



2001 CHAPTER 14

PART IV

AGENTS NOMINEES AND CUSTODIANS

Nominees and custodians

Power to appoint nominees

- 16.—**(1) Subject to the provisions of this Part, the trustees of a trust may—
- (a) appoint a person to act as their nominee in relation to such of the assets of the trust as they determine (other than settled land), and
 - (b) take such steps as are necessary to secure that those assets are vested in a person so appointed.
- (2) An appointment under this section must be in or evidenced in writing.

Power to appoint custodians

- 17.—**(1) Subject to the provisions of this Part, the trustees of a trust may appoint a person to act as a custodian in relation to such of the assets of the trust as they may determine.
- (2) For the purposes of this Act a person is a custodian in relation to assets if he undertakes the safe custody of the assets or of any documents or records concerning the assets.
- (3) An appointment under this section must be in or evidenced in writing.

Investment in bearer securities

18.—(1) If trustees retain or invest in securities payable to bearer, they must appoint a person to act as a custodian of the securities.

(2) Subsection (1) does not apply if the trust instrument or any statutory provision contains provision which (however expressed) permits the trustees to retain or invest in securities payable to bearer without appointing a person to act as a custodian.

(3) An appointment under this section must be in or evidenced in writing.

Persons who may be appointed as nominees or custodians

19.—(1) A person may not be appointed under section 16, 17 or 18 as a nominee or custodian unless one of the relevant conditions is satisfied.

(2) The relevant conditions are that—

- (a) the person carries on a business which consists of or includes acting as a nominee or custodian;
- (b) the person is a body corporate which is controlled by the trustees;
- (c) the person is a body corporate recognised under Article 26A of the [Solicitors \(Northern Ireland\) Order 1976 \(NI 12\)](#).

(3) The question whether a body corporate is controlled by trustees is to be determined in accordance with section 840 of the Income and Corporation Taxes Act 1988 (c. 1).

(4) The trustees of a charitable trust must act in accordance with any guidance given by the Department for Social Development concerning the selection of a person for appointment as a nominee or custodian under section 16, 17 or 18.

(5) Subject to subsections (1) and (4), the persons whom the trustees may under section 16, 17 or 18 appoint as a nominee or custodian include—

- (a) one of their number, if that one is a trust corporation, or
- (b) two (or more) of their number, if they are to act as joint nominees or joint custodians.

(6) The trustees may under section 16 appoint a person to act as their nominee even though he is also—

- (a) appointed to act as their custodian (whether under section 17 or 18 or any other power), or
- (b) authorised to exercise functions as their agent (whether under section 11 or any other power).

(7) Likewise, the trustees may under section 17 or 18 appoint a person to act as their custodian even though he is also—

Status: This is the original version (as it was originally enacted).

- (a) appointed to act as their nominee (whether under section 16 or any other power), or
- (b) authorised to exercise functions as their agent (whether under section 11 or any other power).

Terms of appointment of nominees and custodians

20.—(1) Subject to subsection (2) and sections 29 to 32, the trustees may under section 16, 17 or 18 appoint a person to act as a nominee or custodian on such terms as to remuneration and other matters as they may determine.

(2) The trustees may not under section 16, 17 or 18 appoint a person to act as a nominee or custodian on any of the terms mentioned in subsection (3) unless it is reasonably necessary for them to do so.

(3) The terms are—

- (a) a term permitting the nominee or custodian to appoint a substitute;
- (b) a term restricting the liability of the nominee or custodian or his substitute to the trustees or to any beneficiary;
- (c) a term permitting the nominee or custodian to act in circumstances capable of giving rise to a conflict of interest.