



2001 CHAPTER 14

PART VI

APPOINTMENT AND RETIREMENT OF 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 \(NI 4\)](#).