



Trustee Act 1925

1925 CHAPTER 19 15 and 16 Geo 5

PART III **E+W**

APPOINTMENT AND DISCHARGE OF TRUSTEES

36 Power of appointing new or additional trustees. **E+W**

(1) Where a trustee, either original or substituted, 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, or is an infant, then, subject to the restrictions imposed by this Act on the number of 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 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, or being an infant, 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, but subject to the restrictions imposed by this Act on the number of trustees.

(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

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of the dissolution incapable of acting in the trusts or powers reposed in or conferred on the corporation.

- (4) The power of appointment given by subsection (1) of this section or any similar previous enactment to the personal representatives of 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.

- ^{F1}[^{F2}(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 another person or other persons 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 statutory enactment provides to the contrary, nor shall the number of trustees be increased beyond four by virtue of any such appointment.

- ^{F2}(6A) A person who is either—
- (a) both a trustee and attorney for the other trustee (if one other), or for both of the other trustees (if two others), under a registered power; or
 - (b) attorney under a registered power for the trustee (if one) or for both or each of the trustees (if two or three),

may, if subsection (6B) of this section is satisfied in relation to him, make an appointment under subsection (6)(b) of this section on behalf of the trustee or trustees.

- (6B) This subsection is satisfied in relation to an attorney under a registered power for one or more trustees if (as attorney under the power)—
- (a) he intends to exercise any function of the trustee or trustees by virtue of section 1(1) of the Trustee Delegation Act 1999; or
 - (b) he intends to exercise any function of the trustee or trustees in relation to any land, capital proceeds of a conveyance of land or income from land by virtue of its delegation to him under section 25 of this Act or the instrument (if any) creating the trust.

- (6C) In subsections (6A) and (6B) of this section “registered power” means [^{F3}an enduring power of attorney or lasting power of attorney registered under the Mental Capacity Act 2005]

- (6D) Subsection (6A) of this section—
- (a) applies only if and so far as a contrary intention is not expressed in the instrument creating the power of attorney (or, where more than one, any of them) or the instrument (if any) creating the trust; and

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- (b) has effect subject to the terms of those instruments.]
- (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.
- [^{F4}(9) Where a trustee [^{F5}lacks capacity to exercise] his functions as trustee and is also entitled in possession to some beneficial interest in the trust property, no appointment of a new trustee in his place shall be made by virtue of paragraph (b) of subsection (1) of this section unless leave to make the appointment has been given by [^{F6}the Court of Protection] .]

Textual Amendments

- F1** Words before s. 36(6)(a) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 3(11)** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art. 2**
- F2** S. 36(6A)-(6D) inserted (1.3.2000) by 1999 c. 15, s. 8(1)(2); S.I. 2000/216, **art. 2**
- F3** Words in s. 36(6C) substituted (1.10.2007) by Mental Capacity Act 2005 (c. 9), s. 68(1), **Sch. 6 para. 3(2)(a)** (with ss. 27-29, 62); S.I. 2007/1897, art. 2(1)(d)
- F4** S. 36(9) substituted by Mental Health Act 1959 (c. 72), **Sch. 7 Pt. I**
- F5** Words in s. 36(9) substituted (1.10.2007) by Mental Capacity Act 2005 (c. 9), s. 68(1), **Sch. 6 para. 3(2)(b)(i)** (with ss. 27-29, 62); S.I. 2007/1897, art. 2(1)(d)
- F6** Words in s. 36(9) substituted (1.10.2007) by Mental Capacity Act 2005 (c. 9), s. 68(1), **Sch. 6 para. 3(2)(b)(ii)** (with ss. 27-29, 62); S.I. 2007/1897, art. 2(1)(d)

Modifications etc. (not altering text)

- C1** S. 36(6) excluded by National Theatre Act 1949 (c. 16), s. 2(2)
S. 36(7) extended (1.1.1997) by 1996 c. 47, s. 21(3) (with ss. 24(2), 25(4)); S.I. 1996/2974, **art. 2**
- C2** S.36(9) restricted by S.I. 1984/2035, **art. 15**

Changes to legislation:

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