



# Charities and Trustee Investment (Scotland) Act 2005

2005 asp 10

## PART 3

### INVESTMENT POWERS OF TRUSTEES

#### 93 Extension of general powers of trustees

- (1) Section 4 (general powers of trustees) of the Trusts (Scotland) Act 1921 (c. 58) is amended as follows.
- (2) In subsection (1)—
  - (a) after paragraph (e) insert—
    - “(ea) To make any kind of investment of the trust estate (including an investment in heritable property).
    - (eb) To acquire heritable property for any other reason.”,
  - (b) paragraph (ee) is repealed.
- (3) After subsection (1) insert—
  - “(1A) The power to act under subsection (1)(ea) or (eb) above is subject to any restriction or exclusion imposed by or under any enactment.
  - (1B) The power to act under subsection (1)(ea) or (eb) above is not conferred on any trustees who are—
    - (a) the trustees of a pension scheme,
    - (b) the trustees of an authorised unit trust, or
    - (c) trustees under any other trust who are entitled by or under any other enactment to make investments of the trust estate.
  - (1C) No term relating to the powers of a trustee contained in a trust deed executed before 3rd August 1961 is to be treated as restricting or excluding the power to act under subsection (1)(ea) above.
  - (1D) No term restricting the powers of investment of a trustee to those conferred by the Trustee Investments Act 1961 (c. 62) contained in a trust deed executed on

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*Changes to legislation: There are currently no known outstanding effects for the Charities and Trustee Investment (Scotland) Act 2005, Part 3. (See end of Document for details)*

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or after 3rd August 1961 is to be treated as restricting or excluding the power to act under subsection (1)(ea) above.

(1E) The reference in subsection (1D) above to a trustee does not include a reference to a trustee under a trust constituted by a private or local Act of Parliament or a private Act of the Scottish Parliament; and “trust deed” shall be construed accordingly.

(1F) In this section—

“authorised unit trust” means a unit trust scheme in the case of which an order under section 243 of the Financial Services and Markets Act 2000 (c. 8) is in force,

“enactment” has the same meaning as in the Scotland Act 1998 (c. 46),

“pension scheme” means an occupational pension scheme (within the meaning of the Pension Schemes Act 1993 (c. 48)) established under a trust and subject to the law of Scotland.”

**Annotations:**

**Commencement Information**

**II** S. 93 in force at 1.1.2006 by [S.S.I. 2005/644](#), art. 2(1), [Sch. 1](#)

**94 Exercise of power of investment**

After section 4 of the Trusts (Scotland) Act 1921 (c. 58) insert—

**“4A Exercise of power of investment: duties of trustee**

- (1) Before exercising the power of investment under section 4(1)(ea) of this Act, a trustee shall have regard to—
  - (a) the suitability to the trust of the proposed investment, and
  - (b) the need for diversification of investments of the trust, in so far as is appropriate to the circumstances of the trust.
- (2) Before exercising that power of investment, a trustee shall (except where subsection (4) applies) obtain and consider proper advice about the way in which the power should be exercised.
- (3) When reviewing the investments of the trust, a trustee shall (except where subsection (4) applies) obtain and consider proper advice about whether the investments should be varied.
- (4) If a trustee reasonably concludes that in all the circumstances it is unnecessary or inappropriate to obtain such advice, the trustee need not obtain it.
- (5) In this section, “proper advice” means the advice of a person who is reasonably believed by the trustee to be qualified by the person's ability and practical experience of financial and other matters relating to the proposed investment.”

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**Changes to legislation:** There are currently no known outstanding effects for the Charities and Trustee Investment (Scotland) Act 2005, Part 3. (See end of Document for details)

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**Annotations:**

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**Commencement Information**

**I2** S. 94 in force at 1.1.2006 by [S.S.I. 2005/644](#), art. 2(1), [Sch. 1](#)

**95 Amendments consequential on Part 3**

Schedule 3 makes amendments consequential on sections 93 and 94.

**Annotations:**

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**Commencement Information**

**I3** S. 95 in force at 1.1.2006 by [S.S.I. 2005/644](#), art. 2(1), [Sch. 1](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Charities and Trustee Investment (Scotland) Act 2005, Part 3.