



# Trustee Act (Northern Ireland) 1958

## 1958 CHAPTER 23

### PART IV

#### POWERS OF THE COURT

##### 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

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investment or application of capital, and any compromise or other dealing, or arrangement.

**57<sup>F1</sup> Jurisdiction of court to vary trusts or settlements.**

- (1) Subject to sub-section (2), where property is held [<sup>F2F3</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>F4</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 [ 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 [ or settlements] or enlarging the powers of the trustees of managing or administering any of the property subject to the trusts [ 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>F3</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>F5</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.

**Annotations:**

- F1** 1980 NI 3  
**F2** 1962 c. 10 (NI)  
**F3** 2001 c. 14 (NI)  
**F4** 1962 c. 10 (NI)  
**F5** 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.

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