



# Trustee Act (Northern Ireland) 1958

## 1958 CHAPTER 23

### PART II

#### GENERAL POWERS OF TRUSTEES AND PERSONAL REPRESENTATIVES

##### MAINTENANCE, ADVANCEMENT AND PROTECTIVE TRUSTS

#### **32<sup>F1</sup> Power to apply income for maintenance and to accumulate surplus income during a minority.**

- (1) Where any property is held by trustees in trust for any person for any estate or interest whatsoever, whether vested or contingent, then, subject to any prior estates or interests or charges affecting that property—
  - (a<sup>F2</sup> during the infancy of any such person, if his estate or interest so long continues, the trustees may, at their sole discretion, pay to his parent or guardian, if any, or otherwise apply for or towards his maintenance, education, or benefit, the whole or such part, if any, of the income of that property as may, in all the circumstances be reasonable, whether or not there is—
    - (i) any other fund applicable to the same purpose; or
    - (ii) any person bound by law to provide for his maintenance or education; and
  - (b) if such person on attaining the age of [<sup>F3</sup> eighteen] years has not a vested estate or interest in such income, the trustees shall thenceforth pay the income of that property and of any accretion thereto under sub-section (3) to him, until he either attains a vested estate or interest therein or dies, or until failure of his estate or interest.
- (2) In deciding whether the whole or any part of the income of the property is during a minority to be paid or applied for the purposes aforesaid, the trustees shall have regard to the age of the infant and his requirements and generally to the circumstances of the case, and in particular to what other income, if any, is applicable for the same purposes; and where trustees have notice that the income of more than one fund is applicable

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*Changes to legislation: There are currently no known outstanding effects for the Trustee Act (Northern Ireland) 1958. (See end of Document for details)*

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for those purposes, then, so far as practicable, unless the entire income of the funds is paid or applied as aforesaid or the court otherwise directs, a proportionate part only of the income of each fund shall be so paid or applied.

- (3) During the infancy of any such person, if his estate or interest so long continues, the trustees shall accumulate all the residue of that income<sup>[F4]</sup> by investing it, and any profits from so investing it] from time to time in authorised investments, and shall hold those accumulations as follows:—

(a) if any such person—

- (i) attains the age of [<sup>F3</sup> eighteen] years, or marries under that age<sup>[F5]</sup> or forms a civil partnership under that age], and his estate or interest in such income during his infancy<sup>[F5]</sup>, or until his marriage or his formation of a civil partnership,] is a vested estate or interest; or
- (ii) on attaining the age of [<sup>F3</sup> eighteen] years or on marriage<sup>[F5]</sup>, or on formation of a civil partnership,] under that age becomes entitled to the property from which such income arose in fee simple, or absolutely, or for an entailed estate or interest;

the trustees shall hold the accumulations in trust for such person absolutely, but without prejudice to any provision with respect thereto contained in any settlement by him made under any statutory powers during his infancy, and so that the receipt of such person after marriage<sup>[F5]</sup> or formation of a civil partnership], and though still an infant, shall be a good discharge; and

- (b) in any other case the trustees shall, notwithstanding that such person had a vested estate or interest in such income, hold the accumulations as an accretion to the capital of the property from which such accumulations arose, and as one fund with such capital for all purposes, and so that, if such property is settled land, such accumulations shall be held upon the same trusts as if the same were capital money arising therefrom;

but the trustees may, at any time during the infancy of such person if his estate or interest so long continues, apply those accumulations, or any part thereof, as if they were income arising in the then current year.

- (4) This section applies in the case of a contingent estate or interest only if the limitation or trust carries the intermediate income of the property, but it applies to a future or contingent legacy by the parent of, or a person standing in loco parentis to, the legatee, if and for such period as, under the general law, the legacy carries interest for the maintenance of the legatee, and in any such case as last aforesaid the rate of interest shall (if the income available is sufficient, and subject to any rules of court or county court rules to the contrary) be five pounds per centum per annum.
- (5) This section applies to a vested annuity in like manner as if the annuity were the income of property held by trustees in trust to pay the income thereof to the annuitant for the same period for which the annuity is payable, save that in any case accumulations made during the infancy of the annuitant shall be held in trust for the annuitant or his personal representatives absolutely.
- (6) This section does not apply where the instrument, if any, under which the interest arises came into operation before the commencement of this Act.

<b>F1</b>	1969 c. 28 (NI)
<b>F2</b>	1969 c. 28 (NI)
<b>F3</b>	1969 c. 28 (NI)
<b>F4</b>	2001 c. 14 (NI)

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F5 2004 c.33

### 33 Power of advancement.

- (1) Trustees may at any time or times pay or apply any capital money subject to a trust, for the advancement or benefit, in such manner as they may, in their absolute discretion, think fit, of any person entitled to the capital of the trust property or of any share thereof, whether absolutely or contingently on his attaining any specified age or on the occurrence of any other event, or subject to a gift over on his death under any specified age or on the occurrence of any other event, and whether in possession or in remainder or reversion, and such payment or application may be made notwithstanding that the estate or interest of such person is liable to be defeated by the exercise of a power of appointment or revocation, or to be diminished by the increase of the class to which he belongs so, however, that—
  - (a) the money so paid or applied for the advancement or benefit of any person shall not exceed altogether in amount one-half of the presumptive or vested share, estate or interest of that person in the trust property; and
  - (b) if that person is or becomes absolutely and indefeasibly entitled to a share in the trust property the money so paid or applied shall be brought into account as part of such share; and
  - (c) no such payment or application shall be made so as to prejudice any person entitled to any prior life or other estate or interest, whether vested or contingent, in the money paid or applied unless such person is in existence and of full age and consents in writing to such payment or application.
- (2) This section applies only where the trust property consists of—
  - (a) money or securities which are not by statute or in equity considered as land or applicable as capital money for the purposes of the Settled Land Acts, 1882 to 1890; or
  - (b) property held upon trust for sale, calling in and conversion and the proceeds of such sale, calling in and conversion are not in equity considered as land.
- (3) This section does not apply to trusts constituted or created before the commencement of this Act.

### 34<sup>F6</sup> Protective trusts.

- (1) Where any income, including an annuity or other periodical income payment, is directed to be held on protective trusts for the benefit of any person (in this section referred to as “the principal beneficiary”) for the period of his life or any less period, then, during that period (in this section referred to as “the trust period”) the said income shall, without prejudice to any prior estate or interest be held—
  - (a) upon trust for the principal beneficiary until whichever of the following events shall first occur—
    - (i) the trust period expires; or
    - (ii) the principal beneficiary (whether before or after the termination of any prior estate or interest) does or attempts to do or suffers any act or thing, or until any other event (not being an advance under any statutory or express power) happens whereby, if during the trust period the said income were payable to the principal beneficiary

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absolutely, he would be deprived of the right to receive the same or any part thereof; and

- (b) upon trust, where any of the events referred to in sub-paragraph (ii) of paragraph (a) happens during the subsistence of the trust period, to apply the said income (as the trustees in their absolute discretion, without being liable to account for the exercise of their discretion, think fit) for the maintenance or support, or otherwise for the benefit, of all or any one or more exclusively of the other or others of the following persons—

- (i) the principal beneficiary and his or her<sup>F7</sup> spouse or civil partner], if any, and his or her children or more remote issue, if any; and
- (ii) if as often as and while there is no living issue of the principal beneficiary, the principal beneficiary and his or her<sup>F7</sup> spouse or civil partner], if any, and the persons who, if the principal beneficiary were actually dead without having married<sup>F7</sup> or formed a civil partnership] would for the time being be his next of kin;

so that the trustees in the exercise of their discretion may apply any income accrued but unapplied in any previous year for the purposes of the trusts implied as aforesaid in any subsequent year.

- (2) This section does not apply to trusts coming into operation before the commencement of this Act, and has effect subject to any variation of the trusts implied as aforesaid contained in the instrument creating the trust.
- (3) Nothing in this section operates to validate any trust which would, if contained in the instrument creating the trust, be liable to be set aside.

**F6** 1977 NI 17

**F7** 2004 c.33

**Changes to legislation:**

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