



# Trustee Act (Northern Ireland) 1958

## 1958 CHAPTER 23

An Act to consolidate with amendments certain enactments to trustees. [9th December 1958]

*Part I (ss. 1—11) rep. by 2001 c. 14 (NI)*

### PART II

#### GENERAL POWERS OF TRUSTEES AND PERSONAL REPRESENTATIVES

##### GENERAL POWERS

#### 12 Power of trustees for sale to sell by auction, etc.

- (1) Where a trust for sale or a power of sale of property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to re-sell, without being answerable for any loss.
- (2) Where a trust for sale or a power of sale of land held in fee farm or on lease is vested in a trustee, he may make, on such terms and conditions as he may think proper, a sub fee farm grant of the land or any part thereof, or a sub-lease of the land or any part thereof with a nominal reversion, where such sub fee farm grant or sub-lease amounts in substance to a sale and the trustees have satisfied themselves that it is the most appropriate method of disposing of the land.
- (3) Where trustees grant or lease any land pursuant to any power conferred on them by sub-section (2) they may sell any rent reserved on such grant or any reversion expectant upon the determination of such lease.

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- (4) Where any grant (including a sub fee farm grant) or sub-lease purports to have been made in exercise of a power conferred by this section, that power shall, until the contrary is proved, be assumed to have been properly exercised and—
  - (a) the grantee, sub-grantee or sub-lessee (as the case may be) shall not, either before or on the execution of the grant or sub-lease, be concerned to see or inquire whether a case has arisen to authorise the execution of that grant or sub-lease; and
  - (b) neither the grantee, sub-grantee, sub-lessee nor any of their successors in title shall be concerned to see to the application of any moneys paid on foot of the grant or lease.
- (5) A trust or power to sell or dispose of land includes a trust or power to sell or dispose of part thereof whether the division is horizontal, vertical, or made in any other way.
- (6) This section does not enable—
  - (a) a trust or direction to sell land which is deemed to be settled land by virtue of section sixty-three of the Settled Land Act, 1882, to be exercised unless the consents (if any) which are required by the instrument creating the settlement are first obtained; or
  - (b) an express power to sell settled land to be exercised unless any consents which are required by virtue of sub-section (2) of section fifty-six of the Settled Land Act, 1882, as amended by sub-section (2) of section six of the Settled Land Act, 1884, are first obtained.

### **13 Power to sell subject to depreciatory conditions and under.**

- (1) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.
- (2) No sale made by a trustee shall, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.
- (3) No purchaser, upon any sale made by a trustee, shall be at liberty to make any objection against the title upon any of the grounds aforesaid.
- (4) A trustee who is either a vendor or a purchaser may sell or buy without excluding the application of section two of the Vendor and Purchaser Act, 1874.
- (5) This section applies to sales and purchases made before or after the commencement of this Act.

### **14 Power of trustees to give receipts.**

- (1) The receipt in writing of a trustee for any money, securities<sup>[F1]</sup> investments], or other personal property or effects payable, transferable, or deliverable to him under any trust or power shall be a sufficient discharge to the person paying, transferring, or delivering the same and shall effectually exonerate him from seeing to the application or being answerable for any loss or misapplication thereof, but, except where—

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- (a) the sole trustee is a trust corporation; or
- (b) the settlement authorises the receipt of capital money by a sole trustee; a receipt given by a sole trustee for—
  - (i) the proceeds of sale or other capital money arising under a trust for sale of land; or
  - (ii) capital money arising under the Settled Land Acts, 1882 to 1890;
 shall not discharge the payer of such proceeds or capital money.

*Subs. (2) amends s. 39 of 1882 c. 38 (NI)***F1** 2001 c. 14 (NI)**15 Power to compound liabilities.**

- (1) A personal representative, or two or more trustees acting together, or, subject to the restrictions imposed in regard to receipts by a sole trustee not being a trust corporation, a sole acting trustee where by the instrument, if any, creating the trust, or by statute, a sole trustee is authorised to execute the trusts and powers reposed in him, may, if and as he or they think fit—

- (a) accept any property, real or personal, before the time at which it is made transferable or payable; or
- (b) sever and apportion any blended trust funds or property; or
- (c) pay or allow any debt or claim on any evidence that he or they think sufficient; or
- (d) accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed; or
- (e) allow any time of payment of any debt; or
- (f) compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the trust;

and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them<sup>F2</sup> if he has or they have discharged the duty of care set out in section 1(1) of the Trustee Act (Northern Ireland) 2001].

- (2) Sub-section (1) shall have effect without prejudice to sub-section (9) of section forty of the Administration of Estates Act (Northern Ireland), 1955 .

**F2** 2001 c. 14 (NI)**16 Power to raise money by sale, mortgage, etc.**

- (1) Where trustees are authorised by the instrument, if any, creating the trust or by law to pay or apply capital money subject to the trust for any purpose or in any manner, they shall have and shall be deemed always to have had power to raise the money required by sale, conversion, calling in, or mortgage of all or any part of the trust property for the time being in possession.
- (2) This section applies notwithstanding anything to the contrary contained in the instrument, if any, creating the trust, but does not apply to trustees of property held for

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charitable purposes, or to trustees of a settlement for the purposes of the Settled Land Acts, 1882 to 1890, not being also trustees exercising the powers of a tenant for life under section sixty of the Settled Land Act, 1882 .

## 17 Protection to purchasers and mortgagees dealing with trustees.

No purchaser or mortgagee, paying or advancing money on a sale or mortgage purporting to be made under any trust or power vested in trustees, shall be concerned to see that such money is wanted, or that no more than is wanted is raised, or otherwise as to the application thereof.

## 18 Devolution of powers or trusts.

- (1) Where a power or trust is given to or imposed on two or more trustees jointly, the same may be exercised or performed by the survivors or survivor of them for the time being.
- (2) Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or, where there were two or more trustees, of the last surviving or continuing trustee, shall be capable of exercising or performing any power or trust which was given to, or capable of being exercised by, the sole or last surviving or continuing trustee, or other the trustees or trustee for the time being of the trust.
- (3) This section takes effect subject to the restrictions imposed in regard to receipts by a sole trustee, not being a trust corporation.
- (4) In this section “personal representative” does not include an executor who has renounced or has not proved.

## [<sup>F3</sup>19 Power to insure

A trustee may—

- (a) insure any property which is subject to the trust against risks of loss or damage due to any event, and
- (b) pay the premiums out of any income or capital funds of the trust]

**F3** [2001 c. 14 \(NI\)](#)

## 20 Application of insurance money where policy kept up under any trust, power or obligation.

- (1) Money receivable by trustees or any beneficiary under a policy of insurance against the loss or damage of any property subject to a trust or to a settlement within the meaning of the Settled Land Acts, 1882 to 1890,<sup>F4</sup> . . . , shall, where the policy has been kept up under any trust in that behalf or under any power statutory or otherwise, or in performance of any covenant or of any obligation statutory or otherwise, or by a tenant for life impeachable for waste, be capital money for the purposes of the trust or settlement, as the case may be.
- (2) If any such money is receivable by any person, other than the trustees of the trust or settlement, that person shall use his best endeavours to recover and receive the money, and shall pay the net residue thereof, after discharging any costs of recovering and

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receiving it, to the trustees of the trust or settlement, or, if there are no trustees capable of giving a discharge therefor, into court.

(3) Any such money—

- (a) if it was receivable in respect of settled land within the meaning of the Settled Land Acts, 1882 to 1890, or any building or works thereon, shall be deemed to be capital money arising under those Acts from the settled land, and shall be invested or applied by the trustees, or, if in court, under the direction of the court, accordingly;
- (b) if it was receivable in respect of personal chattels settled in accordance with section thirty-seven of the Settled Land Act, 1882, shall be deemed to be capital money arising under that Act and shall be applicable by the trustees or, if in court, under the direction of the court, in like manner as provided by that Act with respect to money arising by a sale of chattels settled as aforesaid;
- (c) if it was receivable in respect of property held upon trust for sale, shall be held upon the trusts and subject to the powers and provisions applicable to money arising by a sale under such trust;
- (d) in any other case, shall be held upon trusts corresponding as nearly as may be with the trusts affecting the property in respect of which it was payable.

(4) Such money, or any part thereof, may also be applied by the trustees, or, if in court, under the direction of the court, in rebuilding, reinstating, replacing, or repairing the property lost or damaged, but any such application by the trustees shall be subject to the consent of any person whose consent is required by the instrument, if any, creating the trust to the investment of money subject to the trust, and, in the case of money which is deemed to be capital money arising under the Settled Land Acts, 1882 to 1890, be subject to the provisions of those Acts with respect to the application of capital money by the trustees of the settlement.

(5) Nothing contained in this section prejudices or affects the right of any person to require any such money or any part thereof to be applied in rebuilding, reinstating, or repairing the property lost or damaged, or the rights of any mortgagee, lessor, or lessee, whether under any statute or otherwise.

(6) This section applies to policies effected either before or after the commencement of this Act, but only to money received after such commencement.

<b>F4</b> 2001 c. 14 (NI)
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## **21 Power of trustees of renewable leaseholds to renew and raise money for the purpose.**

(1) Subject to sub-section (2), a trustee of any leaseholds for lives or years which are renewable from time to time either under any covenant or contract, or by custom or usual practice may, if he thinks fit, and shall, if so required by any person having any beneficial interest, present or future, in the leaseholds, use his best endeavours to obtain from time to time a renewed lease of the same hereditaments on the accustomed or other reasonable terms, and for that purpose may from time to time make or concur in making a surrender of the lease for the time being subsisting and do all such other acts as are requisite.

(2) Where by the terms of the instrument, if any, creating the trust the person in possession for his life or other limited interest is entitled to enjoy the same without any obligation

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to renew or to contribute to the expense of renewal, this section shall not apply unless the consent in writing of that person is obtained to the renewal on the part of the trustee.

- (3) If money is required to pay for the renewal, the trustee may—
- (a) pay the money out of any funds then in his hands in trust for the persons beneficially interested in the lands to be comprised in the renewed lease; and
  - (b) if he has not in his hands sufficient funds for the purpose, raise the money required—
    - (i) by mortgage of the hereditaments to be comprised in the renewed lease; or
    - (ii) by mortgage of any other hereditaments subject to the trusts to which the hereditaments referred to in sub-paragraph (i) are subject.

*S. 22 rep. by 2001 c. 14 (NI)*

## **23 Reversionary interests, valuations, and audit.**

- (1) Where trust property includes any share, estate or interest in property not vested in the trustees, or the proceeds of the sale of any such property, or any other thing in action, the trustees on the same falling into possession, or becoming payable or transferable may—
- (a) agree or ascertain the amount or value thereof or any part thereof in such manner as they may think fit;
  - (b) accept in or towards satisfaction thereof, at the market or current value, or upon any valuation or estimate of value which they may think fit, any authorised investments;
  - (c) allow any deductions for duties, costs, charges and expenses which they may think proper or reasonable;
  - (d) execute any release in respect of the premises so as effectually to discharge all accountable parties from all liability in respect of any matters coming within the scope of such release;

without being responsible in any such case for any loss occasioned by any act or thing so done by them<sup>F5</sup> if they have discharged the duty of care set out in section 1(1) of the Trustee Act (Northern Ireland) 2001].

- (2) The trustees shall not be under any obligation and shall not be chargeable with any breach of trust by reason of any omission—
- (a) to place any distringas notice or apply for any stop or other like order upon any securities or other property out of or on which such share, estate or interest or other thing in action as aforesaid is derived, payable or charged; or
  - (b) to take any proceedings on account of any act, default, or neglect on the part of the persons in whom such securities or other property or any of them or any part thereof are for the time being, or had at any time been, vested;

unless and until required in writing so to do by some person, or the guardian of some person, beneficially interested under the trust, and unless also due provision is made to their satisfaction for payment of the costs of any proceedings required to be taken so, however, that nothing in this sub-section shall relieve the trustees of the obligation to get in and obtain payment or transfer of such share, estate or interest or other thing in action on the same falling into possession.

- (3) Trustees may, for the purpose of giving effect to the trust, or any of the provisions of the instrument, if any, creating the trust or of any statute, from time to time (by suitably

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qualified agents) ascertain and fix the value of any trust property in such manner as they think proper, and any valuation so made<sup>F5</sup>. . . shall be binding upon all persons interested under the trust<sup>[F5]</sup> if the trustees have discharged the duty of care set out in section 1(1) of the Trustee Act (Northern Ireland) 2001].

- (4) Trustees may, in their absolute discretion, from time to time, but not more than once in every three years unless the nature of the trust or any special dealings with the trust property make a more frequent exercise of the right reasonable, cause the accounts of the trust property to be examined or audited by an independent accountant, and shall, for that purpose, produce such vouchers and give such information to him as he may require; and the costs of such examination or audit, including the fee of the auditor, shall be paid out of the capital or income of the trust property, or partly in one way and partly in the other, as the trustees, in their absolute discretion, think fit, but, in default of any direction by the trustees to the contrary in any special case, costs attributable to capital shall be borne by capital and those attributable to income by income.

**F5** 2001 c. 14 (NI)

*S. 24 rep. by 2001 c. 14 (NI)*

## **25 Power to concur with others.**

Where an undivided share in the proceeds of sale of land directed to be sold, or in any other property, is subject to a trust, or forms part of the estate of a testator or intestate, the trustees or personal representatives may (without prejudice to any trust for sale affecting the entirety of the land and the powers of the trustees for sale in reference thereto) execute or exercise any trust or power vested in them in relation to such share in conjunction with the persons entitled to or having power in that behalf over the other share or shares, and notwithstanding that any one or more of the trustees or personal representatives may be entitled to or interested in any such other share, either in his or their own right or in a fiduciary capacity.

## **[F6]26 Power to delegate trusts etc. by power of attorney.**

- (1) Notwithstanding any rule of law or equity to the contrary, a trustee may, by power of attorney, delegate for a period not exceeding twelve months the execution or exercise of all or any of the trusts, powers and discretions vested in him as trustee either alone or jointly with any other person or persons.
- (2) The persons who may be donees of a power of attorney under this section include a trust corporation but not (unless a trust corporation) the only other co-trustee of the donor of the power.
- (3) An instrument creating a power of attorney under this section shall be attested by at least one witness.
- (4) Before or within seven days after giving a power of attorney under this section the donor shall give written notice thereof (specifying the date on which the power comes into operation and its duration, the donee of the power, the reason why the power is given and, where some only are delegated, the trusts, powers and discretions delegated) to—
  - (a) each person (other than himself), if any, who under any instrument creating the trust has power (whether alone or jointly) to appoint a new trustee; and

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- (b) each of the other trustees, if any;  
 but failure to comply with this sub-section shall not, in favour of a person dealing with the donee of the power, invalidate any act done or instrument executed by the donee.
- (5) The donor of a power of attorney given under this section shall be liable for the acts or defaults of the donee in the same manner as if they were the acts or defaults of the donor.
- (6) For the purpose of executing or exercising the trusts or powers delegated to him, the donee may exercise any of the powers conferred on the donor as trustee by statute or by the instrument creating the trust, including power, for the purpose of the transfer of any inscribed stock, himself to delegate to an attorney power to transfer such stock but not including the power of delegation conferred by this section.
- (7) The fact that it appears from any power of attorney given under this section, or from any evidence required for the purposes of any such power of attorney or otherwise, that in dealing with any stock the donee of the power is acting in the execution of a trust shall not be deemed for any purpose to affect any person in whose books the stock is inscribed or registered with any notice of the trust.
- (8) This section applies to a personal representative, a tenant for life and a trustee or other person exercising the powers of a tenant for life under section 60 of the Settled Land Act 1882 as it applies to a trustee except that sub-section (4) shall apply as if it required the notice therein mentioned to be given—
  - (a) in the case of a personal representative, to each of the other personal representatives, if any, except any executor who has renounced probate;
  - (b) in the case of a tenant for life, to the trustees of the settlement and to each person, if any, who together with the person giving the notice constitutes the tenant for life;
  - (c) in the case of a person (other than a trustee) exercising the powers of a tenant for life under section 60 of the Settled Land Act 1882, to each of the persons, if any, who together with the person giving the notice have, by virtue of an order of the court, power to exercise the powers of a tenant for life under the said section 60.
- (9) This section applies whenever the trusts, powers or discretions in question arose.]

**F6**    1971 c. 33 (NI)

## INDEMNITIES

### 27    **Protection against liability in respect of rents and covenants.**

- (1) Where a personal representative or trustee liable for—
  - (a) any rent, covenant, or agreement reserved by or contained in any lease; or
  - (b) any rent, covenant or agreement payable under or contained in any grant made in consideration of a rent charge; or
  - (c) any indemnity given in respect of any rent, covenant or agreement referred to in either of the foregoing paragraphs;

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satisfies all liabilities under the lease or grant which may have accrued, and been claimed, up to the date of the conveyance hereinafter mentioned, and, where necessary, sets apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum which the lessee or grantee agreed to lay out on the property demised or granted, although the period for laying out the same may not have arrived, then and in any such case the personal representative or trustee may convey the property demised or granted to a purchaser, legatee, devisee, or other person entitled to call for a conveyance thereof and thereafter—

- (i) he may distribute the residuary real and personal estate of the deceased testator or intestate, or, as the case may be, the trust estate (other than the fund, if any, set apart as aforesaid) to or amongst the persons entitled thereto, without appropriating any part, or any further part, as the case may be, of the estate of the deceased or of the trust estate to meet any future liability under the said lease or grant;
  - (ii) notwithstanding such distribution, he shall not be personally liable in respect of any subsequent claim under the said lease or grant.
- (2) This section operates without prejudice to the right of the lessor or grantor, or the persons deriving title under the lessor or grantor, to follow the assets of the deceased or the trust property into the hands of the persons amongst whom the same may have been respectively distributed, and applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.
- (3) In this section “lease” includes a fee farm grant and an underlease and an agreement for a lease or underlease and any instrument giving any such indemnity as aforesaid or varying the liabilities under the lease; “grant” applies to a grant whether the rent is created by limitation, grant, reservation, or otherwise, and includes an agreement for a grant and any instrument giving any such indemnity as aforesaid or varying the liabilities under the grant; “lessee” and “grantee” include persons respectively deriving title under them.

## **28 Protection by means of advertisements.**

- (1) With a view to the conveyance to, or distribution among, the persons entitled to any real or personal property, the trustees of a settlement or of a disposition on trust for sale or personal representatives may give notice by publishing advertisements once in the Belfast Gazette and twice in each of any two daily newspapers printed and published in Northern Ireland, or if the property includes land, in any two newspapers circulating in the district in which the land is situated, of their intention to make such conveyance or distribution as aforesaid, and requiring any person interested to send to the trustees or personal representatives within the time, not being less than two months, fixed in the last of the notices, particulars of his claim in respect of the property or any part thereof to which the notice relates.
- (2) At the expiration of the time fixed by the notice the trustees or personal representatives may convey or distribute the property or any part thereof to which the notice relates, to or among the persons entitled thereto, having regard only to the claims, whether formal or not, of which the trustees or personal representatives then had notice and shall not, as respects the property so conveyed or distributed, be liable to any person of whose claim the trustees or personal representatives have not had notice at the time of conveyance or distribution; but nothing in this section—

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- (a) prejudices the right of any person to follow the property, or any property representing the same, into the hands of any person, other than a purchaser, who may have received it; or
  - (b) frees the trustees or personal representatives from any obligation to make inquiries and searches or obtain official certificates of search similar to those which an intending purchaser would be advised to make or obtain.
- (3) This section applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.

## **29 Protection in regard to notice.**

A trustee or personal representative acting for the purposes of more than one trust or estate shall not, in the absence of fraud, be affected by notice of any instrument, matter, fact or thing in relation to any particular trust or estate if he has obtained notice thereof merely by reason of his acting or having acted for the purposes of another trust or estate.

*S. 30 rep. by 1971 c. 33 (NI)*

*S. 31 rep. by 2001 c. 14 (NI)*

## MAINTENANCE, ADVANCEMENT AND PROTECTIVE TRUSTS

## **32<sup>F7</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>F8</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>F9</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 for those purposes, then, so far as practicable, unless the entire income of the funds is

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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>[F10]</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>F9</sup> eighteen] years, or marries under that age<sup>[F11]</sup> or forms a civil partnership under that age], and his estate or interest in such income during his infancy<sup>[F11]</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>F9</sup> eighteen] years or on marriage<sup>[F11]</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>[F11]</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.

**F7** 1969 c. 28 (NI)

**F8** 1969 c. 28 (NI)

**F9** 1969 c. 28 (NI)

**F10** 2001 c. 14 (NI)

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**F11** 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>F12</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>F13</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>F13</sup> spouse or civil partner], if any, and the persons who, if the principal beneficiary were actually dead without having married<sup>F13</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.

**F12** 1977 NI 17

**F13** 2004 c.33

## PART III

### APPOINTMENT AND DISCHARGE OF TRUSTEES

#### 35 Power of appointing new or additional trustees.

- (1) Where a trustee, whether original, substituted or additional, and whether appointed by a court or otherwise, is dead, or remains out of the United Kingdom for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, then—

- (a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; or  
(b) if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee;

may, by writing, appoint one or more other persons (whether or not being the persons exercising the power) to be a trustee or trustees in the place of the trustee so deceased, remaining out of the United Kingdom, desiring to be discharged, refusing, or being unfit or being incapable, as aforesaid.

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- (2) Where a trustee has been removed under a power contained in the instrument creating the trust, a new trustee or new trustees may be appointed in the place of the trustee who is removed, as if he were dead, or, in the case of a corporation, as if the corporation desired to be discharged from the trust, and the provisions of this section shall apply accordingly.
- (3) Where a corporation being a trustee is or has been dissolved, either before or after the commencement of this Act, then, for the purposes of this section and of any enactment replaced thereby, the corporation shall be deemed to be and to have been from the date of the dissolution incapable of acting in the trusts or powers reposed in or conferred on the corporation.
- (4) The power of appointment given by sub-section (1) or any similar previous enactment to the personal representatives of a last surviving or continuing trustee shall be and shall be deemed always to have been exercisable by the executors for the time being (whether original or by representation) of such surviving or continuing trustee who have proved the will of their testator or by the administrators for the time being of such trustee without the concurrence of any executor who has renounced or has not proved.
- (5) But a sole or last surviving executor intending to renounce, or all the executors where they all intend to renounce, shall have and shall be deemed always to have had power, at any time before renouncing probate, to exercise the power of appointment given by this section, or by any similar previous enactment, if willing to act for that purpose and without thereby accepting the office of executor.
- [<sup>F14</sup>(6) Where, in the case of any trust, there are not more than three trustees—
  - (a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; or
  - (b) if there is no such person, or no such person able and willing to act, then the trustee or trustees for the time being;
 may, by writing, appoint one or more other persons (whether or not being the persons exercising the power) to be an additional trustee or additional trustees, but it shall not be obligatory to appoint any additional trustee, unless the instrument, if any, creating the trust, or any enactment provides to the contrary.
- (7) Every new trustee appointed under this section as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities, and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.
- (8) The provisions of this section relating to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.
- (9) [<sup>F15</sup>Where a trustee is incapable, by reason of mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986, of exercising his functions as trustee and], is also entitled in possession to some beneficial estate or interest in the trust property, no appointment of a new trustee in his place shall be made by the continuing trustees or trustee, under this section, unless leave has been given by the [<sup>F16</sup> High Court or the Master (Care and Protection)] to make the appointment.]

**F14** 2001 c. 14 (NI)

**F15** 1986 NI 4

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**F16** 1978 c. 23

### **36 Supplemental provisions as to appointment of trustees.**

- (1) On the appointment of a trustee for the whole or any part of trust property—
  - (a) the number of trustees may be increased; and
  - (b) a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees, or, if only one trustee was originally appointed, then, save as hereinafter provided, one separate trustee may be so appointed; and
  - (c) it shall not be obligatory, save as hereinafter provided, to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed, but, except where only one trustee was originally appointed, and a sole trustee when appointed will be able to give valid receipts for all capital money, a trustee shall not be discharged from his trust unless there will be either a trust corporation or at least two<sup>F17</sup> persons] to act as trustees to perform the trust; and
  - (d) any assurance or thing requisite for vesting the trust property, or any part thereof, in a sole trustee, or jointly in the persons who are the trustees, shall be executed or done.
- (2) Nothing in this Act shall authorise the appointment of a sole trustee, not being a trust corporation, where the trustee, when appointed, would not be able to give valid receipts for all capital money arising under the trust.

**F17** 2001 c. 14 (NI)

### **37 Evidence as to a vacancy in a trust.**

- (1) A statement, contained in any instrument coming into operation after the commencement of this Act by which a new trustee is appointed for any purpose connected with land, to the effect that a trustee has remained out of the United Kingdom for more than twelve months or refuses or is unfit to act, or is incapable of acting, or that he is not entitled to a beneficial interest in the trust property in possession, shall, in favour of a bona fide purchaser, be conclusive evidence of the matter stated.
- (2) In favour of such purchaser any appointment of a new trustee depending on that statement, and any vesting declaration, express or implied, consequent on the appointment, shall be valid.

### **38<sup>F18</sup> Retirement of trustee without a new appointment.**

- (1) Where a trustee is desirous of being discharged from the trust or a severable part of the trust, and after his discharge there will be either a trust corporation or at least two<sup>F19</sup> persons] to act as trustees to perform the trust, then, if such trustee as aforesaid by deed declares that he is desirous of being discharged from the trust or the severable

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part thereof, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, the trustee desirous of being discharged shall be deemed to have retired from the trust or a severable part thereof, and shall, by the deed, be discharged therefrom under this Act, without any new trustee being appointed in his place.

- (2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

**F18** 1974 c. 52

**F19** 2001 c. 14 (NI)

### **39<sup>F20</sup> Vesting of trust property in new or continuing trustees.**

- (1) Where by a deed a new trustee is appointed to perform any trust, then—
  - (a) if the deed contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover or receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become or are the trustees for performing the trust, the deed shall operate, without any conveyance or assignment, to vest in those persons as joint tenants and for the purposes of the trust the estate, interest or right to which the declaration relates; and
  - (b) if the deed is made after the commencement of this Act and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by the appointor extending to all the estates, interests and rights with respect to which a declaration could have been made.
- (2) Where by a deed a retiring trustee is discharged under<sup>F21</sup> section 38 or section 34 of the Trustee Act (Northern Ireland) 2001] without a new trustee being appointed, then—
  - (a) if the deed contains such a declaration as aforesaid by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, the deed shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates; and
  - (b) if the deed is made after the commencement of this Act and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by such persons as aforesaid extending to all the estates, interests and rights with respect to which a declaration could have been made.
- (3) An express vesting declaration, whether made before or after the commencement of this Act, shall, notwithstanding that the estate, interest or right to be vested is not expressly referred to, and provided that the other statutory requirements were or are complied with, operate and be deemed always to have operated (but without prejudice to any express provision to the contrary contained in the deed of appointment or discharge) to vest in the persons respectively referred to in sub-sections (1) and (2), as the case may require, such estates, interests and rights as are capable of being and ought to be vested in those persons.
- (4) This section does not extend—

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- (a) to land conveyed by way of mortgage for securing money subject to the trust, except land conveyed on trust for securing debentures or debenture stock;
- (b) to land held under a lease which contains any covenant, condition or agreement against assignment or disposing of the land without licence or consent, unless, prior to the execution of the deed containing expressly or impliedly the vesting declaration, the requisite licence or consent has been obtained, or unless, by virtue of any rule of law, the vesting declaration, express or implied, would not operate as a breach of covenant or give rise to a forfeiture;
- (c) to any share, stock, annuity or property which is only transferable in books kept by a company or other body, or in manner directed by or under any enactment.

In this sub-section “lease” includes an underlease and an agreement for a lease or underlease.

- (5) For purposes of registration of the deed in any registry, the person or persons making the declaration expressly or impliedly, shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.
- (6) This section applies to deeds of appointment or discharge executed on or after the first day of January, eighteen hundred and eighty-two.

**F20** 1974 c. 52

**F21** 2001 c. 14 (NI)

## PART IV

### POWERS OF THE COURT

#### APPOINTMENT OF NEW TRUSTEES

#### **40** <sup>F22</sup> Power of court to appoint new trustees.

- (1) The court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult or impracticable so to do without the assistance of the court, make an order appointing a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee.
- (2) In particular and without prejudice to the generality of sub-section (1), the court may make an order appointing a new trustee in substitution for a trustee who ...<sup>F23</sup> is a bankrupt, or is a corporation which is in liquidation or has been dissolved, or who for any other reason whatsoever appears to the court to be undesirable as a trustee.
- (3) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

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(4) Nothing in this section gives power to appoint an executor or administrator.

**F22** 1979 c. 38

**F23** 1967 c. 18 (NI)

#### **41 Power of court to authorise remuneration.**

The court may, in any case in which the circumstances appear to it so to justify, authorise any person to charge such remuneration for his services as trustees as the court may think fit.

#### **42 Powers of new trustee appointed by the court.**

Every trustee appointed by a court of competent jurisdiction shall, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him, have the same powers, authorities, and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

### VESTING ORDERS

#### **43 Vesting orders of land.**

(1) Subject to sub-section (2), where—

- (a) the court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power; or
- (b) a trustee entitled to or possessed of any land or estate or interest therein, whether by way of mortgage or otherwise, or entitled to a contingent right therein, either solely or jointly with any other person—
  - (i) is an infant; or
  - (ii) is out of the jurisdiction of the High Court; or
  - (iii) cannot be found, or, being a corporation, has been dissolved; or
- (c) it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any estate or interest in land; or
- (d) it is uncertain whether the last trustee known to have been entitled to or possessed of any estate or interest in land is living or dead; or
- (e) there is no personal representative of a deceased trustee who was entitled to or possessed of any estate or interest in land, or where it is uncertain who is the personal representative of a deceased trustee who was entitled to or possessed of any estate or interest in land; or
- (f) a trustee jointly or solely entitled to or possessed of any estate or interest in land, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or estate or interest or a release of the right, to convey the land or estate or interest or to release the right, and has wilfully refused or neglected to convey the land or estate or interest or release the right for twenty-eight days after the date of the requirement; or

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- (g) land or any estate or interest therein is vested in a trustee whether by way of mortgage or otherwise, and it appears to the court to be expedient;

the court may make an order (in this Act referred to as a “vesting order”) vesting the land or estate or interest therein in any such person in any such manner and for any such estate or interest as the court may direct, or releasing or disposing of the contingent right to such person as the court may direct.

(2) Where an order made under sub-section (1)—

- (a) is consequential on the appointment of a trustee the land or estate or interest therein shall be vested for such estate or interest as the court may direct in the persons who on the appointment are the trustees; and
- (b) relates to a trustee entitled or formerly entitled jointly with another person, and such trustee is an infant or out of the jurisdiction of the High Court or cannot be found, or being a corporation has been dissolved, the land estate interest or right shall be vested in such other person who remains entitled, either alone or with any other person the court may appoint.

**44 Orders as to contingent rights of unborn persons.**

Where any estate or interest in land is subject to a contingent right in an unborn person or class of unborn persons who, on coming into existence would, in respect thereof, become entitled to or possessed of that estate or interest on any trust, the court may make an order—

- (a) releasing the land or estate or interest therein from the contingent right; or
- (b) vesting in any person the estate or interest to or of which the unborn person or class of unborn persons would, on coming into existence, be entitled or possessed in the land.

**45 Vesting order in place of conveyance by infant mortgagee.**

Where any person entitled to or possessed of any estate or interest in land, or entitled to a contingent right in land, by way of security for money, is an infant, the court may make an order vesting or releasing or disposing of the estate or interest in the land or the right in like manner as in the case of an infant trustee.

**46 Vesting order in place of conveyance by personal representative of mortgagee.**

Where—

- (a) a mortgagee of land has died without having entered into possession or into the receipt of the rents and profits thereof; and
- (b) the money due in respect of the mortgage has been paid to a person entitled to receive the same, or that person consents to an order for the reconveyance of the land;

the court may make an order vesting the land in such person in such manner and for such estate or interest as the court may direct, where—

- (i) a personal representative or devisee of the mortgagee is out of the jurisdiction of the High Court or cannot be found, or, being a corporation, has been dissolved; or
- (ii) a personal representative or devisee of the mortgagee on demand made by or on behalf of a person entitled to require a conveyance of the land has stated in writing that he will not convey the same or does not convey the same for the space

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of twenty-eight days after a proper instrument for conveying the land has been tendered to him by or on behalf of the person so entitled; or

- (iii) it is uncertain which of several devisees of the mortgagee was the survivor; or
- (iv) it is uncertain whether the personal representative of the mortgagee or the survivor of several devisees of the mortgagee is living or dead; or
- (v) there is no personal representative to a mortgagee who has died intestate as to the land, or where the mortgagee has died, and it is uncertain who is his personal representative or devisee.

#### 47 <sup>F24</sup> **Vesting order consequential on order for sale or mortgage of land.**

Where any court gives a judgment or makes an order directing the sale or mortgage of any land, every person who is entitled to or possessed of any estate or interest in the land, or entitled to a contingent right therein, and is a party to the action or proceeding in which the judgment or order is given or made or is otherwise bound by the judgment or order, shall be deemed to be so entitled or possessed, as the case may be, as a trustee for the purposes of this Act, and the court may, if it thinks expedient, make an order vesting the land or any part thereof for such estate or interest as that court thinks fit in the purchaser or mortgagee or in any other person.

**F24**   [1979 NI 14](#)

#### 48 **Vesting order consequential on judgment for specific performance, etc.**

Where a judgment is given for the specific performance of a contract concerning any estate or interest in land, or for the partition, or for sale or exchange of any estate or interest in land, or generally where any judgment is given for the conveyance of any estate or interest in land either in cases arising out of the doctrine of election or otherwise, the court may declare—

- (a) that any of the parties to the action are trustees of any estate or interest in the land or any part thereof within the meaning of this Act; or
- (b) that the estates or interests of unborn persons who might claim under any party to the action, or under the will or voluntary settlement of any deceased person who was during his lifetime a party to the contract or transaction concerning which the judgment is given, are the estates or interests of persons who, on coming into existence, would be trustees within the meaning of this Act;

and thereupon the court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees.

#### 49 **Effect of vesting order.**

A vesting order under any of the foregoing provisions shall in the case of a vesting order consequential on the appointment of a trustee, have the same effect—

- (a) as if the persons who before the appointment were the trustees, if any, had duly executed all proper conveyances of the land for such estate or interest as the court directs; or
- (b) if there is no such person, or no such person of full capacity, as if such person had existed and been of full capacity and had duly executed all proper conveyances of the land for such estate or interest as the court directs;

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and shall in every other case have the same effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order.

## **50 Power to appoint person to convey.**

Where a vesting order can be made under any of the foregoing provisions, the court may, if it is more convenient, appoint a person to convey the land or any interest therein or release the contingent right, and a conveyance or release by that person in conformity with the order shall have the same effect as an order under the appropriate provision.

## **51 Vesting orders as to stock and things in action.**

(1) Subject to sub-section (2), where—

- (a) the court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power, or
- (b) a trustee entitled, whether by way of mortgage or otherwise, alone or jointly with another person to stock or to a thing in action—
  - (i) is an infant; or
  - (ii) is out of the jurisdiction of the High Court; or
  - (iii) cannot be found, or, being a corporation, has been dissolved; or
  - (iv) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action, according to the direction of the person absolutely entitled thereto for twenty-eight days next after a request in writing has been made to him by the person so entitled; or
  - (v) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action for twenty-eight days next after an order of the court for that purpose has been served on him; or
- (c) it is uncertain whether a trustee entitled alone or jointly with another person to stock or to a thing in action is alive or dead; or
- (d) stock is standing in the name of a deceased person whose personal representative is under disability; or
- (e) stock or a thing in action is vested in a trustee whether by way of mortgage or otherwise and it appears to the court to be expedient;

the court may make an order vesting the right to transfer or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for or recover the thing in action, in any such person as the court may appoint.

(2) Where—

- (a) an order made under sub-section (1) is consequential on the appointment of a trustee, the right shall be vested in the persons who, on the appointment, are the trustees; and
- (b) the person whose right is dealt with by an order made under sub-section (1) was entitled jointly with another person, the right shall be vested in that last-mentioned person either alone or jointly with any other person whom the court may appoint.

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- (3) Where a vesting order can be made under this section, the court may, if it is more convenient, appoint some proper person to make or join in making the transfer so, however, that the person appointed to make or join in making a transfer of stock shall be some proper officer of the bank, or the company or society whose stock is to be transferred.
- (4) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the court under this Act, may transfer the stock to himself or any other person, according to the order, and the Banks of England and Ireland and all other companies shall obey every order under this section according to its tenor.
- (5) After notice in writing of an order under this section it shall not be lawful for the Bank of England or of Ireland or any other company to transfer any stock to which the order relates or to pay any dividends thereon except in accordance with the order.
- (6) The court may make declarations and give directions concerning the manner in which the right to transfer any stock or thing in action vested under the provisions of this Act is to be exercised.
- (7) The provisions of this Act as to vesting orders shall apply to shares in ships registered under the<sup>F25</sup> Merchant Shipping Act 1995] as if they were stock.

**F25** 1995 c. 21

## **52 Vesting orders of charity property.**

The powers conferred by this Act as to vesting orders may be exercised for vesting any estate or interest in land, stock, or thing in action in any trustee of a charity or society over which the court would have jurisdiction upon action duly instituted, whether the appointment of the trustee was made by instrument under a power or by the court under its general or statutory jurisdiction.

## **53 Vesting orders in relation to infant's beneficial interests.**

Where an infant is beneficially entitled to any property the court may, with a view to the application of the capital or income thereof for the maintenance, education, or benefit of the infant, make an order—

- (a) appointing a person to convey such property; or
- (b) in the case of stock, or a thing in action, vesting in any person the right to transfer or call for a transfer of such stock, or to receive the dividends or income thereof, or to sue for and recover such thing in action, upon such terms as the court may think fit.

## **54 Orders made upon certain allegations to be conclusive evidence.**

Where a vesting order is made as to any land under this Act or under<sup>F26</sup> Part VIII of the Mental Health (Northern Ireland) Order 1986] founded on an allegation—

- (a) of the personal incapacity of a trustee or mortgagee; or
- (b) that a trustee or mortgagee or the personal representative of or other person deriving title under a trustee or mortgagee is out of the jurisdiction of the High Court or cannot be found, or being a corporation has been dissolved; or

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- (c) that it is uncertain which of two or more trustees, or which of two or more persons interested in a mortgage, was the survivor; or
- (d) that it is uncertain whether the last trustee or the personal representative of or other person deriving title under a trustee or mortgagee, or the last surviving person interested in a mortgage is living or dead; or
- (e) that any trustee or mortgagee has died intestate without leaving a person beneficially interested under the intestacy or has died and it is not known who is his personal representative or the person interested;

the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any court upon any question as to the validity of the order; but this section does not prevent the court from directing a reconveyance or surrender or the payment of costs occasioned by any such order if improperly obtained.

**F26** 1986 NI 4

## **55 Application of vesting order to property out of Northern Ireland.**

The powers of the High Court to make vesting orders under this Act shall extend to all property in any part of Her Majesty's dominions except Scotland.

### JURISDICTION TO MAKE OTHER ORDERS

## **56 Power of court to authorise transactions relating to trust property.**

- (1) Where any transaction affecting or concerning any property vested in trustees, is in the opinion of the court expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the instrument, if any, creating the trust, or by law, the court may by order confer upon the trustees, either generally or in any particular instance, the necessary power for the purpose, on such terms and subject to such provisions and conditions, if any, as the court may think fit and may direct in what manner any money authorised to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.
- (2) The court may, from time to time, rescind or vary any order made under this section or may make any new or further order.
- (3) An application to the court under this section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust.
- (4) This section shall apply to a settlement within the meaning of the Settled Land Acts, 1882 to 1890, as if in sub-section (1) after the words “vested in trustees” there were inserted the words “ or beneficiaries ”, for the words “the trustees” wherever they occur there were substituted the words “ the tenant for life ” and for the words “the trust” there were substituted the words “ the settlement ”.
- (5) In this section “transaction” includes any sale, exchange, assurance, grant, lease, partition, surrender, reconveyance, release, reservation, or other disposition, and any purchase or other acquisition, and any covenant, contract, or option, and any investment or application of capital, and any compromise or other dealing, or arrangement.

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## 57 <sup>F27</sup> Jurisdiction of court to vary trusts or settlements.

- (1) Subject to sub-section (2), where property is held [<sup>F28F29</sup> on any trusts or settlements] arising under any will, settlement or other disposition, the court may if it thinks fit by order approve on behalf of—
  - (a) any person having, directly or indirectly, an estate or interest, whether vested or contingent, under the trusts [<sup>F30F29</sup> or settlements] who by reason of infancy or other incapacity is incapable of assenting; or
  - (b) any person (whether ascertained or not) who may become entitled, directly or indirectly, to an estate or interest under the trusts [<sup>F30F29</sup> or settlements] as being at a future date or on the happening of a future event a person of any specified description or a member of any specified class of persons so, however, that this paragraph shall not include any person who would be of that description, or a member of that class, as the case may be, if the said date had fallen or the said event had happened at the date of the application to the court; or
  - (c) any person unborn; or
  - (d) any person in respect of any discretionary interest of his under protective trusts where the interest of the principal beneficiary has not failed or determined;

any arrangement (by whomsoever proposed, and whether or not there is any other person beneficially interested who is capable of assenting thereto) varying or revoking all or any of the trusts [<sup>F30F29</sup> or settlements] or enlarging the powers of the trustees of managing or administering any of the property subject to the trusts [<sup>F30F29</sup> or settlements].
- (2) Except by virtue of paragraph ( d ) of sub-section (1) the court shall not approve an arrangement on behalf of any person unless the carrying out of the arrangement would be for the benefit of that person.
- (3) In sub-section (1), “protective trusts” means the trusts [<sup>F29</sup> or settlements] specified in paragraphs ( a ) and ( b ) of sub-section (1) of section thirty-four or any like trusts, “the principal beneficiary” has the same meaning as in the said sub-section (1) and “discretionary interest” means an interest arising under the trust specified in paragraph ( b ) of the said sub-section (1) or any like trust.
- (4) The question whether the carrying out of any arrangement would be for the benefit of a person falling within paragraph ( a ) of sub-section (1) shall be determined by order of the [<sup>F31</sup> High Court or the Master (Care and Protection)] if a committee has been appointed of that person's estate.
- (5) Nothing in sub-sections (1) to (4) shall apply to trusts affecting property settled by Act of Parliament.
- (6) Nothing in this section shall be taken to limit the powers conferred by section fifty-six.

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|------------|-----------------|
| <b>F27</b> | 1980 NI 3       |
| <b>F28</b> | 1962 c. 10 (NI) |
| <b>F29</b> | 2001 c. 14 (NI) |
| <b>F30</b> | 1962 c. 10 (NI) |
| <b>F31</b> | 1978 c. 23      |

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## **58 Persons entitled to apply for orders.**

- (1) An order under this Act for the appointment of a new trustee or concerning any estate or interest in land, stock, or thing in action subject to a trust, may be made on the application of any person beneficially interested in the land, stock, or thing in action, whether under disability or not, or on the application of any person duly appointed trustee thereof.
- (2) An order under this Act concerning any estate or interest in land, stock, or thing in action subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage.

## **59 Power to give judgment in absence of a trustee.**

Where in any action the court is satisfied that diligent search has been made for any person who, in the character of trustee, is made a defendant in any action, to serve him with a process of the court, and that he cannot be found, the court may hear and determine the action and give judgment therein against that person in his character of a trustee as if he had been duly served, or had entered an appearance in the action, and had also appeared by his counsel and solicitor at the hearing, but without prejudice to any interest he may have in the matters in question in the action in any other character.

## **60 Power to charge costs on trust estate.**

The court may order the costs and expenses of and incidental to any application for an order under this Act or for any order or declaration in respect of any property subject to a trust, or of and incidental to any such order or declaration, or any document executed or act performed in pursuance thereof, to be raised and paid out of the property in respect whereof the same is made or performed, or out of the income thereof, or to be borne and paid in such manner and by such persons as to the court may seem just.

## **61 Power to relieve trustee from personal liability.**

- (1) If it appears to the court that a trustee, whether appointed by the court or otherwise, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Act, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which he committed such breach, then the court may relieve him either wholly or partly from personal liability for the same.
- (2) In this section “trustee” includes a person who has ceased to be a trustee and the personal representative of a deceased trustee.

## **62 Power to make beneficiary indemnify for breach of trust.**

- (1) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the court may, if it thinks fit, make such order as to the court seems just, for impounding all or any part of the estate or interest of the beneficiary in the trust estate by way of indemnity to the trustee or persons claiming through him.

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- (2) This section applies to breaches of trust committed as well before as after the commencement of this Act.

## PAYMENT INTO COURT

### 63 Payment into court by trustees.

- (1) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into court; and the same shall, subject to rules of court or county court rules, be dealt with according to the orders of the court.
- (2) The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into court.
- (3) Where money or securities are vested in any persons as trustees, and the majority are desirous of paying the same into court, but the concurrence of the other or others cannot be obtained, the court may order the payment into court to be made by the majority without the concurrence of the other or others.
- (4) Where any such money or securities are deposited with any banker, broker, or other depositary, the court may order payment or delivery of the money or securities to the majority of the trustees for the purpose of payment into court.
- (5) Every transfer payment and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the act of all the persons entitled to the money and securities so transferred, paid, or delivered.

## PART V

### GENERAL PROVISIONS

### 64 Application of Act to Settled Land Act Trustees.

- (1) All the powers and provisions contained in this Act with reference to the appointment of new trustees, and the discharge and retirement of trustees, apply to and include trustees for the purposes of the Settled Land Acts, 1882 to 1890, and trustees for the purpose of section forty-two of the Conveyancing Act, 1881, whether such trustees are appointed by the court or by the settlement, or under provisions contained in any instrument.
- (2) Where, either before or after the commencement of this Act, trustees of a settlement have been appointed by the court for the purposes of the Settled Land Acts, 1882 to 1890, then, after the commencement of this Act—
  - (a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the settlement, though no trustees for the purposes of the said Acts were thereby appointed; or
  - (b) if there is no such person, or no such person able and willing to act, the surviving or continuing trustees or trustee for the time being for the purposes

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of the said Acts or the personal representatives of the last surviving or continuing trustee for those purposes;  
shall have the powers conferred by this Act to appoint new or additional trustees of the settlement for the purposes of the said Acts.

- (3) Appointments of new trustees for the purposes of the said Acts made or expressed to be made before the commencement of this Act by the trustees or trustee or personal representatives referred to in paragraph (b) of sub-section (2) or by the persons referred to in paragraph (a) of that sub-section are, without prejudice to any order of the court made before such commencement, hereby confirmed.

## 65 Indemnity to banks, etc.

This Act, and every order purporting to be made under this Act, shall be a complete indemnity to the Banks of England and Ireland and to all persons for any acts done pursuant thereto, and it shall not be necessary for those Banks or for any person to inquire concerning the propriety of the order, or whether the court by which the order was made had jurisdiction to make it.

## 66 Jurisdiction of “the court” .

- (1) In this Act “the court” means the High Court, and also the county court, where that court has jurisdiction.
- (2) The procedure under this Act in county courts shall be in accordance with the Acts and rules regulating the procedure of those courts.
- <sup>F32</sup>(3) Any reference in this Act to paying money or securities into court shall be construed as referring to paying the money or transferring or depositing the securities into or in the<sup>F33</sup>Court of Judicature] or into or in the county court that has jurisdiction, and any reference in this Act to payment of money or securities into court shall be construed—
- (a) with reference to an order of the High Court, as referring to payment of the money or transfer or deposit of the securities into or in the<sup>F33</sup>Court of Judicature]; and
  - (b) with reference to an order of a county court, as referring to payment of the money or transfer or deposit of the securities into or in that court.]

**F32** 1978 c. 23

**F33** Words in s. 66(3) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 59(5), 148(1), Sch. 11 para. 6; S.I. 2009/1604, [art. 2\(d\)](#)

## 67 Interpretation.

In this Act—

“authorised investments” mean investments authorised by the instrument, if any, creating the trust for the investment of money subject to the trust, or by law;

<sup>F34</sup>“bank” means—

- (a) an institution authorised under the Banking Act 1987 or a municipal bank within the meaning of that Act;
- (b) a European deposit-taker (within the meaning of Article 82(3) of the Banking Coordination (Second Council Directive) Regulations 1992);

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(c) the National Savings Bank;]

“contingent right” as applied to land includes a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of the interest, or possibility is or is not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent;

“convey” and “conveyance” as applied to any person include the execution by that person of every necessary or suitable assurance (including an assent) for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of land whereof he is seised or possessed, or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, together with the performance of all formalities required by law for the validity of the conveyance;

“income” includes rents and profits;

“instrument” includes an Act of the Parliament of Northern Ireland or of the Parliament of the United Kingdom;

“land” includes an estate in any corporeal or incorporeal hereditaments;

“mortgage” includes a charge, created under section forty<sup>F35</sup> of the Local Registration of Title (Ireland) Act, 1891, for the payment of a principal sum and

“mortgagee” includes a registered owner of such a charge, and “mortgage” and “mortgagee” relate to every estate and interest regarded in equity as merely a security for money, and every person deriving title under the original mortgagee;

*Definition rep. by 1978 c. 23*

“personal representative” means the executor, original or by representation, or administrator for the time being of a deceased person;

“possession” includes receipt of rents and profits or the right to receive the same, if any; and “possessed” applies to receipt of income of and to any vested estate less than a life estate or interest in possession or in expectancy in any land;

“property” includes real and personal property, and any estate, share and interest in any property, real or personal, and any debt, and any thing in action, and any other right or interest, whether in possession or not;

“rights” include estates and interests;

“sale” includes an exchange;

“securities” include stocks, funds, and shares and “securities payable to bearer” include securities transferable by delivery or by delivery and endorsement;

“stock” includes fully paid up shares, and so far as relates to vesting orders made by the court under this Act, includes any fund, annuity, or security transferable in books kept by any company or society, or by instrument of transfer either alone or accompanied by other formalities, and any share or interest therein;

“tenant for life”, “settled land”, “settlement” and “trustees of the settlement” have the same meanings as in the Settled Land Act, 1882 ;

“transfer” in relation to stock or securities, includes the performance and execution of every deed, power of attorney, act, and thing on the part of the transferor to effect and complete the title in the transferee;

“trust” does not include the duties incident to an estate or interest conveyed by way of mortgage, but with this exception the expressions “trust” and “trustee” extend to implied and constructive trusts, and to cases where the trustee has a beneficial interest in the trust property, and to the duties incident to the office of a personal representative, and “trustee”, includes a personal representative, and “new trustee” includes an additional trustee;

“trust corporation” has the same meaning as in [<sup>F36</sup> Article 9 of the Administration of Estates (Northern Ireland) Order 1979];

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“trust for sale” in relation to land means an immediate trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without power at discretion to postpone the sale;

“trust funds” include any funds in the hands of a trustee, whether at the time in a state of investment or not.

**F34** 2001 c. 14 (NI)

**F35** 1970 c. 18 (NI)

**F36** 1979 NI 14

## **68 Application of Act.**

- (1) This Act, except where otherwise expressly provided, applies to trusts including, so far as this Act applies thereto, executorships and administratorships constituted or created either before or after the commencement of this Act.
- (2) The powers conferred by this Act on trustees are in addition to the powers conferred by the instrument, if any, creating the trust, but those powers, unless otherwise stated, apply if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust, and have effect subject to the terms of that instrument.
- (3) This Act does not affect the legality or validity of anything done before the commencement of this Act, except as otherwise hereinbefore expressly provided, and except that the enactments set out in the First Schedule shall be deemed always to have had effect subject to the provisions specified in that Schedule.

*S. 69 rep. by SLR 1973*

## **70 Short title and application to Crown.**

- (1) This Act may be cited as the Trustee Act (Northern Ireland), 1958.

*Subs. (2) rep. by SLR 1973*

- (3) This Act shall bind the Crown to the full extent authorised or permitted by the constitutional laws of Northern Ireland.

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*First Schedule—Amendments.*

*Second Schedule rep. by SLR 1973*

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