

# Trusts Bill

## Deals with Practical Issues

The Trusts Bill was introduced to Parliament on 1 August 2017. The Bill is largely an update and restatement of the Trustee Act 1956 and the common law. However, it also deals with practical issues that have faced lawyers and trustees for some years. We outline some of the most important parts of the Bill.

### 'Express Trust' Defined

An 'express trust' is defined in the Bill. The definition makes it clear that trust property is separate from a trustee's personal property, it must be administered in accordance with the trustee's obligations in the trust deed, and that trustees will be accountable to beneficiaries for their compliance with the duties imposed on them by the trust deed and by law.

### Trust Life will be Longer

The life of a trust has also been extended. Currently the life of a trust is either specified in the trust deed (as up to 80 years) or it's determined according to the current (and confusing rule) against perpetuities. This has been replaced; if a trust deed does not specify a duration for the trust, or provide a way of determining the date at which the trust is to come to an end, the trust will continue for 125 years. A trust can come to an end earlier if the trust deed says so.

### Trustee Duties

The Bill also contains duties that must be performed by trustees. Trustees must know the terms of the trust, act in accordance with these, act honestly and in good faith, act for the benefit of beneficiaries and exercise powers for a proper purpose. These duties cannot be negated or modified by the trust deed – all trustees must perform them.

There are also 'default' duties which will apply to trustees unless the trust deed says otherwise. These duties are largely a restatement of existing law, but it is expected that their being listed in the Bill will be helpful for trustees to better understand their obligations, and for beneficiaries to understand the function of trustees.



## Trust Information

Trustees will also have clear duties in relation to trust information. Trustees will be required to keep copies of trust documents – these include the trust deed, any other deeds such as deeds of variation and any deeds changing the trustees, a record of all trust assets and liabilities, any accounting records or financial statements, and any letter of wishes from the settlor. If a trustee retires and hands these documents on to a new trustee, the new trustee will be required to keep these documents.

## Beneficiaries' Rights Clarified

Beneficiaries' rights are also clarified in the Bill. Beneficiaries must be notified of basic trust information including the fact that they are beneficiaries, the names and contact details of trustees and their right to request a copy of the trust deed and/or other trust information. This is designed to ensure that beneficiaries have sufficient information to hold trustees accountable for their actions.

The Bill also clarifies the process for beneficiaries who wish to challenge trustees' decision-making.

Once the new Trust bill is passed we will be in touch and we suspect your Solicitor is likely to be also.



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