

The Trusts Act 2019 (“**Act**”) comes into force on 30 January 2021. While all trusts should be regularly reviewed by trustees, settlors, lawyers and accountants to ensure they remain fit for purpose, such reviews are now essential as many trust arrangements will need to change in light of the provisions of the Act.

The Act replaces the Trustee Act 1956 as well as updates or restates law that exists already. The Act also imposes new requirements for trust arrangements which will likely require action by trustees and settlors or changes to the way the trust operates in the future. The Act applies to all trusts whether they have been around for decades, months or are established after 30 January 2021. In this article, we have summarised some of the key changes of which trustees and settlors need to be aware.

1. *Lifetime of a Trust*

Under the Act the lifetime of a Trust can now be 125 years. However, this extension of time does not automatically apply to existing trusts. Trustees of existing trusts will need to look to their trust documentation to determine if an extension of the trust lifetime is possible or desirable.

2. *Trustee Duties*

Minimum trustee duties are now specifically outlined in the Act. There are two types of duties stated; mandatory duties and default duties. Mandatory duties cannot be modified or excluded and apply to every trust. Default duties also apply to every trust, however, these duties can be modified or excluded if the correct process is followed.

3. *Documents to be kept by trustees*

The Act requires each trustee to personally retain core documents (or copies of them). Core documents are defined and listed in the Act. Failure to comply with this obligation may mean a trustee will be liable for breach of trust should a claim be made against them. It is no longer sufficient to only have a solicitor or accountant hold those core documents.

4. *Beneficiaries Right to Information*

The Act contains a presumption that trustees will provide basic information (as defined in the Act) to beneficiaries. This means that trustees must, without request from a beneficiary, give to the beneficiaries’ certain details about the trust. An example of “basic information” is telling a beneficiary that they are a beneficiary, providing the name and contact details of the trustees (including when there are changes to the trustees) and letting the beneficiaries know that they have the right to ask for information about the trust. For many trustees and settlors, the mere possibility of beneficiaries being given basic information is undesirable.

NORTH END LAW

LAWYERS

Trustees must consider at reasonable intervals whether they should be providing basic trust information to beneficiaries. Such consideration and the reasons for the decision should be carefully recorded in trustee resolutions to best protect the trustees.

The requirement for trustees to provide basic information does not negate the obligation to respond to a request for information from a beneficiary. If a beneficiary asks for information about the trust, the trustees must first look the Act for guidance on what, if anything, needs to be disclosed and follow the process outlined in the Act carefully.

While the Act does provide limited situations where trustees may withhold basic information from beneficiaries or refuse requests for information, it is most likely that basic information will need to be disclosed to at least one beneficiary who is not also a settlor. However, there is more discretion available to trustees when considering and responding to requests for information from beneficiaries.

5. *Compulsory Removal of Trustees*

The Act now makes it compulsory for the person with the power to remove trustees to remove any trustee who becomes incapable of acting. If an incapable trustee is not removed, then the person holding the power of removal may find themselves answerable to the beneficiaries for any loss which arises from their failure to act. It may be possible to avoid the obligation to remove a trustee, if their trustee powers have been otherwise delegated, but trusts will need to seek legal assistance to ensure this exemption applies.

6. *Other Considerations*

The Act further details how trustee appointment, removal (in addition to compulsory removal) and retirement is to be completed, how trusts are distributed, trustee indemnification and alternative dispute resolution methods. If a trust deed is silent on how these matters are to be dealt with, then the Act provides the default position. For some trusts, the default provisions of the Act may not be suitable and trust variations may need to be undertaken, if possible, to avoid the application of the Act in this respect.

Trustees may also need to give serious consideration to whether a trust should be ended and distributed rather than varied.

Next Steps

Trustees and settlors need to familiarise themselves with their trust arrangements and the provisions of the Act (particularly the trustee duties) as soon as possible. All trusts should be reviewed prior to 30 January 2021 to ensure compliance and avoid unintended consequences once the Act comes into force. For those who need guidance on this process or assistance with changes that need to be made, we are available to help and welcome your enquiries.