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# The new Trusts Act and its implications for Trustees

By Jonathon Russell - 31 Aug 2020

The Trusts Act 2019 (**Act**) comes into effect in January 2021, providing the first major reform to trust law in over 70 years. Although the Act implements significant changes, the over-arching purpose of the new legislation is to re-state the existing law in a more accessible format, so that it can better assist beneficiaries in holding trustees to account.

The Act clearly sets out a range of obligations as well as a list of "Mandatory Duties" and "Default Duties" to follow. The obligations include a requirement for:

- every trustee to hold a copy of the trust deed and any variations
- at least one of the trustees must hold the rest of the "*core trust documents*". N.B. the Act sets out what the core documents are.

As the name suggests, Mandatory Duties cannot be contracted out of, and therefore **must** be followed, whereas the Default Duties can be modified or excluded in appropriate circumstances.

## The Mandatory duties are to:

- know the terms of the trust
- act in accordance with the terms of the trust
- act honestly and in good faith
- deal with the trust property and to act for the benefit of the beneficiaries in accordance with the terms of the trust deed, and
- exercise the trustees' powers for a proper purpose.

## Default duties include:

- a general duty of care
- a requirement to invest prudently
- a duty not to exercise power for a trustee's own benefit
- a duty to consider the exercise of trustees' powers
- a duty to avoid conflicts of interest
- a duty of impartiality towards the beneficiaries

- a duty to act for no reward and not to profit from the trusteeship, and
- a duty for trustees to act unanimously.

It is common for the Default Duties to be modified, even in older trust deeds. For example, most trust deeds we see already provide that:

- trustees can benefit one beneficiary, to the exclusion of the others (not acting impartially), and
- allow professional trustees, such as accountants and lawyers, to charge for their services (profiting from the trusteeship).

## Beneficiary Disclosure

The Act creates two key *presumptions* for trustees to follow. These presumptions have come about as a means of ensuring beneficiaries have sufficient information to enforce the terms of the trust and hold the trustees to account.

The first *presumption* is that trustees must provide certain "*basic trust information*" to every beneficiary. This means the trustees should voluntarily disclose:

- the fact that a person is a beneficiary of the trust
- the name and contact details of the trustees
- the occurrence of, and details of, each appointment, removal, and retirement of a trustee as it occurs, and
- the right of the beneficiary to request a copy of the terms of the trust or further information about the trust. This could include **a copy of the trust deed and information around any assets and liabilities.**

The second *presumption* is that if a beneficiary requests further trust information, the trustees must provide that information within a reasonable period of time.

With the new disclosure obligations coming into effect in January 2021, now would be a prudent time to consider the ongoing need for the trust, and to review the list of beneficiaries.

A smaller group of beneficiaries will reduce the number of people the disclosure obligations are owed to, making life easier for the trustees. Where appropriate, consider removing beneficiaries who are not intended to benefit from the trust's assets.

## What steps should trustees take now?

Assuming the trust is still needed, before the Act comes into effect in January 2021, trustees **must**:

- ensure they hold the required trust documents. If you are unsure if one of the other trustees is meeting this obligation, you should ensure that you hold these documents yourself
- review the terms of the trust deed to ascertain which default duties have been modified and which ones must be complied with
- review the list of beneficiaries, and consider removing those who are not intended to benefit from the trust, and
- consider making disclosure to beneficiaries - at least one non-trustee beneficiary should have sufficient information to hold the trustees to account.

If you are involved with a trust and are unsure how the new Act will affect you when it comes into effect on 30 January, please contact [Jonathon Russell](#) or any member of our [Trusts Team](#).

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