

# CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY ON PARTS

#### **Part 3: Investment Powers of Trustees**

##### **Exercise of power of investment: duties of trustee**

“**103** **Section 94** makes further amendments to section 4 of 1921 Act, adding a new section (4A) to it, to provide a number of duties that apply to trustees and must be followed before exercising the wider investment powers under **section 93(2)**.”

Exercise of power of investment: power to appoint nominees

104. **Section 94** also inserts a new section (4B) into the 1921 Act to provide for a new statutory default power to appoint nominees for the purpose of investment. This will allow trustees to transfer title to property to nominees where a trust deed is silent. This provision also sets out key elements of the duty of care to which trustees must pay particular regard in exercising the power. The existing common law duty of care trustees owe to the beneficiaries for the management of the trust, the standard of which is the prudent man acting in his own affairs, remains unaffected. Trustees should select nominees whom they reasonably believe to have the skills, knowledge and expertise to carry out this role and they must reasonably believe that the appointment is appropriate in the circumstances of the trust. The trustees will be under a duty to keep the arrangements under which the nominee operates under review. This will include considering whether it is appropriate in the circumstances to give directions to the nominee or revoke the nominee’s appointment, and to exercise these powers if necessary.

“**105** It also provides that trustees should have discretion in relation to the terms and conditions on which they appoint nominees subject to certain exclusions, unless the excluded terms and conditions are reasonably necessary. The test of what is reasonably necessary is whether the prudent man in the exercise of his own affairs would agree in the circumstances to the inclusion of such a term.”