



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(b) paragraph (ee) is repealed.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

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.”

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.

4B Exercise of power of investment: power to appoint nominees

- (1) The trustees of a trust may, for the purpose of exercising the power of investment under section 4(1)(ea) of this Act—
 - (a) appoint a person to act as their nominee in relation to such of the trust estate, heritable as well as moveable, as they may determine, and
 - (b) take such steps as are necessary to secure the transfer of title to that property to their nominee.

- (2) A person may not be appointed as a nominee unless the trustees reasonably believe—
 - (a) that the appointment is appropriate in the circumstances of the trust, and
 - (b) that the proposed nominee has the skills, knowledge and expertise that it is reasonable to expect of a person acting as a nominee.
- (3) The power to appoint a nominee is subject to any restriction or exclusion imposed by or under—
 - (a) the trust deed, or
 - (b) any enactment (within the meaning of the Scotland Act 1998 (c. 46)).
- (4) An appointment as a nominee shall—
 - (a) be made in writing,
 - (b) be subject to the trustees' retaining power to—
 - (i) direct the nominee, and
 - (ii) revoke the nominee's appointment, and
 - (c) subject to subsection (4), otherwise be on such terms as to suitable remuneration and other matters as the trustees may determine.
- (5) The trustees may not appoint a nominee on any of the following terms unless it is reasonably necessary for them to do so—
 - (a) a term permitting the nominee to appoint a substitute,
 - (b) a term restricting the liability of the nominee, or of any substitute, to the trustees or to any beneficiary,
 - (c) a term permitting the nominee, or any substitute, to act in circumstances capable of giving rise to a conflict of interest.
- (6) While a nominee continues to act for the trust, the trustees shall—
 - (a) keep under review the arrangements under which the nominee acts and how those arrangements are being put into effect,
 - (b) if circumstances make it appropriate to do so, consider whether there is a need to exercise their power—
 - (i) to direct the nominee, or
 - (ii) to revoke the nominee's appointment, and
 - (c) exercise either or both of those powers if they consider that there is a need to do so.

4C Declaration of power to delegate investment management functions

- (1) It is declared that the trustees of a trust have and have always had the power, subject to any restriction or exclusion imposed by or under the trust deed or any enactment, to authorise an agent to exercise any of their investment management functions at the agent's discretion or in such other manner as the trustees may direct.
- (2) In this section—
 - “enactment” has the same meaning as in the Scotland Act 1998 (c. 46), and

Status: This is the original version (as it was originally enacted).

“investment management functions” means functions relating to the management of investments of the trust estate, heritable as well as moveable.”

95 Amendments consequential on Part 3

Schedule 3 makes amendments consequential on sections 93 and 94.