



# Trustee Act 1925

1925 CHAPTER 19 15 and 16 Geo 5

## PART II

### GENERAL POWERS OF TRUSTEES AND PERSONAL REPRESENTATIVES

#### *Maintenance, Advancement and Protective Trusts*

#### **31 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 interest whatsoever, whether vested or contingent, then, subject to any prior interests or charges affecting that property—
- (i) during the infancy of any such person, if his 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 [<sup>F1</sup>as the trustees may think fit,] whether or not there is—
    - (a) any other fund applicable to the same purpose; or
    - (b) any person bound by law to provide for his maintenance or education; and
  - (ii) if such person on attaining the age of [<sup>F2</sup>eighteen years] has not a vested interest in such income, the trustees shall thenceforth pay the income of that property and of any accretion thereto under subsection (2) of this section to him, until he either attains a vested interest therein or dies, or until failure of his interest:
- <sup>F3</sup> ...
- (2) During the infancy of any such person, if his interest so long continues, the trustees shall accumulate all the residue of that income [<sup>F4</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:—

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- (i) If any such person—
- (a) attains the age of [<sup>F2</sup>eighteen years], or marries under that age [<sup>F5</sup>or forms a civil partnership under that age], and his interest in such income during his infancy or [<sup>F6</sup>, or until his marriage or his formation of a civil partnership, ] is a vested interest or;
  - (b) on attaining the age of [<sup>F2</sup>eighteen years] or on marriage [<sup>F7</sup>, or formation of a civil partnership, ] under that age becomes entitled to the property from which such income arose in fee simple, absolute or determinable, or absolutely, or for an entailed 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>F8</sup>or formation of a civil partnership], and though still an infant shall be a good discharge, and

- (ii) In any other case the trustees shall, notwithstanding that such person had a vested 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 interest so long continues, apply those accumulations, or any part thereof, as if they were income arising in the then current year.

- (3) This section applies in the case of a contingent 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 to the contrary) be five pounds per centum per annum.
- (4) 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.
- (5) This section does not apply where the instrument, if any, under which the interest arises came into operation before the commencement of this Act.

#### Textual Amendments

- F1** Words in s. 31(1)(i) substituted (1.10.2014) by [Inheritance and Trustees' Powers Act 2014 \(c. 16\)](#), [ss. 8\(a\)](#), 12(2) (with s. 10(1)(4)(5)); S.I. 2014/2039, art. 2
- F2** Word substituted by [Family Law Reform Act 1969 \(c. 46\)](#), s. 1(3), [Sch. 1 Pt. I](#)
- F3** Words in s. 31(1) omitted (1.10.2014) by virtue of [Inheritance and Trustees' Powers Act 2014 \(c. 16\)](#), [ss. 8\(b\)](#), 12(2) (with s. 10(1)(4)(5)); S.I. 2014/2039, art. 2
- F4** Words in s. 31(2) substituted (1.2.2001) by [2000 c. 29](#), s. 40(1), [Sch. 2 Pt. II para. 25](#) (with s. 35); S.I. 2001/49, [art. 2](#)
- F5** Words in s. 31(2)(i)(a) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(b), [Sch. 27 para. 5\(2\)\(a\)](#); S.I. 2005/3175, art. 2(2); S.I. 2005/3175, art. 2(2)

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- F6** Words in s. 31(2)(i)(a) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 5(2)(b)**; S.I. 2005/3175, art. 2(2); S.I. 2005/3175, art. 2(2)
- F7** Words in s. 31(2)(i)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 5(3)**; S.I. 2005/3175, art. 2(2); S.I. 2005/3175, art. 2(2)
- F8** Words in s. 31(2)(i) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 5(4)**; S.I. 2005/3175, art. 2(2); S.I. 2005/3175, art. 2(2)

## 32 Power of advancement.

- (1) Trustees may at any time or times pay or apply any capital money subject to a trust, <sup>[F9]</sup> or transfer or apply any other property forming part of the capital of the trust property,] 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 <sup>[F10]</sup>, transfer] or application may be made notwithstanding that the 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:

Provided that—

- (a) <sup>[F11]</sup>property (including any money) so paid, transferred or applied for the advancement or benefit of any person must not, altogether, represent more than <sup>[F12]</sup>... the presumptive or vested share 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 <sup>[F13]</sup>the money or other property so paid, transferred or applied] shall be brought into account as part of such share; and
- (c) no such payment <sup>[F14]</sup>, transfer] or application shall be made so as to prejudice any person entitled to any prior life or other interest, whether vested or contingent, in the money <sup>[F15]</sup> or other property paid, transferred] or applied unless such person is in existence and of full age and consents in writing to such payment or application.

<sup>[F16]</sup>(1A) In exercise of the foregoing power trustees may pay, transfer or apply money or other property on the basis (express or implied) that it shall be treated as a proportionate part of the capital out of which it was paid, transferred or applied, for the purpose of bringing it into account in accordance with proviso (b) to subsection (1) of this section.]

<sup>[F17]</sup>(2) This section does not apply to capital money arising under the <sup>MI</sup> Settled Land Act 1925. ]

- (3) This section does not apply to trusts constituted or created before the commencement of this Act.

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### Textual Amendments

- F9** Word in s. 32(1) inserted (1.10.2014) by Inheritance and Trustees' Powers Act 2014 (c. 16), **ss. 9(2)(a), 12(2)** (with s. 10(2)); S.I. 2014/2039, art. 2
- F10** Words in s. 32(1) inserted (1.10.2014) by Inheritance and Trustees' Powers Act 2014 (c. 16), **ss. 9(2)(b), 12(2)** (with s. 10(2)); S.I. 2014/2039, art. 2

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- F11** Words in s. 32(1) substituted (1.10.2014) by [Inheritance and Trustees' Powers Act 2014 \(c. 16\)](#), **ss. 9(3)(a)**, 12(2); S.I. 2014/2039, art. 2
- F12** Words in s. 32(1) omitted (1.10.2014) by virtue of [Inheritance and Trustees' Powers Act 2014 \(c. 16\)](#), **ss. 9(3)(b)**, 12(2) (with s. 10(3)-(5)); S.I. 2014/2039, art. 2
- F13** Words in s. 32(1) substituted (1.10.2014) by [Inheritance and Trustees' Powers Act 2014 \(c. 16\)](#), **ss. 9(4)**, 12(2) (with s. 10(2)); S.I. 2014/2039, art. 2
- F14** Words in s. 32(1) inserted (1.10.2014) by [Inheritance and Trustees' Powers Act 2014 \(c. 16\)](#), **ss. 9(5)(a)**, 12(2) (with s. 10(2)); S.I. 2014/2039, art. 2
- F15** Words in s. 32(1) substituted (1.10.2014) by [Inheritance and Trustees' Powers Act 2014 \(c. 16\)](#), **ss. 9(5)(b)**, 12(2) (with s. 10(2)); S.I. 2014/2039, art. 2
- F16** S. 32(1A) inserted (1.10.2014) by [Inheritance and Trustees' Powers Act 2014 \(c. 16\)](#), **ss. 9(6)**, 12(2) (with s. 10(2)); S.I. 2014/2039, art. 2
- F17** S. 32(2) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 3(8)** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art.2**

#### Marginal Citations

- M1** 1925 c. 18.

### 33 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 called “the principal beneficiary”) for the period of his life or for any less period, then, during that period (in this section called the “trust period”) the said income shall, without prejudice to any prior interest, be held on the following trusts, namely:—
- (i) Upon trust for the principal beneficiary during the trust period or until he, whether before or after the termination of any prior interest, does or attempts to do or suffers any act or thing, or until any event happens, other than an advance under any statutory or express power, whereby, if the said income were payable during the trust period to the principal beneficiary absolutely during that period, he would be deprived of the right to receive the same or any part thereof, in any of which cases, as well as on the termination of the trust period, whichever first happens, this trust of the said income shall fail or determine;
- (ii) If the trust aforesaid fails or determines during the subsistence of the trust period, then, during the residue of that period, the said income shall be held upon trust for the application thereof 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 (that is to say)—
- (a) the principal beneficiary and his or her [<sup>F18</sup>spouse or civil partner], if any, and his or her children or more remote issue, if any; or
- (b) if there is no [<sup>F19</sup>spouse or civil partner] or issue of the principal beneficiary in existence, the principal beneficiary and the persons who would, if he were actually dead, be entitled to the trust property or the income thereof or to the annuity fund, if any, or arrears of the annuity, as the case may be;
- as the trustees in their absolute discretion, without being liable to account for the exercise of such discretion, think fit.

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- (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 implied trusts 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.
- [<sup>F20</sup>(4) In relation to the dispositions mentioned in section 19(1) of the Family Law Reform Act 1987, this section shall have effect as if any reference (however expressed) to any relationship between two persons were construed in accordance with section 1 of that Act.]

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**Textual Amendments**

- F18** Words in s. 33(1)(ii)(a) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(b), [Sch. 27 para. 6](#); S.I. 2005/3175, art. 2(2); S.I. 2005/3175, art. 2(2)
- F19** Words in s. 33(1)(ii)(b) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(b), [Sch. 27 para. 6](#); S.I. 2005/3175, art. 2(2); S.I. 2005/3175, art. 2(2)
- F20** S. 33(4) added by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), s. 33(1)(2), Sch. 2 para. 2, Sch. 3 paras. 1, [6](#)

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**Modifications etc. (not altering text)**

- C1** S. 33 modified by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), ss. 19(3)(4), 33(2), Sch. 3 paras. 1, [6](#)

**Changes to legislation:**

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