Section 1: Understanding Deeds of Variation

1.1 What Is a Deed of Variation?

A deed of variation is a written instrument by which a beneficiary of a deceased person's estate redirects all or part of their inheritance to another person. The key feature of a deed of variation is that, provided the statutory requirements are met, the variation is treated for IHT and CGT purposes as if the deceased had made the amended disposition in their will (or as if the intestacy rules had provided for the redirected distribution).

In other words, the law 'looks through' the variation and treats it as if the deceased had always intended the inheritance to go to the new beneficiary.

1.2 The Legal Basis

The statutory authority for deeds of variation is found in:

- Section 142 of the Inheritance Tax Act 1984 (for IHT purposes)
- Section 62(6) of the Taxation of Chargeable Gains Act 1992 (for CGT purposes)

These provisions allow a variation to be treated as if made by the deceased, provided the following conditions are met:

1.3 Requirements for a Valid Deed of Variation

All of the following conditions must be satisfied:

Requirement	Details
Time limit	The variation must be made within 2 years of the date of death
Written instrument	The variation must be in writing (a 'deed' or 'instrument')
All affected beneficiaries must consent	Every person whose entitlement is reduced must agree
Statement of intent	The instrument must contain a statement that s.142 IHTA 1984 and/or s.62(6) TCGA 1992 are intended to apply
No consideration	The variation must not be made for money or other consideration (i.e., the original beneficiary must not be 'bought out')
The deceased died on or after 1 January 1985	Section 142 does not apply to deaths before this date

1.4 When to Use a Deed of Variation

Common reasons for making a deed of variation include:

IHT Savings, Redirecting to the Surviving Spouse

If the deceased left their estate to their children (or other non-exempt beneficiaries), the children can redirect all or part of the inheritance to the surviving spouse. Transfers between spouses are exempt from IHT, so this eliminates or reduces the IHT liability on the first death.

IHT Savings, Skipping a Generation

If the surviving spouse has sufficient assets for their own needs, the beneficiaries can redirect the inheritance to the grandchildren, effectively 'skipping' the surviving spouse's estate. This can prevent the inheritance being taxed again when the surviving spouse dies.

Charitable Giving

If a beneficiary redirects part of their inheritance to a charity, the gift is exempt from IHT. If the total charitable gifts amount to at least 10% of the 'baseline amount' of the estate, the entire estate benefits from a reduced IHT rate of 36% (instead of 40%).

Equalising Estates Between Spouses

If one spouse's estate is significantly larger than the other's, a variation can be used to equalise the estates, ensuring both nil-rate bands are fully utilised.

Correcting Errors or Outdated Wills

If the deceased's will was out of date or contained errors, a deed of variation allows the beneficiaries to redirect the inheritance to better reflect what the deceased would have wanted.

Section 2: What You Cannot Do

A deed of variation cannot be used to:

- Create a new settlement or trust (except in limited circumstances, seek professional advice)
- Benefit a minor child of the person making the variation (anti-avoidance rules apply)
- Vary a variation, once a deed of variation has been made, it cannot itself be varied
- Override the rights of creditors of the estate
- Redirect pension benefits or life insurance policies written in trust (these are outside the estate)
- Be made after 2 years from the date of death

2.1 The Two-Year Time Limit

The two-year time limit is absolute and cannot be extended. The instrument must be executed (signed) within two years of the date of death. It is not sufficient to have merely agreed the variation; the written instrument must be in place.

If you are approaching the two-year deadline, act immediately. It is better to execute a deed of variation and seek professional review afterwards than to miss the deadline entirely.

2.2 The Consent Issue

Every beneficiary whose entitlement is reduced by the variation must consent. This can be problematic if:

- There are many beneficiaries and some cannot be found
- A beneficiary is a minor (under 18), the court's approval may be needed
- A beneficiary lacks mental capacity, the Court of Protection may need to be involved
- Beneficiaries disagree about the variation

If any of these situations apply, seek professional legal advice before proceeding.