012 c6](#)

<sup>8</sup> [Second Reading Committee Deb 5 November 2012 c7](#)

<sup>9</sup> [PBC Deb 13 November 2012 c4](#)

<sup>10</sup> *Ibid*

<sup>11</sup> *Ibid*

The Bill was reported without amendment.

## **4 Members of Committees**

### **4.1 Members of Second Reading Bill Committee**

**Chair:** Martin Caton

**Members:**

Alexander, Heidi (Lewisham East) (Lab)  
Bray, Angie (Ealing Central and Acton) (Con)  
Buckland, Mr Robert (South Swindon) (Con)  
Chishti, Rehman (Gillingham and Rainham) (Con)  
Cunningham, Alex (Stockton North) (Lab)  
Evennett, Mr David (Lord Commissioner of Her Majesty's Treasury)  
Flello, Robert (Stoke-on-Trent South) (Lab)  
Grant, Mrs Helen (Parliamentary Under-Secretary of State for Justice)  
Hillier, Meg (Hackney South and Shoreditch) (Lab/Co-op)  
Huppert, Dr Julian (Cambridge) (LD)  
Johnson, Gareth (Dartford) (Con)  
Lumley, Karen (Redditch) (Con)  
Penrose, John (Weston-super-Mare) (Con)  
Qureshi, Yasmin (Bolton South East) (Lab)  
Sanders, Mr Adrian (Torbay) (LD)  
Scott, Mr Lee (Ilford North) (Con)  
Shannon, Jim (Strangford) (DUP)  
Sharma, Mr Virendra (Ealing, Southall) (Lab)  
Turner, Karl (Kingston upon Hull East) (Lab)

**Committee Clerks:** John-Paul Flaherty, Steven Mark

### **4.2 Members of the Public Bill Committee**

**Chairs:** Mr David Crausby, Mr Edward Leigh

**Members:**

Alexander, Heidi (Lewisham East) (Lab)  
Bray, Angie (Ealing Central and Acton) (Con)  
Buckland, Mr Robert (South Swindon) (Con)  
Chishti, Rehman (Gillingham and Rainham) (Con)  
Cunningham, Alex (Stockton North) (Lab)  
Evennett, Mr David (Lord Commissioner of Her Majesty's Treasury)  
Flello, Robert (Stoke-on-Trent South) (Lab)  
Grant, Mrs Helen (Parliamentary Under-Secretary of State for Justice)  
Huppert, Dr Julian (Cambridge) (LD)  
Johnson, Gareth (Dartford) (Con)  
Lumley, Karen (Redditch) (Con)  
Mearns, Ian (Gateshead) (Lab)  
Penrose, John (Weston-super-Mare) (Con)  
Qureshi, Yasmin (Bolton South East) (Lab)  
Sanders, Mr Adrian (Torbay) (LD)  
Scott, Mr Lee (Ilford North) (Con)

Shannon, Jim (Strangford) (DUP)  
Sharma, Mr Virendra (Ealing, Southall) (Lab)  
Turner, Karl (Kingston upon Hull East) (Lab)

**Committee Clerk:** Alison Groves