

Trusts Act 2019

Meeting the new obligations with Connectworks.

What are the changes?

The new Act comes into force January 30th 2021.

Much of the content of the new Act is to make the existing legislation more modern and user-friendly in light of the large number of people who have settled trusts and act as trustees.

However, there are several important areas of change that each require careful consideration.

1 Beneficiary disclosure requirements.

It requires trustees to inform beneficiaries (including discretionary) of the fact that they are beneficiaries of a trust, the name and contact details of trustees and that they have the right to request a copy of the terms of the trust and trust information.

The purpose of this is to ensure that beneficiaries have sufficient information to enable the terms of the trust and the trustees' duties to be enforced against the trustees.

In Connectworks

Email required documents and reports directly from your electronic trust files or download for distribution

2 Perpetuity period extended to 125 years

As peoples' life expectancy is now longer, the life of a trust can now be extended from the current maximum of 80 years to 125 years. To enact this may require a variation of the trust deed.

In Connectworks

Your trust professional can utilise our Deeds of Variation to auto-populate with trust details and distribute for electronic signing. Signed documents are stored in Connectworks automatically, removing the risk of documents being incorrectly filed or misplaced.



3

Document retention requirements.

Each trustee of a trust must keep, so far as is reasonable, all key documents relating to the trust. Or, satisfied that at least one of the trustees holds the key documents and that copies of them will be made available to other trustees on request. At the time that the trusteeship of a trustee ends, if the trust continues, the trustee must give at least one replacement or continuing trustee the documents that they hold.

In Connectworks

Connectworks gives all authorised parties access to all trust information and enables them to upload and download information, sign documents and approve resolutions. Access rights can be changed if there is a changes of trustee, enabling the record-keeping requirements to be met.

4

Restriction on trustee exemption and indemnity clauses

The terms of a trust must not limit or exclude a trustee's liability for any breach of trust arising from the trustee's dishonesty, wilful misconduct, or gross negligence. The terms of a trust must not give a trustee any indemnity against the trust property for liability for any breach of trust arising from the trustee's dishonesty, wilful misconduct, or gross negligence.

In Connectworks

A more rigorous process of dealing with issues relating to the trust is going to be required. This will include that all trustees take part in discussions relating to trusts matters. That the required trust resolutions and minutes are generated and approved by all parties in advance of any transactions. All of which can be completed and recorded in Connectworks.

5

Mandatory and default duties

The Act has prescribed Mandatory Duties that must be adhered to. They are: A duty to know terms of trust, Duty to act in accordance with terms of trust, a duty to act honestly and in good faith, duty to act for benefit of beneficiaries or to further permitted purpose of trust, a duty to exercise powers for proper purpose.

Additionally, there are Default Duties that must be adhered to unless the trustees modify or opt-out of them. These are: A general duty of care, duty to invest prudently, duty not to exercise power for own benefit, to consider exercise of power, duty not to bind or commit trustees to future exercise of discretion, duty to avoid conflict of interest, duty of impartiality, duty not to profit, duty to act for no reward and a duty to act unanimously.

In Connectworks

Connectworks offers a centralised repository of all trust information so that adherence with the requirements is able to be recorded. There may be valid reasons for the trustees to vary or modify the default duties. If so, Connectworks contains Deeds of Variation to enable this to be undertaken correctly and then for all records to be maintained.