



Trustee Act 1925

1925 CHAPTER 19 15 and 16 Geo 5

PART II

GENERAL POWERS OF TRUSTEES AND PERSONAL REPRESENTATIVES

General Powers

12 Power of trustees for sale to sell by auction, &c.

- (1) Where [^{F1}a trustee has a duty or power to sell property], he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the Trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to re-sell, without being answerable for any loss.
- (2) A [^{F2}duty] or power to sell or dispose of land includes a [^{F2}duty] or power to sell or dispose of part thereof, whether the division is horizontal, vertical, or made in any other way.
- (3) This section does not enable an express power to sell settled land to be exercised where the power is not vested in the tenant for life or statutory owner.

Textual Amendments

- F1** Words in s. 12(1) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 3(2)(a)** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art.2**
- F2** Words in s. 12(2) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 3(2)(b)** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art.2**

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13 Power to sell subject to depreciatory conditions.

- (1) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.
- (2) No sale made by a trustee shall, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.
- (3) No purchaser, upon any sale made by a trustee, shall be at liberty to make any objection against the title upon any of the grounds aforesaid.
- (4) This section applies to sales made before or after the commencement of this Act.

14 Power of trustees to give receipts.

- (1) The receipt in writing of a trustee for any money, securities, [^{F3}investments] or other personal property or effects payable, transferable, or deliverable to him under any trust or power shall be a sufficient discharge to the person paying, transferring, or delivering the same and shall effectually exonerate him from seeing to the application or being answerable for any loss or misapplication thereof.
- (2) This section does not, except where the trustee is a trust corporation, enable a sole trustee to give a valid receipt for—
 - [^{F4}(a) proceeds of sale or other capital money arising under a trust of land;]
 - (b) capital money arising under the ^{M1}Settled Land Act, 1925.
- (3) This section applies notwithstanding anything to the contrary in the instrument, if any, creating the trust.

Textual Amendments

F3 Words in s. 14(1) inserted (1.2.2001) by 2000 c. 29, s. 40(1), **Sch. 2 Pt. II para. 19** (with s. 35); S.I. 2001/49, **art. 2**

F4 S. 14(2)(a) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 3(3)** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art. 2**

Marginal Citations

M1 1925 c. 18.

15 Power to compound liabilities.

A personal representative, or two or more trustees acting together, or, subject to the restrictions imposed in regard to receipts by a sole trustee not being a trust corporation, a sole acting trustee where by the instrument, if any, creating the trust, or by statute, a sole trustee is authorised to execute the trusts and powers reposed in him, may, if and as he or they think fit—

- (a) accept any property, real or personal, before the time at which it is made transferable or payable; or

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- (b) sever and apportion any blended trust funds or property; or
- (c) pay or allow any debt or claim on any evidence that he or they think sufficient; or
- (d) accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed; or
- (e) allow any time of payment of any debt; or
- (f) compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's or intestate's estate or to the trust;

and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them [^{F5}if he has or they have discharged the duty of care set out in section 1(1) of the Trustee Act 2000].

Textual Amendments

F5 Words in s. 15 substituted (1.2.2001) by 2000 c. 29, s. 40(1), **Sch. 2 Pt. II para. 20** (with s. 35); S.I. 2001/49, **art. 2**

16 Power to raise money by sale, mortgage, &c.

- (1) Where trustees are authorised by the instrument, if any, creating the trust or by law to pay or apply capital money subject to the trust for any purpose or in any manner, they shall have and shall be deemed always to have had power to raise the money required by sale, conversion, calling in, or mortgage of all or any part of the trust property for the time being in possession.
- (2) This section applies notwithstanding anything to the contrary contained in the instrument, if any, creating the trust, but does not apply to trustees of property held for charitable purposes, or to trustees of a settlement for the purposes of the ^{M2}Settled Land Act, 1925, not being also the statutory owners.

Marginal Citations

M2 1925 c. 18.

17 Protection to purchasers and mortgagees dealing with trustees.

No purchaser or mortgagee, paying or advancing money on a sale or mortgage purporting to be made under any trust or power vested in trustees, shall be concerned to see that such money is wanted, or that no more than is wanted is raised, or otherwise as to the application thereof.

18 Devolution of powers or trusts.

- (1) Where a power or trust is given to or imposed on two or more trustees jointly, the same may be exercised or performed by the survivors or survivor of them for the time being.

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- (2) Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or, where there were two or more trustees of the last surviving or continuing trustee, shall be capable of exercising or performing any power or trust which was given to, or capable of being exercised by, the sole or last surviving or continuing trustee, or other the trustees or trustee for the time being of the trust.
- (3) This section takes effect subject to the restrictions imposed in regard to receipts by a sole trustee, not being a trust corporation.
- (4) In this section “personal representative” does not include an executor who has renounced or has not proved.

19 ^{F6} Power to insure.

- (1) A trustee may—
 - (a) insure any property which is subject to the trust against risks of loss or damage due to any event, and
 - (b) pay the premiums out of the trust funds.
- (2) In the case of property held on a bare trust, the power to insure is subject to any direction given by the beneficiary or each of the beneficiaries—
 - (a) that any property specified in the direction is not to be insured;
 - (b) that any property specified in the direction is not to be insured except on such conditions as may be so specified.
- (3) Property is held on a bare trust if it is held on trust for—
 - (a) a beneficiary who is of full age and capacity and absolutely entitled to the property subject to the trust, or
 - (b) beneficiaries each of whom is of full age and capacity and who (taken together) are absolutely entitled to the property subject to the trust.
- (4) If a direction under subsection (2) of this section is given, the power to insure, so far as it is subject to the direction, ceases to be a delegable function for the purposes of section 11 of the Trustee Act 2000 (power to employ agents).
- (5) In this section “trust funds” means any income or capital funds of the trust.

Textual Amendments

F6 S. 19 substituted (1.2.2001) by 2000 c. 29, s. 34(1)(3), (with s. 35); S.I. 2001/49, art. 2

20 Application of insurance money where policy kept up under any trust, power or obligation.

- (1) Money receivable by trustees or any beneficiary under a policy of insurance against the loss or damage of any property subject to a trust or to a settlement within the meaning of the ^{M3}Settled Land Act, 1925, [^{F7}whether by fire or otherwise], shall, where the policy has been kept up under any trust in that behalf or under any power statutory or otherwise, or in performance of any covenant or of any obligation statutory or otherwise, or by a tenant for life impeachable for waste, be capital money for the purposes of the trust or settlement, as the case may be.

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- (2) If any such money is receivable by any person, other than the trustees of the trust or settlement, that person shall use his best endeavours to recover and receive the money, and shall pay the net residue thereof, after discharging any costs of recovering and receiving it, to the trustees of the trust or settlement, or, if there are no trustees capable of giving a discharge therefor, into court.
- (3) Any such money—
- (a) if it was receivable in respect of settled land within the meaning of the Settled Land Act, 1925, or any building or works thereon, shall be deemed to be capital money arising under that Act from the settled land, and shall be invested or applied by the trustees, or, if in court, under the direction of the court, accordingly;
 - (b) if it was receivable in respect of personal chattels settled as heirlooms within the meaning of the Settled Land Act, 1925, shall be deemed to be capital money arising under that Act, and shall be applicable by the trustees, or, if in court, under the direction of the court, in like manner as provided by that Act with respect to money arising by a sale of chattels settled as heirlooms as aforesaid;
 - (c) if it was receivable in respect of [^{F8}land subject to a trust of land or personal property held on trust for sale], shall be held upon the trusts and subject to the powers and provisions applicable to money arising by a sale under such trust;
 - (d) in any other case, shall be held upon trusts corresponding as nearly as may be with the trusts affecting the property in respect of which it was payable.
- (4) Such money, or any part thereof, may also be applied by the trustees, or, if in court, under the direction of the court, in rebuilding, reinstating, replacing, or repairing the property lost or damaged, but any such application by the trustees shall be subject to the consent of any person whose consent is required by the instrument, if any, creating the trust to the investment of money subject to the trust, and, in the case of money which is deemed to be capital money arising under the ^{M4}Settled Land Act, 1925, be subject to the provisions of that Act with respect to the application of capital money by the trustees of the settlement.
- (5) Nothing contained in this section prejudices or affects the right of any person to require any such money or any part thereof to be applied in rebuilding, reinstating, or repairing the property lost or damaged, or the rights of any mortgagee, lessor, or lessee, whether under any statute or otherwise.
- (6) This section applies to policies effected either before or after the commencement of this Act, but only to money received after such commencement.

Textual Amendments

F7 Words in s. 20(1) repealed (1.2.2001) by 2000 c. 29, s. 34(2)(3), 40(3), 42(2), **Sch. 4 Pt. II** (with s. 35)

F8 Words in s. 20(3)(c) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 3(5)** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art. 2**

Marginal Citations

M3 1925 c. 18.

M4 1925 c. 18.

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F9 21

Textual Amendments

F9 S. 21 repealed (1.2.2001) by 2000 c. 29, s. 40(1)(3), Sch. 2 Pt. II para. 21, **Sch. 4 Pt. II** (with s. 35); S.I. 2001/49, **art. 2**

22 Reversionary interests, valuations and audit.

(1) Where trust property includes any share or interest in property not vested in the trustees, or the proceeds of the sale of any such property, or any other thing in action, the trustees on the same falling into possession, or becoming payable or transferable may—

- (a) agree or ascertain the amount or value thereof or any part thereof in such manner as they may think fit;
- (b) accept in or towards satisfaction thereof, at the market or current value, or upon any valuation or estimate of value which they may think fit, any authorised investments;
- (c) allow any deductions for duties, costs, charges and expenses which they may think proper or reasonable;
- (d) execute any release in respect of the premises so as effectually to discharge all accountable parties from all liability in respect of any matters coming within the scope of such release;

without being responsible in any such case for any loss occasioned by any act or thing so done by them [^{F10}if they have discharged the duty of care set out in section 1(1) of the Trustee Act 2000].

(2) The trustees shall not be under any obligation and shall not be chargeable with any breach of trust by reason of any omission—

- (a) to place any distringas notice or apply for any stop or other like order upon any securities or other property out of or on which such share or interest or other thing in action as aforesaid is derived, payable or charged; or
- (b) to take any proceedings on account of any act, default, or neglect on the part of the persons in whom such securities or other property or any of them or any part thereof are for the time being, or had at any time been, vested;

unless and until required in writing so to do by some person, or the guardian of some person, beneficially interested under the trust, and unless also due provision is made to their satisfaction for payment of the costs of any proceedings required to be taken: Provided that nothing in this subsection shall relieve the trustees of the obligation to get in and obtain payment or transfer of such share or interest or other thing in action on the same falling into possession.

(3) Trustees may, for the purpose of giving effect to the trust, or any of the provisions of the instrument, if any, creating the trust or of any statute, from time to time (by duly qualified agents) ascertain and fix the value of any trust property in such manner as they think proper, and any valuation so made [^{F11}. . .] shall be binding upon all persons interested under the trust [^{F12}:if the trustees have discharged the duty of care set out in section 1(1) of the Trustee Act 2000].

(4) Trustees may, in their absolute discretion, from time to time, but not more than once in every three years unless the nature of the trust or any special dealings with the trust

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property make a more frequent exercise of the right reasonable, cause the accounts of the trust property to be examined or audited by an independent accountant, and shall, for that purpose, produce such vouchers and give such information to him as he may require; and the costs of such examination or audit, including the fee of the auditor, shall be paid out of the capital or income of the trust property, or partly in one way and partly in the other, as the trustees, in their absolute discretion, think fit, but, in default of any direction by the trustees to the contrary in any special case, costs attributable to capital shall be borne by capital and those attributable to income by income.

Textual Amendments

- F10** Words in s. 22(1) substituted (1.2.2001) by 2000 c. 29, s. 40(1), **Sch. 2 Pt. II para. 22(a)** (with s. 35); S.I. 2001/49, **art. 2**
- F11** Words in s. 22(3) omitted (1.2.2001) by virtue of 2000 c. 29, s. 40(1), **Sch. 2 Pt. II para. 22(b)** (with s. 35); S.I. 2001/29, **art. 2**
- F12** Words in s. 22(3) inserted (1.2.2001) by 2000 c. 29, s. 40(1), **Sch. 2 Pt. II para. 22(b)** (with s. 35); S.I. 2001/29, **art. 2**

^{F13}23

Textual Amendments

- F13** S. 23 repealed (1.2.2001) by 2000 c. 29, s. 40(1)(3), Sch. 2 Pt. II para. 23, **Sch. 4 Pt. II** (with s. 35, Sch. 3 para. 6); S.I. 2001/49, **art. 2**

24 Power to concur with others.

Where an undivided share in [^{F14}any] property, is subject to a trust, or forms part of the estate of a testator or intestate, the trustees or personal representatives may (without prejudice to the [^{F15}trust] affecting the entirety of the land and the powers of the [^{F16}trustees] in reference thereto) execute or exercise any [^{F17}duty or] power vested in them in relation to such share in conjunction with the persons entitled to or having power in that behalf over the other share or shares, and notwithstanding that any one or more of the trustees or personal representatives may be entitled to or interested in any such other share, either in his or their own right or in a fiduciary capacity.

Textual Amendments

- F14** Words in s. 24 substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 3(6)(a)** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art.2**
- F15** Words in s. 24 substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 3(6)(b)** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art.2**
- F16** Words in s. 24 substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 3(6)(c)** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art.2**
- F17** Words in s. 24 substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 3(6)(d)** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art.2**

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[^{F18}25 Delegation of trustee’s functions by power of attorney.

- (1) Notwithstanding any rule of law or equity to the contrary, a trustee may, by power of attorney, delegate the execution or exercise of all or any of the trusts, powers and discretions vested in him as trustee either alone or jointly with any other person or persons.
- (2) A delegation under this section—
 - (a) commences as provided by the instrument creating the power or, if the instrument makes no provision as to the commencement of the delegation, with the date of the execution of the instrument by the donor; and
 - (b) continues for a period of twelve months or any shorter period provided by the instrument creating the power.
- (3) The persons who may be donees of a power of attorney under this section include a trust corporation.
- (4) Before or within seven days after giving a power of attorney under this section the donor shall give written notice of it (specifying the date on which the power comes into operation and its duration, the donee of the power, the reason why the power is given and, where some only are delegated, the trusts, powers and discretions delegated) to—
 - (a) each person (other than himself), if any, who under any instrument creating the trust has power (whether alone or jointly) to appoint a new trustee; and
 - (b) each of the other trustees, if any;
 but failure to comply with this subsection shall not, in favour of a person dealing with the donee of the power, invalidate any act done or instrument executed by the donee.
- (5) A power of attorney given under this section by a single donor—
 - (a) in the form set out in subsection (6) of this section; or
 - (b) in a form to the like effect but expressed to be made under this subsection,
 shall operate to delegate to the person identified in the form as the single donee of the power the execution and exercise of all the trusts, powers and discretions vested in the donor as trustee (either alone or jointly with any other person or persons) under the single trust so identified.
- (6) The form referred to in subsection (5) of this section is as follows—

“

THIS GENERAL TRUSTEE POWER OF ATTORNEY is made on [date] by [name of one donor] of [address of donor] as trustee of [name or details of one trust].

I appoint [name of one donee] of [address of donee] to be my attorney [if desired, the date on which the delegation commences or the period for which it continues (or both)] in accordance with section 25(5) of the ^{M5}Trustee Act 1925.

[To be executed as a deed]”.
- (7) The donor of a power of attorney given under this section shall be liable for the acts or defaults of the donee in the same manner as if they were the acts or defaults of the donor.
- (8) For the purpose of executing or exercising the trusts or powers delegated to him, the donee may exercise any of the powers conferred on the donor as trustee by statute or by the instrument creating the trust, including power, for the purpose of the transfer

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of any inscribed stock, himself to delegate to an attorney power to transfer, but not including the power of delegation conferred by this section.

- (9) The fact that it appears from any power of attorney given under this section, or from any evidence required for the purposes of any such power of attorney or otherwise, that in dealing with any stock the donee of the power is acting in the execution of a trust shall not be deemed for any purpose to affect any person in whose books the stock is inscribed or registered with any notice of the trust.
- (10) This section applies to a personal representative, tenant for life and statutory owner as it applies to a trustee except that subsection (4) shall apply as if it required the notice there mentioned to be given—
- (a) in the case of a personal representative, to each of the other personal representatives, if any, except any executor who has renounced probate;
 - (b) in the case of a tenant for life, to the trustees of the settlement and to each person, if any, who together with the person giving the notice constitutes the tenant for life; and
 - (c) in the case of a statutory owner, to each of the persons, if any, who together with the person giving the notice constitute the statutory owner and, in the case of a statutory owner by virtue of section 23(1)(a) of the ^{M6}Settled Land Act 1925, to the trustees of the settlement.]

Textual Amendments

F18 S. 25 substituted (1.3.2000) by 1999 c. 15, s. 5(1)(2); S.I. 2000/216, art. 2

Modifications etc. (not altering text)

C1 S. 25(6) amended (1.3.2000) by S.I. 2000/215, art. 2, Sch. Pt. I

Marginal Citations

M5 1925 c.19.

M6 1925 c.18.

Indemnities

26 Protection against liability in respect of rents and covenants.

- (1) Where a personal representative or trustee liable as such for—
- (a) any rent, covenant, or agreement reserved by or contained in any lease; or
 - (b) any rent, covenant or agreement payable under or contained in any grant made in consideration of a rentcharge; or
 - (c) any indemnity given in respect of any rent, covenant or agreement referred to in either of the foregoing paragraphs;
- satisfies all liabilities under the lease or grant ^{F19}which may have accrued and been claimed] up to the date of the conveyance hereinafter mentioned, and, where necessary, sets apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum which the lessee or grantee agreed to lay out on the property demised or granted, although the period for laying out the same may not have arrived, then and in any such case the personal representative or trustee may convey the property demised or granted to a purchaser, legatee, devisee, or other person entitled to call for a conveyance thereof and thereafter—

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- (i) he may distribute the residuary real and personal estate of the deceased testator or intestate, or, as the case may be, the trust estate (other than the fund, if any, set apart as aforesaid) to or amongst the persons entitled thereto, without appropriating any part, or any further part, as the case may be, of the estate of the deceased or of the trust estate to meet any future liability under the said lease or grant;
- (ii) notwithstanding such distribution, he shall not be personally liable in respect of any subsequent claim under the said lease or grant.

[^{F20}(1A) Where a personal representative or trustee has as such entered into, or may as such be required to enter into, an authorised guarantee agreement with respect to any lease comprised in the estate of a deceased testator or intestate or a trust estate (and, in a case where he has entered into such an agreement, he has satisfied all liabilities under it which may have accrued and been claimed up to the date of distribution)—

- (a) he may distribute the residuary real and personal estate of the deceased testator or intestate, or the trust estate, to or amongst the persons entitled thereto—
 - (i) without appropriating any part of the estate of the deceased, or the trust estate, to meet any future liability (or, as the case may be, any liability) under any such agreement, and
 - (ii) notwithstanding any potential liability of his to enter into any such agreement; and
- (b) notwithstanding such distribution, he shall not be personally liable in respect of any subsequent claim (or, as the case may be, any claim) under any such agreement.

In this subsection “authorised guarantee agreement” has the same meaning as in the Landlord and Tenant (Covenants) Act 1995.]

- (2) This section operates without prejudice to the right of the lessor or grantor, or the persons deriving title under the lessor or grantor, to follow the assets of the deceased or the trust property into the hands of the persons amongst whom the same may have been respectively distributed, and applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.
- (3) In this section “lease” includes an underlease and an agreement for a lease or underlease and any instrument giving any such indemnity as aforesaid or varying the liabilities under the lease; “grant” applies to a grant whether the rent is created by limitation, grant, reservation, or otherwise, and includes an agreement for a grant and any instrument giving any such indemnity as aforesaid or varying the liabilities under the grant; “lessee” and “grantee” include persons respectively deriving title under them.

Textual Amendments

F19 Words substituted by [Law of Property \(Amendment\) Act 1926 \(c. 11\)](#), [Sch.](#)

F20 [S. 26\(1A\)](#) inserted (1.1.1996) by [1995 c. 30, s. 30\(1\)](#), [Sch. 1 para.1](#) (with [ss. 2\(2\)](#), [26\(1\)\(2\)](#)); [S.I. 1995/2963](#), [art.2](#)

27 Protection by means of advertisements.

- (1) With a view to the conveyance to or distribution among the persons entitled to any real or personal property, the trustees of a settlement [^{F21}, trustees of land, trustees for sale of personal property] or personal representatives, may give notice by advertisement

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in the Gazette, and [^{F22}in a newspaper circulating in the district in which the land is situated] and such other like notices, including notices elsewhere than in England and Wales, as would, in any special case, have been directed by a court of competent jurisdiction in an action for administration, of their intention to make such conveyance or distribution as aforesaid, and requiring any person interested to send to the trustees or personal representatives within the time, not being less than two months, fixed in the notice or, where more than one notice is given, in the last of the notices, particulars of his claim in respect of the property or any part thereof to which the notice relates.

- (2) At the expiration of the time fixed by the notice the trustees or personal representatives may convey or distribute the property or any part thereof to which the notice relates, to or among the persons entitled thereto, having regard only to the claims, whether formal or not, of which the trustees or personal representatives then had notice and shall not, as respects the property so conveyed or distributed, be liable to any person of whose claim the trustees or personal representatives have not had notice at the time of conveyance or distribution; but nothing in this section—
 - (a) prejudices the right of any person to follow the property, or any property representing the same, into the hands of any person, other than a purchaser, who may have received it; or
 - (b) frees the trustees or personal representatives from any obligation to make searches or obtain official certificates of search similar to those which an intending purchaser would be advised to make or obtain.
- (3) This section applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.

Textual Amendments

- F21** Words in s. 27(1) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 3(7)** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art.2**
- F22** Words substituted by Law of Property (Amendment) Act 1926 (c. 11), **Sch.**

28 Protection in regard to notice.

A trustee or personal representative acting for the purposes of more than one trust or estate shall not, in the absence of fraud, be affected by notice of any instrument, matter, fact or thing in relation to any particular trust or estate if he has obtained notice thereof merely by reason of his acting or having acted for the purposes of another trust or estate.

29 ^{F23}

Textual Amendments

- F23** S. 29 repealed by Power of Attorney Act 1971 (c. 27), **Sch. 2**

^{F24}**30 Implied indemnity of trustees.**

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Textual Amendments

F24 S. 30 repealed (1.2.2001) by 2000 c. 29, s. 40(1)(3), Sch. 2 Pt. II para. 24, **Sch. 4 Pt. II** (with s. 35); S.I. 2001/49, **art. 2**

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 as may, in all the circumstances, be reasonable, 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 [^{F25}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:

Provided that, in deciding whether the whole or any part of the income of the property is during a minority to be paid or applied for the purposes aforesaid, the trustees shall have regard to the age of the infant and his requirements and generally to the circumstances of the case, and in particular to what other income, if any, is applicable for the same purposes; and where trustees have notice that the income of more than one fund is applicable for those purposes, then, so far as practicable, unless the entire income of the funds is paid or applied as aforesaid or the court otherwise directs, a proportionate part only of the income of each fund shall be so paid or applied.

- (2) During the infancy of any such person, if his interest so long continues, the trustees shall accumulate all the residue of that income [^{F26}by investing it, and any profits from so investing it] from time to time in authorised investments, and shall hold those accumulations as follows:—
- (i) If any such person—
 - (a) attains the age of [^{F25}eighteen years], or marries under that age [^{F27}or forms a civil partnership under that age], and his interest in such income during his infancy or [^{F28} , or until his marriage or his formation of a civil partnership,] is a vested interest or;
 - (b) on attaining the age of [^{F25}eighteen years] or on marriage [^{F29} , 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;

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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 [^{F30}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

- F25** Word substituted by [Family Law Reform Act 1969 \(c. 46\), s. 1\(3\)](#), [Sch. 1 Pt. I](#)
- F26** 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](#)
- F27** 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\(2\)](#)
- F28** 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\(2\)](#)
- F29** 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\(2\)](#)
- F30** 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\(2\)](#)

32 Power of advancement.

- (1) Trustees may at any time or times pay or apply any capital money subject to a trust, 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

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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 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) the money so paid or applied for the advancement or benefit of any person shall not exceed altogether in amount one-half of 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 the money so paid or applied shall be brought into account as part of such share; and
- (c) no such payment 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 paid or applied unless such person is in existence and of full age and consents in writing to such payment or application.

[^{F31}(2) This section does not apply to capital money arising under the ^{M7}Settled Land Act 1925.]

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

Textual Amendments

F31 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

M7 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

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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 [^{F32}spouse or civil partner], if any, and his or her children or more remote issue, if any; or
- (b) if there is no [^{F33}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.

(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.

[^{F34}(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.]

Textual Amendments

- F32** 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)
- F33** 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)
- F34** 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

Modifications etc. (not altering text)

- C2** 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

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