



# Trustee Act (Northern Ireland) 1958

## 1958 CHAPTER 23

### 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.
- (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.

---

*Changes to legislation: There are currently no known outstanding effects for the Trustee Act (Northern Ireland) 1958, Section 35. (See end of Document for details)*

---

- (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>F1</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>F2</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>F3</sup>High Court or the Master (Care and Protection)] to make the appointment.]

<p><b>F1</b> 2001 c. 14 (NI)</p> <p><b>F2</b> 1986 NI 4</p> <p><b>F3</b> 1978 c. 23</p>
---

**Changes to legislation:**

There are currently no known outstanding effects for the Trustee Act (Northern Ireland) 1958, Section 35.