



2001 CHAPTER 14

PART V

REMUNERATION

Trustee's entitlement to payment under trust instrument

28.—(1) Except to the extent (if any) to which the trust instrument makes inconsistent provision, subsections (2) to (4) apply to a trustee if—

- (a) there is a provision in the trust instrument entitling him to receive payment out of trust funds in respect of services provided by him to or on behalf of the trust, and
- (b) the trustee is a trust corporation or is acting in a professional capacity.

(2) The trustee is to be treated as entitled under the trust instrument to receive payment in respect of services even if they are services which are capable of being provided by a lay trustee.

(3) Subsection (2) applies to a trustee of a charitable trust who is not a trust corporation only—

- (a) if he is not a sole trustee, and
- (b) to the extent that a majority of the other trustees have agreed that it should apply to him.

(4) Any payments to which the trustee is entitled in respect of services are to be treated as remuneration for services (and not as a gift) for the purposes of—

- (a) Article 8 of the [Wills and Administration Proceedings \(Northern Ireland\) Order 1994 \(NI 13\)](#) (gifts to an attesting witness to be void), and
- (b) section 30(3) of the Administration of Estates Act (Northern Ireland) [1955 \(c. 24\)](#) (order in which estate to be paid out).

(5) For the purposes of this Part, a trustee acts in a professional capacity if he acts in the course of a profession or business which consists of or includes the provision of services in connection with—

- (a) the management or administration of trusts generally or a particular kind of trust, or
- (b) any particular aspect of the management or administration of trusts generally or a particular kind of trust,

and the services he provides to or on behalf of the trust fall within that description.

(6) For the purposes of this Part, a person acts as a lay trustee if he—

- (a) is not a trust corporation, and
- (b) does not act in a professional capacity.

Remuneration of certain trustees

29.—(1) Subject to subsection (5), a trustee who—

- (a) is a trust corporation, but
- (b) is not a trustee of a charitable trust,

is entitled to receive reasonable remuneration out of the trust funds for any services that the trust corporation provides to or on behalf of the trust.

(2) Subject to subsection (5), a trustee who—

- (a) acts in a professional capacity, but
- (b) is not a trust corporation, a trustee of a charitable trust or a sole trustee,

is entitled to receive reasonable remuneration out of the trust funds for any services that he provides to or on behalf of the trust if each other trustee has agreed in writing that he may be remunerated for the services.

(3) “Reasonable remuneration” means, in relation to the provision of services by a trustee, such remuneration as is reasonable in the circumstances for the provision of those services to or on behalf of that trust by that trustee and for the purposes of subsection (1) includes, in relation to the provision of services by a trustee who is an authorised institution under the Banking Act 1987 (c. 22) and provides the services in that capacity, the institution’s reasonable charges for the provision of such services.

(4) A trustee is entitled to remuneration under this section even if the services in question are capable of being provided by a lay trustee.

(5) A trustee is not entitled to remuneration under this section if any provision about his entitlement to remuneration has been made—

- (a) by the trust instrument, or
- (b) by any statutory provision.

(6) This section applies to a trustee who has been authorised under a power conferred by Part IV or the trust instrument—

- (a) to exercise functions as an agent of the trustees, or
- (b) to act as a nominee or custodian,

as it applies to any other trustee.

Remuneration of trustees of charitable trusts

30.—(1) The Department for Social Development may by regulations make provision for the remuneration of trustees of charitable trusts who are trust corporations or act in a professional capacity.

(2) The power under subsection (1) includes power to make provision for the remuneration of a trustee who has been authorised under a power conferred by Part IV or any other statutory provision, or by the trust instrument—

- (a) to exercise functions as an agent of the trustees, or
- (b) to act as a nominee or custodian.

(3) Regulations under this section may contain such supplemental, incidental, consequential and transitional provision as the Department for Social Development considers appropriate.

(4) Regulations shall not be made under this section unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

Trustees' expenses

31.—(1) A trustee—

- (a) is entitled to be reimbursed from the trust funds, or
- (b) may pay out of the trust funds,

expenses properly incurred by him when acting on behalf of the trust.

(2) This section applies to a trustee who has been authorised under a power conferred by Part IV or any other statutory provision, or by the trust instrument—

- (a) to exercise functions as an agent of the trustees, or
- (b) to act as a nominee or custodian,

as it applies to any other trustee.

Remuneration and expenses of agents, nominees and custodians

32.—(1) This section applies if, under a power conferred by Part IV or any other statutory provision, or by the trust instrument, a person other than a trustee has been—

- (a) authorised to exercise functions as an agent of the trustees, or

(b) appointed to act as a nominee or custodian.

(2) The trustees may remunerate the agent, nominee or custodian out of the trust funds for services if—

(a) he is engaged on terms entitling him to be remunerated for those services, and

(b) the amount does not exceed such remuneration as is reasonable in the circumstances for the provision of those services by him to or on behalf of that trust.

(3) The trustees may reimburse the agent, nominee or custodian out of the trust funds for any expenses properly incurred by him in exercising functions as an agent, nominee or custodian.

Application

33.—(1) Subject to subsection (2), sections 28, 29, 31 and 32 apply in relation to services provided to or on behalf of, or (as the case may be) expenses incurred on or after their commencement on behalf of, trusts whenever created.

(2) Nothing in section 28 or 29 is to be treated as affecting the operation of—

(a) Article 8 of the [Wills and Administration Proceedings \(Northern Ireland\) Order 1994 \(NI 13\)](#), or

(b) section 30(3) of the Administration of Estates Act (Northern Ireland) 1955 ([c. 24](#)),

in relation to any death occurring before the commencement of section 28 or (as the case may be) section 29.