

TRUSTEE ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part II: Investment

Section 4: Standard investment criteria

23. **Section 4(1)** provides that in exercising a power of investment, whether under section 3 or otherwise, a trustee must have regard to the suitability to the trust of the investment and, secondly, to the extent that it is appropriate in the circumstances, to the need for diversification of the trust's investments. These factors are defined in the Act (section 4(3)) as the standard investment criteria. "Suitability" relates both to the kind of investment proposed and to the particular investment as an investment of that kind. It will include considerations as to the size and risk of the investment and the need to produce an appropriate balance between income and capital growth to meet the needs of the trust. It will also include any relevant ethical considerations as to the kind of investments which it is appropriate for the trust to make.
24. **Section 4(2)** requires a trustee to keep the investments of the trust under review and to consider whether, in the light of the standard investment criteria, they should be varied. This provision codifies the common law position, under which "a trustee with a power of investment must undertake periodic reviews of the investments held by the trust": *Nestle v National Westminster Bank plc (No 2)* [1993] 1 WLR 1260, 1282G, per Leggatt LJ.
25. The definition of the standard investment criteria in section 4(3) is closely modelled on section 6(1) of the Trustee Investments Act 1961 and accords with modern portfolio theory. The general duty of care applies in relation to the application of the standard investment criteria by a trustee (Schedule 1 paragraph 1(b)). As the exercise of a power of investment is subject to the duty of care in section 1, trustees may need to have regard to other matters in addition to the standard investment criteria, as defined. However, the standard investment criteria will be of central importance in every case.