A guide to the key features of the new Act for Trustees

The Trustee Act 2000 ('The Act') is an important piece of legislation with wide-ranging implications for all trusts and trustees in England and Wales, except those charities established as companies limited by guarantee.

Trustees must consider and adapt to the requirements, except where a trust deed overrules the Act.

There are three main areas to consider:
1. A new statutory Duty of Care applying to all trustees.
2. A new and wider General Power of Investment.
3. New rules on the Appointment of Nominees, Custodians and Investment Managers.

Trustees are advised to consider the following steps:

- Review the trust's aims and objectives
- Decide which, if any, of their responsibilities are, or should be, delegated to outside agents
- Review the investment management, nominee and custodian agreements to ensure that they comply with the rules
- Ensure they are acting in accordance with guidance provided by the Charity Commission on the selection and appointment of custodians and nominees
- Check that the investment advice is provided by someone who is qualified to give it
- Prepare, review and revise as necessary an investment policy statement (see below)
- Review and agree the asset allocation with the investment manager in the light of any change in the objectives and the investment policy
- Check that the investment manager has agreed in writing to comply with the investment policy statement and will also comply with any subsequent revisions
- Set appropriate benchmarks and regular review dates
- Ensure that there is a record of each stage of the process.

Regular review of agents

Trustees must regularly review agency arrangements and their implementation. In the case of investment management functions, they must consider whether to revise or replace the investment policy statement and they also have a duty to ensure compliance with the statement.

Investment portfolios should be regularly assessed against a suitable benchmark, which reflects the investment objectives and risk levels of the trust. The benchmark should be tailored to the specific requirements of the trustees.

Investment policy

Every trust must have a written investment policy statement, which should explain the objectives of the trust. It will help the investment manager to determine a strategy to generate a sufficient return to fulfil these objectives over the short, medium and long term.

The policy should naturally dovetail with the charity's reserves policy, disclosure of the two in the trustees' report highlighting how they relate to one another.

The written statement should cover:

- The overall level of return expected and the minimum yield required
- The income or capital requirements
- The ability to distribute capital in the place of income, i.e total return
- The nature of timing of any liabilities
- The liquidity requirement, including dates of planned expenditure
- The marketability of the investments – important if capital needs to be raised quickly
- The time horizon of the trust – less than five years or long term
- The time horizon over which performance will be assessed
- The base currency of the trust
- The residence and tax status of the trust and the beneficiaries
- Any socially responsible investment constraints
- Other tax and legal constraints.

APPENDIX

All trustees now have the general power to appoint a nominee to hold the title to the trust's investments and/or a custodian to look after any documents of title. The agreements must be in writing.

Trustees should check that a nominee has the following security features:

- It is separately incorporated from the investment manager
- It is a non-trading company
- It provides an insurance policy / indemnity over and above the statutory compensation limits.

Charitable trusts must act in accordance with any guidance provided by the Charity Commissioners on selecting and appointing a nominee or custodian (this guidance is available from http://www.charity-commission.gov.uk).

The appointed investment manager should be properly qualified.

The Act requires trustees to obtain and consider proper advice from a person who is properly qualified, unless it can be reasonably concluded that in the circumstances it is unnecessary or inappropriate to do so.