



# Trustee Act (Northern Ireland) 1958

## 1958 CHAPTER 23

### PART IV

#### POWERS OF THE COURT

##### APPOINTMENT OF NEW TRUSTEES

#### **40<sup>F1</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>F2</sup> is a bankrupt<sup>F3</sup> or is the subject of a bankruptcy restrictions order], 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.
- (4) Nothing in this section gives power to appoint an executor or administrator.

**F1** 1979 c. 38

**F2** 1967 c. 18 (NI)

**F3** Words in s. 40(2) inserted (21.4.2015) by [The Insolvency \(Northern Ireland\) Order 2005 \(Consequential Amendments\) Order \(Northern Ireland\) 2015 \(S.R. 2015/159\)](#), art. 1, [Sch. para. 1](#)

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#### **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
- (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)—

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- (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 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.

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#### 47<sup>F4</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.

F4 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;

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

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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.

(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.

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- (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>F5</sup> Merchant Shipping Act 1995] as if they were stock.

F5 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>F6</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
- (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

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does not prevent the court from directing a reconveyance or surrender or the payment of costs occasioned by any such order if improperly obtained.

F6 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.

## 57<sup>F7</sup> Jurisdiction of court to vary trusts or settlements.

- (1) Subject to sub-section (2), where property is held [<sup>F8F9</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>F10F9</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>F10F9</sup> or settlements] as being

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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>F10F9</sup> or settlements] or enlarging the powers of the trustees of managing or administering any of the property subject to the trusts [<sup>F10F9</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>F9</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>F11</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.

<b>F7</b>	1980 NI 3
<b>F8</b>	1962 c. 10 (NI)
<b>F9</b>	2001 c. 14 (NI)
<b>F10</b>	1962 c. 10 (NI)
<b>F11</b>	1978 c. 23

## 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.



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**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.
- (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.

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- (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 depository, 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.

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