

*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

Extension of general powers of trustees

102. **Section 4** of the Trusts (Scotland) Act 1921 is amended (by **section 93(2)**), adding a provision allowing a trustee to make any kind of investment of the trust estate (including an investment in heritable property). The effect is that trustees will generally have the same powers of investment as if they were the beneficial owners of the trust estate. **Subsection (2)** also provides a new wide power for trustees to acquire heritable property for any other reason. These wider powers are subject to any restriction or exclusion imposed by other enactments and do not extend to certain categories of trustees (**subsection (3)**). **Subsection (3)** continues the policy of the Trustee Investments Act 1961 in relation to pre-existing trust deeds. No term in a private trust deed made before the passing of the 1961 Act was to restrict the investment powers granted to trustees by that Act. The new general power in **subsection (2)** is similarly not to be restricted. In relation to trust deeds made after the passing of the 1961 Act, where the investment powers contained in the 1961 Act are conferred the trustees are to have the new general powers. But if trustees in existing post-1961 Act deeds or in future deeds are prohibited from making certain investments then these prohibitions will continue to apply. This is because **section 4(1)** of the 1921 Act, in which the new general investment power is inserted, authorises only acts which are not at variance with the terms and purposes of the trust.