

*These notes relate to the Charities and Trustee Investment (Scotland)
Act 2005 (asp 10) which received Royal Assent on 14 July 2005*

CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 3: Investment Powers of Trustees

Declaration of power to delegate investment management functions

106. **Section 94** also inserts a new section (4C) into the 1921 Act which is a declaratory provision on trustee powers to delegate investment and management of funds where a trust deed is silent. Trustees are not bound to perform the whole duties of the trust personally. Delegation, if properly carried out, is not a breach of trust. Trustees do have a statutory power to appoint law agents and factors and, in addition, have common law powers to appoint agents, managers and others. This provision gives a statutory default provision setting out the power to delegate management of investments and makes specific reference to the power to delegate the discretionary management of investments. This is not a new power and is already covered by the trustees' common law duty of care. Trustees should select agents with care, determine the investment policy, set guidelines, and communicate with and monitor agents.

“107 **Section 95** introduces **Schedule 3** which makes a number of amendments consequential on **sections 93 and 94** to other legislation relating to investment powers of trustees.