



2001 CHAPTER 14

PART VI

APPOINTMENT AND RETIREMENT OF TRUSTEES

Appointment or retirement of trustee at instance of beneficiaries

- 34.—**(1) This section applies in the case of a trust where—
- (a) there is no person nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; and
 - (b) the beneficiaries under the trust are of full age and capacity and (taken together) are absolutely entitled to the property subject to the trust.
- (2) The beneficiaries may give a direction or directions of either or both of the following descriptions—
- (a) a written direction to a trustee or trustees to retire from the trust; and
 - (b) a written direction to the trustees or trustee for the time being (or, if there are none, to the personal representative of the last person who was a trustee) to appoint by writing to be a trustee or trustees the person or persons specified in the direction.
- (3) Where—
- (a) a trustee has been given a direction under subsection (2)(a);
 - (b) reasonable arrangements have been made for the protection of any rights of his in connection with the trust;
 - (c) after he has retired there will be either a trust corporation or at least two persons to act as trustees to perform the trust; and

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(d) either another person is to be appointed to be a new trustee on his retirement (whether in compliance with a direction under subsection (2)(b) or otherwise) or the continuing trustees by deed consent to his retirement, he shall make a deed declaring his retirement and shall be deemed to have retired and be discharged from the trust.

(4) Where a trustee retires under subsection (3) he and the continuing trustees (together with any new trustee) shall (subject to any arrangements for the protection of his rights) do anything necessary to vest the trust property in the continuing trustees (or the continuing and new trustees).

Appointment of substitute for incapable trustee

35.—(1) This section applies where—

- (a) a trustee is incapable by reason of mental disorder (within the meaning of the Mental Health Order) of exercising his functions as trustee;
- (b) there is no person who is both entitled and willing and able to appoint a trustee in place of him under section 35(1) of the Trustee Act (Northern Ireland) 1958 (c.23); and
- (c) the beneficiaries under the trust are of full age and capacity and (taken together) are absolutely entitled to the property subject to the trust.

(2) The beneficiaries may give to—

- (a) a controller appointed for the trustee under Article 101 of the Mental Health Order;
- (b) an attorney acting for the trustee under the authority of a power of attorney created by an instrument which is registered under Article 8 of the Enduring Powers of Attorney (Northern Ireland) Order 1987 (NI 16); or
- (c) a person authorised for the purpose by the High Court under Part VIII of the Mental Health Order,

a written direction to appoint by writing the person or persons specified in the direction to be a trustee or trustees in place of the incapable trustee.

(3) In this section “the Mental Health Order” means the Mental Health (Northern Ireland) Order 1986 (NI 4).

Provisions supplementary to sections 34 and 35

36.—(1) For the purposes of sections 34 and 35 a direction is given by beneficiaries if—

- (a) a single direction is jointly given by all of them; or
- (b) (subject to subsection (2)) a direction is given by each of them (whether solely or jointly with one or more, but not all, of the others),

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and none of them by writing withdraws the direction given by him before it has been complied with.

(2) Where more than one direction is given each must specify for appointment or retirement the same person or persons.

(3) Subsection (7) of section 35 of the Trustee Act (Northern Ireland) 1958 (c.23) (powers of trustees appointed under that section) applies to a trustee appointed under section 34 or 35 as if he were appointed under that section.

(4) Sections 34 and 35 do not apply in relation to a trust created by a disposition in so far as provision that they do not apply is made by the disposition.

(5) Sections 34 and 35 do not apply in relation to a trust created before the commencement of those sections by a disposition in so far as provision to the effect that they do not apply is made by a deed executed—

- (a) in a case in which the trust was created by one person and he is of full capacity, by that person; or
- (b) in a case in which the trust was created by more than one person, by such of the persons who created the trust as are alive and of full capacity.

(6) A deed executed for the purposes of subsection (5) is irrevocable.

(7) Where a deed is executed for the purposes of subsection (5)—

- (a) it does not affect anything done before its execution to comply with a direction under section 34 or 35; but
- (b) a direction under section 34 or 35 which has been given but not complied with before its execution shall cease to have effect.

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