



# Trusts Act 2019: Key actions for charitable trusts and other permitted purpose trusts

## What you need to know

- The Trusts Act 2019 (Act) came into force on 30 January 2021.
- The Act codifies the obligations of trustees and the rights of beneficiaries with the aim of making trustees more accountable and trust law more understandable.
- The act applies to charitable trusts and other “permitted purpose” trusts.
- There are, however, important differences in how the Act applies to these trusts – especially given that they may exist indefinitely and their focus is their purposes, not “beneficiaries”.
- The checklist below outlines steps for trustees and other stakeholders of charitable and other permitted purpose trusts to take in light of the Act.

## Steps for you to take in light of the Act

### 1. Understand the key features of the Act and the potential implications for the charitable/permitted purpose trust with which you are involved

For starters, click [here](#) for our guide providing further details regarding the key features of the Act and their application to charitable and other permitted purpose trusts.

### 2. Review – and if in doubt get legal advice on – the specific implications of the Act for your trust

Issues for you to consider include:

- Are the terms of the trust consistent with the Act, and not inaccurate or misleading for its trustee(s) and other stakeholders? Specific aspects of the trust’s terms that may require attention include:
  - o Consistency with the mandatory trustee duties set out in the Act
  - o Consistency with, or exclusion or modification of, the default trustee duties set out in the Act
  - o Any provisions limiting or excluding trustee liability
  - o Any provisions relating to the delegation of trustee powers/discretions
  - o Trustee appointment/discharge and disqualification provisions
  - o Trust record-keeping provisions
- If the trust’s terms must, or should, be changed because of the Act, do the trust’s terms allow for this and if so what is the process for approving and effecting changes?
- Are there any other inapt or out-of-date trust terms that should be changed at the same time?

Reviewing the trust and its terms in light of the Act might also be an opportune time to consider and address broader issues, such as:

- Whether the description of the trust's purposes and its governance arrangements are up-to-date and fit-for-purpose
- Whether it might be time to restructure, or possibly wind up, the trust.

### 3. Implement the findings of your review

In many cases this will mean drafting, approving and effecting some changes to your trust's terms, in accordance with approval and other requirements set out under those terms.

For charitable trusts, any changes may also need to be filed with:

- the Companies Office, if the board of trustees is incorporated under the Charitable Trusts Act 1957; and/or
- with DIA Charities Services, if the trust is registered under the Charities Act 2005

### 4. Ensure that the trustee(s) of the trust are complying with all applicable duties under the Act

Key matters for you to consider include:

- The mandatory trustee duties set out in the Act, all of which apply to charitable and other permitted purpose trusts
- The default trustee duties set out in the Act, to the extent these apply to charitable and other permitted purpose trusts and are not excluded or modified by the trust's terms
- Restrictions under the Act relating to the delegation of trustees' powers
- Requirements under the Act relating to eligibility, appointment and discharge of trustees
- The requirement for the trust's terms and any variations to be held by all trustees
- The requirement for other core trust information to be kept by at least one of the trustees, including:
  - o Full records of the trust's assets, liabilities, income and expenses
  - o Full records of all trustee decisions

- o Copies of all written contracts
- o Accounting records and financial statements
- o Trustee appointment/removal/discharge documents
- o Any settlor letter or memorandum of wishes, if applicable
- o Any other documents necessary for the trust's administration

You should have systems in place to ensure that those trust records are properly kept, and to deal with the handover of records when there are trustee changes.

Note, however, that charitable and other permitted purpose trusts that do not have "beneficiaries" for the purposes of the Act do not have to deal with provisions of the Act relating to the disclosure of trust information to beneficiaries.

### 5. Don't forget your other compliance obligations

It is also important to remember that the Act does not affect the continued application of other legislation to charitable and other permitted purpose trusts – including, as applicable:

- The Charities Act 2005, if the trust is registered under that Act for tax concession (income tax exemption and donation tax incentive) purposes
- The Charitable Trusts Act 1957, if the trust is governed by a board of trustees is incorporated under that Act
- Any other enactment by or under which the trust has been created

## Get in touch

For advice on reviewing your trust and addressing any identified issues, please get in touch with our experts.

## Contacts



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