



OUR ROLE
& SERVICES

Sales, leases, transfers or mortgages:

What trustees need to
know about disposing of
charity land



CHARITY
COMMISSION

The Charity Commission

The Charity Commission is the independent regulator of charities in England and Wales. Its aim is to provide the best possible regulation of charities in England and Wales in order to increase charities' effectiveness and public confidence and trust. Most charities must register with the Commission, although some special types of charity do not have to register. There are some 190,000 registered charities in England and Wales. In Scotland the framework is different, and the Commission does not regulate Scottish charities.

The Commission provides a wide range of advice and guidance to charities and their trustees, and can often help with problems. Registered charities with an annual income of over £10,000 must provide annual information to the Commission. The Commission has wide powers to intervene in the affairs of a charity where things have gone wrong.

More information about the Commission together with a range of guidance for charities can be found on our website www.charitycommission.gov.uk, or by contacting Charity Commission Direct:

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Contents

A. Introduction	2
B. Some things to think about before disposing of your charity land	6
C. Simple, short term disposals	14
D. Sales, longer leases and other disposals	19
E. Disposals that need our authority	24
F. Statements and certificates	32
G. Exceptions, exemptions and other situations	38
H. Charitable companies	45
I. Mortgages, loans and grants given on security	48
J. Further information and advice	56
K. Appendices	59

A. Introduction

A1. What is this guidance about?

Trustees must always act in the best interests of their charity. How they demonstrate this is usually left to their discretion, but when it comes to selling, leasing or transferring their charity's land, the law sets out clear requirements to ensure that these important transactions are properly managed in the charity's interests and that the trustees obtain the best price reasonable in the circumstances. In most cases the law enables trustees to proceed without approaching us, the Charity Commission, for approval to the transaction before they can proceed.

This guide will help trustees understand the steps they have to take when disposing of their charity's land and when they need our authority. In cases where trustees **do** need our authority, it outlines the information we will require.

There is a similar regime in place allowing trustees to mortgage or charge their charity's land as security and this guidance helps trustees through this area.

A2. 'Must' and 'should': what we mean

In this guidance, where we use 'must', we mean it is a specific legal or regulatory requirement affecting trustees of a charity. Trustees must comply with these requirements. To help you easily identify those sections which contain legal or regulatory requirement we have used the **L**

symbol next to the short answer in that section.

We use 'should' for items we regard as minimum good practice, but for which there is no specific legal requirement. Trustees should follow good practice guidance unless there's a good reason not to.

We also offer less formal advice and recommendations that trustees may find helpful in the management of their charity.

A3. Previous guidance

This guidance replaces the previous version of *Disposing of Charity Land* (CC28). It is a complete rewrite in a new format. It amends previous guidance and updates it to reflect provisions of the Charities Act 2006 (the 2006 Act).

A4. Scope of this guidance

This guidance describes what trustees need to do when they want to sell, lease or otherwise transfer their charity's land or where they mortgage or charge their charity's land as security. This is a complex area and governed by different laws and regulations depending on the kind of charity and the type of disposal. You should not rely on this guidance to be an accurate or full description of legal matters affecting your charity. It provides a general introduction and overview, and highlights areas where you may need further advice from us or from your charity's legal advisers.

A5. Using this guidance

The structure of this guidance follows a sequence assuming the reader is a trustee of a charity wishing to dispose of the land held by or in trust for a charity. The summary decision chart in section B6 will help you decide if you can proceed with your disposal of land without our authority. Depending on the type of disposal, whether you need our authority or not, you are directed to the appropriate section of the guidance.

Alternatively, if you are considering mortgaging your property or seeking a grant or loan where your charity property will be used as security, you will find information to help you in section I.

A6. Other sources of help and advice

Details of some resources providing useful and practical guidance are mentioned in the text of this guidance and listed in section J, together with contact details for all the organisations mentioned, and a brief description of what they do.

A7. Some technical terms used

Although we have tried to write this guidance in everyday language, we have had to use some technical terms in places. This list explains some of them:

Charity land

This is a simple phrase with a technically complex definition; it is land

held by, or on trust for, a charity in England or Wales together with any buildings or structures on the land. It covers both land held on charitable trust and land held as corporate property by a charitable company or corporation. The word 'land' also covers any estate, interest or easements over the land. These could include, for example, a right of way or access to equipment on the land. It could also be a right, such as fishing rights in a lake or river on the land. Any of these may be described in the governing document of the charity, a separate governing document, or perhaps a trust deed or will – see also section H.

Connected person

This is anyone closely connected to or associated with the charity. This could be someone working for the charity, paid or unpaid, as a trustee, officer or employee, or someone who has donated land to the charity. It extends to the spouses or civil partners of any of these as well as close relatives of trustees or donors of land and also any institutions or businesses run by any of these people. The full legal definition of this is set out in section K1. A disposal of land to a connected person can only be valid if it has been authorised by an Order – see section E for more detail.

Contract

This is an agreement between the owner of the land and the person(s) buying, leasing or otherwise taking over the transfer of the land. A contract for the sale, lease or other disposal is completed when the land is transferred

to the new owner or lessee.

Designated land

Designated property, sometimes referred to as 'specie land', is required by the charity's governing document to be used for a particular purpose of the charity. Many charities own land which is not designated and they are free to use it for any of the purposes of the charity.

Disposal

In this context a disposal occurs when charity land is conveyed, transferred, leased or otherwise disposed of. This will obviously include leases and freehold sales but will also include, for example, granting rights such as fishing rights. Other examples might include granting an easement or granting a right of way over land, or granting a wayleave to allow access to facilities on that land. However, entry into (rather than completion of) a contract or agreement for sale, for example, is not a disposal. It is at the point of the transfer or completion of the transaction that the disposal takes place.

Easement

This is the right or freedom to do something or the right to prevent someone else from doing something over the real property of another. The right is often described as the right to use the land of another for a special purpose and is established by case law as an interest in land.

Fine or premium

A fine or premium is a lump sum or other benefit, other than rent, paid to the charity on the granting of a lease.

Governing document

A legal document setting out the charity's purposes and, usually, how it is to be administered. It may be a trust deed, constitution, memorandum and articles of association, will, conveyance, Royal Charter, Scheme of the Commission, or other formal document.

Order

In this document an Order is a legal document made by us or the Courts under section 26 or 36 of the 1993 Act authorising the charity trustees to carry out an act which otherwise they may have no power to do. We cannot make an Order to do anything which overrides a specific prohibition in the charity's governing document.

Professional charging clause

A professional charging clause is a clause written in to the charity's governing document which expressly permits the payment of the trustee(s) concerned out of the funds of the charity for the provision of a service rendered, work carried out or the use of professional or specialist skills or knowledge, or employment by the charity.

Scheme

A legal document made by the Commission, normally under section 16 of the 1993 Act, used to change almost any aspect of a charity's purposes or administrative provisions which otherwise the trustees have no power to do. The Charity Commission has powers under the 1993 Act to make a Scheme to change a charity's purposes or administrative provisions. We will usually make a Scheme with the trustees' agreement and where no suitable power of amendment is available.

The 1993 Act

This is the Charities Act 1993, as amended by the Charities Act 2006.

Trustees

Charity trustees are the people who serve on the governing body of a charity. They may be known as trustees, directors, Board Members, Governors or Committee Members. Charity trustees are responsible for the general control and management of the administration of a charity.

Wayleave

This is a formal written consent between two parties giving rights to install, inspect, maintain, alter or repair equipment or apparatus located on private land.

B. Some things to think about before disposing of your charity land

This section examines some of the reasons you might be considering for disposing of your charity's land and what you must think about before taking things further. It also looks at when our authority is and is not needed before proceeding with the disposal.

B1. Why would you want to dispose of your charity's land?

Short answer

There may be various reasons for disposing of your charity land. You may, for example, want to relocate the charity to more appropriate premises or release some cash that you can apply to other projects.

In more detail

You will want to be satisfied that any disposal will be in the charity's best interests. For example, you should consider whether it would be better to retain the land for longer and perhaps continue taking any income from it, so as to earn more for it later. Or, in spite of the money that could be realised,

you might consider continuing to use it for the benefit of the charity. As trustees it is part of your responsibility to think carefully before disposing of valuable assets of your charity which may be useful in the future.

B2. Does your charity have the power to dispose of the property?

Short answer

In many cases trustees can rely on the power contained in the Trusts of Land and Appointment of Trustees Act 1996 (TLAT 1996), commonly called the statutory power. In some cases the trustees may be able to rely on the power in some other statutes. Or there may be wider powers written into the governing document of the charity. Charitable companies will almost always have a power of disposal in their Memorandum and Articles of Association. This will usually be in the form of an explicit power or may be inferred from the 'sweeping up' power which permits the exercise of any other powers which further the objects of the charity.

Where you cannot rely on any of these powers, you may need to contact us for an Order or a Scheme.

In more detail

The statutory power is available in many cases and allows trustees to act as if they were absolute owners of the property; this includes disposing of land. Use of the power is dependent on the trustees:

- exercising it in a way which is compatible with the trusts of the charity;
- complying with the requirements of s36 of the Charities Act 1993 – see section B5 and also sections C and D below; and
- complying with the standard of care set out in the Trustee Act 2000 – see OG86 Trustee Act 2000, particularly OG86 B2 section 3, and also OG86 B6.

In some cases trustees will not be able to rely on the statutory power. Some governing documents contain a clause that expressly prohibits the trustees from disposing of the land. Some charities hold designated land. In these cases you may need to come to us for an Order or a Scheme to give you the power to dispose of the land. See section E below for more detail on this.

Even where you do have the power to dispose of the land, you may still need our authority. This is true, for example, if you are disposing of the property to a connected person – see section E for more information about this.

B3. What must you consider before going ahead?



Short answer

There are several things you must think about before proceeding with a disposal. For example:

- Do the trustees have a power to dispose of the land?
 - Would the disposal be in the best interests of the charity?
 - Do the trustees own the title to the land?
 - Is there anything in the governing document that prohibits the disposal?
 - Do you need authority from the Commission or the Court?
-

In more detail

Whatever you decide to do, as trustees you must always consider what is in the best interests of your charity; this is one of your main responsibilities and must be borne in mind throughout the process of decision making in this important area.

It is up to you to prove you own the title to the property and also that you have the power to dispose of it – see

section B2 above. You must check to see if there are any restrictions in your governing document that might prevent the disposal.

Finally, you must establish whether you need our authority. Sections B5 and B6 will help you decide this.

B4. What else should you consider before going ahead?

Short answer

You should consider who else would be affected by the disposal and what any lease grants to the lessee.

In more detail

Although it shouldn't necessarily be an overriding consideration, you should think about who else would be affected by the disposal – for example, would it affect the beneficiaries, or public support for the charity? In some cases, where you are disposing of designated land, you must carry out a consultation. Even where it is not a legal obligation, it is still good practice.

When leasing the charity's property, you should take legal advice to ensure the terms of the lease do not grant more to the lessee than you intend and that you are able to take back possession of the land at the end of the lease.

B5. Do you need the Commission's authority?



Short answer

In most cases you will be able to dispose of your charity's land without our authority. However, this is dependent on you complying with certain requirements before entering an agreement to dispose – see sections C and D for more information about this. On the other hand:

- if you cannot comply with these requirements; or
- you do not do so before entering an agreement; or
- if your disposal is one that must have our authority,

then you will need an Order – see section E below for more information on how to go about this.

In more detail

As trustees you can usually dispose of your charity's land without authority from us if you comply with certain legal requirements. These involve, for example, obtaining a survey and valuation of the land, advertising the disposal and deciding you are satisfied the terms for the disposal are the best that can reasonably be achieved.

Where you cannot comply with these requirements, or do not do so before entering an agreement to dispose, you must apply to us for an Order.

However, there are some cases where you will always need an Order from us before you can proceed with the

disposal – see the chart in section B6. The most common reason for this is if you are disposing of your land to a connected person – see section E.

There are special circumstances where you are disposing of designated land and you are not going to replace it – see section E8.

In some cases where the title of the charity land is registered in the name of the Official Custodian for Charities, it may be necessary to obtain an Order from us before making a disposal. You can find more information about this in the Land Registry's Practice Guide 14 – see section J3 below.

B6. How do you decide if you need an Order?

The answer

It depends on:

- the circumstances of the disposal;
- to whom you are going to dispose;
- whether you have power to dispose;
- the type of charity;
- whether you can comply with the requirements before entering an agreement to dispose of the land; and
- in some cases, whether you intend to replace the land or not.

The following chart will help you decide whether you need to contact us for an Order or if you can proceed by complying with the requirements set out in sections C and D.

What is your situation?

Can you rely on the statutory power or power in other legislation or in the governing document for the disposal? – see B2

No

You need an Order from us. Contact us for more information.

Yes

Is your disposal to a connected person?

This is someone closely connected with the charity – a donor of land to the charity, a trustee or employee or someone related or a business connected in some way – see Appendix K1.

Yes

You need an Order from us. Go to the 'Apply for it' page on our website and download the application pack for disposals to connected persons – see also section E1 of this guidance.

No

Is the land held by the charity for a particular purpose of the charity (designated land) and you are not going to replace it?

Yes

You may need to come to us for a Scheme as the purposes of your charity will almost certainly need to be changed – see section E8 of this guidance.

No

Is the disposal a lease for 7 years or less with no fine or premium?

Yes

You must:

- obtain and consider advice from someone with the ability and experience to advise you – an estate agent or surveyor, for example;
- decide you are satisfied that the terms for the disposal are the best that can reasonably be obtained; and
- supply certain statements and certificates.

See section C of this guidance.

No

Is the disposal:

- A sale, transfer or conveyance of freehold land?
- A lease for more than 7 years?
- A grant or release of a right, easement or restrictive covenant?
- A lease for 7 years or less with a fine or premium?
- Any other type of disposal of land not specifically excluded?

Yes

You must:

- obtain and consider a written report from a qualified surveyor;
 - advertise the disposal unless your surveyor recommends not to;
 - decide you are satisfied that the terms for the disposal are the best that can reasonably be obtained; and
 - supply certain statements and certificates.
- See section D of this guidance.

No

What do you need to do?

Why do you need to do it?

–Why?– If there are restrictions in the governing document or there is some other reason you cannot rely on the statutory power or a power in the governing document, you will need an Order to authorise the disposal.

–Why?– **These are relatively high risk transactions that involve conflict of interest.** Information you supply on the application form allows us to assess your management of this aspect together with other details of the transaction to see whether we can make the Order.

–Why?– **You are disposing of land used for the purposes of your charity.** If you are not intending to replace the land then it's likely you will not be able to fulfil the purposes as they are presently stated. The objects of a charity can only be changed by Scheme. **Also...** You need to advertise the disposal and consider any comments you receive (this is a different requirement from advertising the disposal to try and seek best offers for the property).

–Why?– **These are legal requirements but by complying with them you will:**

- have a good idea of the value of the land you are proposing to dispose of;
- show you have understood the recommendations and are working in the best interests of the charity; and

–Why?–

- provide assurance to the purchaser that you are validly disposing of the land.

Your transaction may not be classed as a disposal as defined in this context, or there may be special circumstances where you may dispose of your land without an Order from us and without the need to comply with the requirements outlined – see section G in this guidance.

C. Simple, short term disposals

This section covers disposals by way of a lease for seven years or less where no fine or premium is paid to the charity. The requirements are less demanding and you should complete this type of disposal without coming to us for an Order unless it involves a connected person – see section E.

If the lease contains an option for the lessee to renew the lease for a further term and the sum of the terms exceeds seven years, the more demanding requirements set out in section D below will apply. This will also be the case on the assignment of an existing lease even if it was originally granted for seven years or less or has seven years or less to run.

C1. What are the requirements for simple disposals?



Short answer

As these transactions are relatively low risk and for a relatively short time, the requirements are less demanding than for other disposals. Nevertheless, you must still consider the advice you are given and the terms of the disposal carefully to ensure they are the best that can reasonably be obtained in the circumstances of the disposal. Timing of obtaining your advice is important – see section C2.

In more detail

If you are granting a lease of charity property for seven years or less without requiring a fine or premium to be paid, you must:

- obtain and consider a report from someone who has the ability and experience to advise you competently; and

- decide you are satisfied that the terms proposed for the disposal are the best that can reasonably be obtained.

You will only need to obtain an Order from us before proceeding if the disposal is to a connected person or if you have entered an agreement for the disposal before complying with the requirements.

C2. When must you comply with the requirements for simple disposals?



Short answer

To be able to complete the transaction without an Order from us you must comply with the requirements before entering into an agreement to dispose.

In more detail

If you **do** enter a contract without complying with these self-certification requirements then, to be able to complete the transaction and make the

disposal validly, you must come to us for an Order before completion. This will inevitably extend the time needed for the disposal.

C3. Who should act as adviser for these types of disposals?

Short answer

It is a matter for you as trustees to satisfy yourselves that the person you select has the ability and expertise to provide you with reliable advice on the disposal. There is no objection to one of the trustees or even a suitably qualified employee of the charity acting as the adviser.

In more detail

Although there is no legal requirement for your adviser to possess professional qualifications in this type of disposal, we recommend you use a qualified person who is a member of some professional body such as the:

- Royal Institution of Chartered Surveyors (RICS);
- Architects' and Surveyors' Institute (ASI); or
- Institute of Revenues, Rating and Valuation (IRRV).

However, as trustees you will need to make your own choice of adviser and be prepared to justify your decision if you are challenged about it. If one of the trustees is asked to give the advice you could not pay them unless there is

a power such as a professional charging clause in the governing document or you follow the terms of the power to pay a trustee for services (section 73A of the Charities Act 1993).

In these cases there is also no legal requirement for the advice to be given in writing but we recommend you do not rely on oral advice; this might be misinterpreted and there would be no evidence to produce if you are called upon to justify your decisions in connection with the disposal. We recommend you take legal advice also to ensure the terms of the lease do not grant more to the lessee than you intended, such as security of tenure, and that you will be able to take possession at the end of the term.

C4. What statements and certificates are needed?



The answer

Legislation requires you to include certain statements and certificates in the disposal documents. For more information on this see section F.

C5. Can you dispose of designated land?

The answer

If you are disposing of designated land and:

- the disposal of this type of land is by means of a lease for two years or less with no fine or premium, you can proceed, complying with the requirements set out in section C.

If your land is designated land and the disposal does **not** involve a lease of less than 2 years with no fine or premium, then there are additional requirements with which you must comply and it is likely you will need a Scheme – see section E8.

D. Sales, longer leases and other disposals

This section covers disposals by way of:

- a sale, transfer or conveyance of freehold land;
- a lease for more than seven years;
- a grant or release of a right, easement or restrictive covenant;
- a lease for seven years or less where a premium or other fine is paid to the charity;
- any other type of disposal of an interest in land that is not a mortgage or charge against land.

You should complete this type of disposal without coming to us for an Order unless it involves a connected person – see section E.

D1. What are the requirements for sales, longer leases and other disposals of an interest in land?



Short answer

If you are carrying out one of these types of disposals you must:

- obtain and consider a written report from a qualified surveyor;
- advertise the disposal following advice from your surveyor; and
- decide you are satisfied that the proposed terms are the best that can reasonably be obtained in the circumstances of the disposal.

In more detail

For disposals involving a sale, longer lease or other disposal of an interest in land not covered by section C, there are more demanding procedures you must follow. The law requires your surveyor to be qualified (see section D3) and you must follow his or her advice on how to market the disposal (or not, if that is the advice). You must receive a written report that complies with the Charities (Qualified Surveyors'

Reports) Regulations 1992 – a properly qualified surveyor will know about these regulations and you can find a copy in Appendix K2.

Generally speaking the surveyor should be engaged to work exclusively for the trustees on a particular disposal. Timing of obtaining your advice is important – see section D2.

D2. When must you comply with these requirements?



Short answer

To be able to complete the transaction without an Order from us you must comply with the requirements before entering into an agreement to dispose.

In more detail

If you **do** enter a contract without complying with these self-certification requirements then, to be able to complete the transaction and make the

disposal validly, you must come to us for an Order before completion. This will inevitably extend the time needed for the disposal.

D3. What qualifications must your surveyor have?



Short answer

This must be a person who:

- is professionally qualified; for example, a Member or Fellow of the Royal Institution of Chartered Surveyors (RICS); and
- the trustees reasonably believe to have the ability in, and experience of, valuing land of the particular kind and in the particular area in question.

In more detail

The definition of a qualified surveyor relies on professional qualifications together with practical ability and experience. Your surveyor will have letters MRICS or FRICS after his or her name. To satisfy the second requirement the surveyor must:

- have considerable experience of the property market in the town or district where the land is situated;
- be familiar with the factors which affect the value of the type of land (eg agricultural, freehold or leasehold residential, light industrial, etc) within the market; and
- know which methods of marketing and disposal are most likely to succeed in the market of that type of land.

D4. What statements and certificates are needed?



The answer

Legislation requires you to include certain statements and certificates in the disposal documents. For more information on this see section F.

D5. What if you want to sell your land at auction?

Short answer

You can do this if you think it will be in the best interests of the charity. It can be helpful to obtain professional advice.

In more detail

Auctions can be a useful way of getting a quick sale but you should put a reserve on the lot in order to achieve at least the value recommended by your surveyor. However, to be able to complete the disposal by auction without an Order you must have complied with the requirements before

entering the property for the sale. If you have not done so, you must obtain an Order before the sale can be completed.

You should write into the conditions of sale that the transaction will be subject to obtaining an Order if it turns out the purchaser is a connected person.

D6. Can you dispose of designated land?



The answer

See section E8.

E. Disposals that need our authority

This section describes when you must obtain an Order from us before disposing of charity land. It explains why it is necessary and how to make the application, together with what information we need to see so that we can consider your application.

E1. When will you need an Order?



Short answer

If you do not or cannot comply with the requirements set out in sections C or D, you must obtain an Order from us. When you dispose of your land to a connected person you must always obtain an Order even if you can comply with the requirements set out in sections C or D.

In more detail

In many cases you will be able to proceed with the disposal without authority from us or the Courts. If you do not or cannot comply with the requirements set out in sections C or D you must apply to us for an Order. However, there are some cases where an Order will always be needed before

you can proceed with the disposal. Most frequently these are cases where you make the disposal to a connected person – see sections E2 to E4 below. Our authority, probably by Scheme, will also be needed if you are selling designated land and you do not intend to replace it – see section E8.

E2. Why do you need an Order?



Short answer

An Order gives our authority for you to proceed with the disposal. It provides assurance that you have carried out the transaction openly and transparently and that it is in the best interests of the charity.

In more detail

It is a legal requirement under section 36(1) of the Charities Act 1993 that you obtain an Order:

- before proceeding with a disposal to a connected person; or
- where you do not or cannot comply with the requirements of the rest of section 36 of the Act before entering an agreement to dispose.

In such cases we need to be sure you have taken the correct measures to manage any conflict of interest and to assure ourselves that you are achieving the best terms for the disposal.

E3. Who is a connected person?



Short answer

Certain persons and organisations closely connected to or associated with the charity that the law says are connected persons.

In more detail

This includes:

- the trustees themselves;
- a donor of land to the charity;
- close relatives of either of these;
- employees or officers of the charity;
- the spouse or civil partner of any of the above persons; or

- institutions or companies controlled by such people or in which such people have a substantial interest.

The full list of who is a connected person for the purposes of a disposal is set out in Schedule 5 of the 1993 Act. You can see this list as Appendix K1.

E4. How do you obtain an Order when disposing of charity land to a connected person?

The answer

If the disposal is to a connected person our application pack will help you provide the information we will need. The pack, together with guidance notes, is available in the 'Apply for it' area of our website.

In other cases where you think you need an Order, see section E5 below.

E5. When might you ask for an Order in non-connected person cases?

Short answer

We may consider making an Order if you do not or cannot comply with the requirements of section 36 where:

- the cost of obtaining a surveyor's report would be out of all proportion to the value of the transaction and we can be reasonably certain that the value of the transaction is genuinely low; or
- the land is in a remote area where it may be difficult to find a qualified surveyor with sufficient knowledge of local land values; or
- the disposition is proposed for undervalue that is not outside the scope of section 36 by exemption under s36(9) (b) or (c).

Generally speaking we will want to know why you think you need an Order and we shall need to see evidence of:

- the value of the land;
- how you have advertised the disposal; and
- your decision making processes including how you have managed any conflict of interest.

In more detail

In some cases it may be that the cost of obtaining a surveyor's report far outweighs the benefit the charity will receive from the disposal. For example, you may be disposing of wayleaves and we have dealt with you recently on similar low value transactions, as

valued by your surveyor, in the recent past. You may ask us to consider making an Order under s36(1) in these circumstances. But we shall still need some information to consider your reasons, as set out in the bullet list below.

It may be that in the remote area where the charity land is situated it is difficult to find a surveyor or one who is experienced in the particular type of land involved. In these circumstances your only option may be to instruct an estate agent to value the land for you. We would expect the estate agent's report to follow a similar pattern and contain similar information as required by a qualified surveyor's report. However, because you will not be able to comply with the requirements of s36 we will have to make an Order.

In many cases a disposal under value will be because it is being made to another charity with the same objects. In such a case the disposal will be exempt from the requirements of s36 – see section G3 below. However, there may be other circumstances where a disposal under value would be appropriate. An example of this might be where you are disposing of the property to a public authority which was intending to use the property for a purpose which was compatible with the objects of the charity. Such a disposal is not exempt under s36(9) so you will need to apply for an Order to sanction the disposal.

If you need to obtain an Order, we will need to know:

- the reasons why you think you need an Order;
- an assessment of the value of the land;
- details of advertising you have carried out including when, where and for how long you have advertised, or your reasons for not advertising if that is the case;
- minutes of the meetings where the decisions involved in the disposal process have been discussed.

This is not an exhaustive list and it may be that, even after receiving your application, we will need to contact you for further information. By providing full details you will give us the best chance to assess your application. Even if your case is not concerned with a connected person, the application pack mentioned in E4 above will give you a good general outline of the type of information we will need to see, so you could use it as a guide or checklist for other, ie non-connected person, cases.

E6. Why do you need to supply this information?

Short answer

We need to be able to understand the details of the proposed disposal so that we can consider them and come to an informed decision about whether we can make an Order or not. Gathering this information will also help you check the details of the case and may assist in your decision making processes.

In more detail

When we look at your application we need to be able to see that you:

- have a realistic valuation for the property;
- have understood the professional advice you have received;
- have looked at and understood any powers or restrictions contained in your charity's governing document;
- know exactly what you are disposing of;
- have made the case that the disposal is in the best interests of your charity;
- have obtained the best terms for the charity that you can reasonably do in the circumstances – this would include information about how you have advertised the property or, if you have not, your reasons for not doing so; and
- have managed any conflict of interest.

E7. Will you still need to give statements and certificates?

L

The answer

Yes – see section F.

E8. Do you need an Order if you are disposing of designated land?



Short answer

Sometimes – where there is no power of sale or you cannot comply with the terms of the power. If you are intending to replace the land using the proceeds from the disposal, you can usually use the self-certification regime outlined in section D unless the disposal is to a connected person.

If you do not intend to replace the designated land then you will probably need a Scheme as the disposal will mean you can no longer carry out the purposes of the charity for which the land is held (but see also below). You will also need to give public notice of the proposed disposal – this is in addition to advertising the property in order to obtain the best price.

There may be some cases where disposal of designated land would not have the effect of altering the purposes of the charity, but could still not be effected compatibly with the trusts of the charity – see below for more detail.

In more detail

If you dispose of all or most of the designated land without replacement then it is most likely that the existing purposes of the charity for which the land is designated cannot continue. In such circumstances we will probably have to make a Scheme to provide new purposes for the charity – see *Changing your charity's governing document* (CC36).

For example, the provision of almshouses is one of many means of relieving need. In the case of an

almshouse charity, the trusts on which the land is held will often require the charity to use it to provide almshouses. These buildings may be designated property. If you sell the almshouses and do not replace them, then it follows that the charity will not be able to carry out the purposes for which the land is held. To see if your charity land is designated land, you should look in your governing document or title documents.

There are some cases where you will not need an Order, even if you are disposing of designated land and not replacing it. This applies where the extent of the disposal is so small that it will have no impact on the charity's ability to further its objects - examples would include the rededication a boundary or resolution of a boundary dispute, the grant of a wayleave or creation of a public right of way over the land. In these circumstances, you only need to comply with the requirements set out in section D relying on the power of sale in TLAT 1996. If the disposal of any part of the designated land is something which is expressly prohibited by the trusts of the charity, then we will have to make a Scheme to alter the purposes of the charity so as to allow the sale of the property to proceed properly. It will also provide a suitable outlet for the proceeds of sale if the governing document does not contain any suitable trusts.

In all cases where you are disposing of all or some of your charity's designated land and are not replacing it, you must give public notice of the disposal inviting representations. The notice period must be for at least a month and you must consider any representations you receive. The form and extent of the notice will depend on the size and type of the charity. In

the case of a local charity it will usually be acceptable for you to put up a notice on the property itself and insert a second notice in a local newspaper. Larger charities, or charities with specialised activities, should consider advertising in newspapers of wider circulation or in specialised publications connected with the charity's activities. In publishing the notices, we recommend that you aim to reach as many beneficiaries, and other people who may have an interest in the charity, as is possible at reasonable cost.

We may decide to waive this requirement if we are satisfied that it would be in the best interests of the charity. You, or others on your behalf, would need to apply for this in writing. We may consider this:

- if there has already been public discussion of the proposed disposal or where the trusts of the charity itself impose a more onerous duty, for example, in the case of a village hall where the trustees are required to call a public meeting before disposing of property; or
- where the disposal only involves only a small part of the land (as in the examples above) and will not affect the ability to carry out the purposes of the charity.

F. Statements and certificates

This section explains why statements and certificates are required in the documents when disposing of charity land and also gives information about their format and who must provide them.

F1. Why are these statements and certificates needed?



The answer

The statements and certificates must be provided to assure the purchaser:

- how the land is held and by what sort of charity; and
- that the land is being disposed of legally.

In this way the purchaser can have confidence in the validity of the transaction.

F2. What information is required in the statements?



Short answer

In the documents for disposals you must state:

- that the land is held by the charity or in trust for the charity; and
- whether the transaction is subject to the statutory requirements or whether the charity is exempt or the transaction comes within section 36(9) of the Charities Act.

In more detail

It is a legal requirement that you make these statements in the disposal documentation. You should be able to check in the title documents that the land is held by the charity or in trust for the charity. If your charity is exempt from the statutory requirements, the statements must say so and detail which exemption, as set out in legislation, you are relying on – see also section G in this guidance. If you

are disposing of your land to another charity you must include further statements with additional information – see section F6.

In some circumstances there are prescribed forms of statement but in many cases there is no set form of wording; you should seek your own legal advice on this. There is useful guidance in the Land Registry's Practice Guide LRPG 014, 'Charities'.

F3. What information is required in the certificates?



Short answer

You must certify you have the power to dispose of the land and that you have followed the correct procedures in either obtaining an Order or by following the statutory requirements.

In more detail

It is a legal requirement that you provide such certificates in the disposal documentation (usually just after the statements described in F2). The certificate must say if the disposal is authorised by Order. If it is not, it must state that you have the power to

dispose of the property and that you have complied with the requirements. There is useful guidance on the form of wording for these certificates in the Land Registry's Practice Guide LRPG 014, 'Charities', and we suggest you take legal advice.

F4. Who must make these statements and certify correctly, and can this function be delegated?



Short answer

It is your responsibility as trustees to make the statements and certify correctly; we suggest also that you take legal advice. There may be some scope for delegation depending on the type of charity, either through provisions in the governing document or in legislation.

In more detail

In the case of an unincorporated charity, you can delegate to two or more of the trustees the authority to sign the certificates. This would be subject to the trusts of the charity. The trustees may give a general authority to do this or limit it as they think fit. This authority:

- must be given in writing or by resolution of a meeting of the trustees;
- may be conferred on any two or more trustees or be restricted to named trustees or in any other way;

- will, subject to any restrictions placed on it, have continuing effect until revoked.

In a corporation, the trustees can delegate the giving of the certificate to the persons signing the transfer on behalf of the corporation. Where this happens the delegates must indicate in the wording of the certificates that they are giving the certificate in their capacity as representatives of the trustees as a whole rather than as agents for the body corporate. See section H below and also the Land Registry's Practice Guide LRPG 014, 'Charities'.

F5. What if the statements or certificates are incorrect or not provided?

The answer

Generally, the disposal will still be valid in the purchaser's favour, unless the purchaser knew or ought to have known that the statements or certificates were incorrect. This statement stands where the purchaser has acquired the land in good faith for money or money's worth, for example, the exchange of a piece of land of equivalent value. If this is not the case, say, where the disposal was to someone who knew or ought to have known that the statements or certificates were incorrect, the disposal may be void or voidable.

F6. Are the statements or certificates required when disposing of your land to another charity?



The answer

Yes – see section G.

In addition, where the disposal is to another charity, you must include in the disposal documentation a further statement. This must explain:

- that the land disposed of will be held by or in trust for a charity;
- whether the receiving charity is an exempt charity; and
- if it is not an exempt charity, that the restrictions applied by section 36 of the Charities Act regarding requirements for future disposal will apply unless such a disposal is excluded or exempt from these restrictions.

G. Exceptions, exemptions and other situations

This section describes disposals that do not need authority in the form of an Order and also do not need trustees to comply with the other requirements of section 36 because they are excepted, exempt or excluded from these requirements.

G1. What situations are excepted, exempt or excluded from the requirements of section 36 of the Charities Act?

L

The answer

You can complete any of the following land transactions without following the requirements set out in either section C, D or E:

- disposals given authority under an Act of Parliament or other statutory provision or Scheme – see section G2;
- a disposal for less than best price to another charity whose objects come within those of the disposing charity – see section G3;
- a lease to a beneficiary of the charity for less than best price – see section G4;
- disposal of land by way of a mortgage or grant or other security; these have their own regime – see section I;
- an advowson – see section G7;
- an option (which is not a disposal) – see section G5;
- the release of a rentcharge – see section G6;
- a disposal of land not in England or Wales even if the charity is based there.

The following sub-sections give more information about some of these situations. For details of mortgages or grants using charity land as security, see section I.

G2. Are you making your disposal using power under an Act of Parliament, other statutory provision or Scheme?

Short answer

Some charities are set up under an Act of Parliament, or subject to other statutory provision or Scheme. Where the Act or provision or Scheme expressly gives general or special authority for disposals without the authority being made subject to the sanction of an Order of the court, then these charities are specifically excluded or exempt from complying with the requirements of section 36 of the Charities Act.

In more detail

You need to look carefully at the documentation concerning the trusts of your charity or any subsequent paperwork. In order for the disposal to be exempt from complying with the rest of the sections of section 36, the power must have been expressly given for a particular transaction or classes of transaction. Alternatively, your charity may be the subject of a Scheme made by us or the Courts that has a similar

effect. Again, you will need to look carefully at the wording of any Scheme to see whether it affects the way you need to approach a disposal. Your charity will not be exempt from compliance with the requirements of the rest of section 36 merely because the Act of Parliament or Scheme gives a general power of sale. If you are not sure, you should take legal advice before proceeding further.

G3. Are you disposing of your land to another charity for less than best price?

Short answer

Where you are disposing of charity land to another charity, you will be able to do so without an Order and without needing to comply with the requirements mentioned in sections C or D above where:

- the disposal carries out the purposes of the first charity and is therefore a practical application of its charitable trusts; or
- the disposing charity has a power through its trusts to dispose of land to another charity.

You will also need to state in the documents for disposal that the disposal falls within section 36(9)(b) of the Charities Act 1993.

In more detail

You can proceed as above where the disposal is to a charity whose purposes are no wider than your charity. This may depend on the wording in the disposing charity's trusts – you should look carefully at this. The following example may help to explain.

The disposing charity may have objects for the relief of those in need in area 'A'. If the charity transfers land to another charity, the disposal could be made for less than best price and without the need to obtain an Order or to comply with the requirements set out in sections C or D. This can happen as long as the receiving charity is established also for the relief of those in need in area 'A'.

If the receiving charity had objects for the relief of those in need in areas 'A'

and 'B', then the trusts relating to the land being transferred would need to be restricted to the relief in need of only those in area 'A'. The property must not be disposed of and the proceeds of sale used for purposes beyond those of the purposes of the giving charity.

There may be a case when a charity is considering disposal of land to an organisation which is also a charity but which has objects which do not fall within those of the disposing charity. This would mean the disposal would have to be made at full market price and would be subject to the full requirements as set out in sections C or D. You must also provide additional statements – see section F6.

G4. What if you are leasing to a beneficiary for less than best rent?

The answer

If you are granting a lease to a beneficiary of the charity, there is no requirement to comply with the procedures set out in sections C or D. This would be where the premises are to be occupied for the purposes of the charity. An example of this is where a housing association is letting property to its tenants for less than the full market value of the lease.

G5. What is an option and is it regarded as a disposal?

The answer

An option is an agreement which gives someone (the option owner) the legal right, for a price, to demand the disposition of a charity's land to him or her if he or she chooses, on terms which are set out in the option agreement. This, in itself, is not a disposal of land but an agreement to dispose. The disposal does not actually take place until completion.

However, you should normally comply with the requirements set out in section C or D above before granting an option. If you do not or cannot, it will not be possible to comply with these requirements when the time comes to complete on the agreed option and you will need to obtain an Order. If the option owner is a connected person, you will need an Order anyway – see section E.

G6. What is a rentcharge?

Short answer

A rentcharge is an annual fee payable in respect of land to a person who is not the owner of the land and who has no other legal interest in it. If your charity owns a rentcharge of £10 or more we would encourage you, whenever the opportunity arises, to negotiate with the landowner for its release. Depending on the circumstances this type of disposal may or may not require an Order from us or compliance with the disposal requirements set out in section D.

In more detail

The amount of the rentcharge is usually fixed and bears no relation to the value of the land. It is sometimes difficult to collect, especially where the land has been split up and is now owned by a number of different people. For these reasons it is not a suitable investment for a charity.

Rentcharges will be extinguished in July 2037 or 60 years after the rentcharge first became payable if this is later. No compensation is payable when this happens.

Where the charity releases a rentcharge for a payment of at least ten times the annual amount of rentcharge, the release is a disposal outside the scope of the requirements of other disposals and does not require an Order from us. Where you wish to release the rentcharge for less than ten times the annual amount, you must obtain an Order from us or comply with the procedures set out in section D above, including the necessary statements and certificates in the disposal documents as required.

G7. What is an advowson and does disposal need authorisation?

The answer

An advowson is the right of presentation to a rectory, vicarage or other ecclesiastical benefice of the Church of England when vacant. The owner of the advowson offers a suitably qualified candidate to the Bishop of the diocese to be instituted as parson or vicar of a living.

Although an advowson falls into the definition of land, the requirements set out in section D do not apply and the disposal does not need an Order from us.

H. Charitable companies

This section outlines the requirements in connection with companies when disposing of their charitable land.

H1. Is the land your company holds affected by the requirements for disposals of charity land?



The answer

Whether the land of a charitable company is held as corporate property or held on trust, it will be land held by, or in trust for, a charity. Accordingly the requirements set out in sections C or D will apply.

H2. What if the land your company holds is designated land?

The answer

A charitable company cannot itself own designated land as part of its corporate property as by definition it is land held on trust. Therefore the company will not need to comply with the requirements for disposals of designated land set out in E8 when disposing of corporate property.

If the company as a trustee of an unincorporated charity holds designated land, then the information in section E8 will apply.

H3. Who signs the certificates required?

Short answer

Two directors or a director and the secretary can sign the conveyance or other documents of transfer on behalf of the company – see also section F4.

In more detail

The directors as trustees, and not the body corporate itself, must give the certificates, subject to the proviso mentioned below, even though it is the body corporate which is making the disposal. This must be made clear in the wording of the certificates in the documents of disposal of the property.

If the constitution of the company includes a power which is wide enough to enable the directors to delegate the giving of the certificate then they can use it. The delegates may be the signatories for the company itself, if the power permits this.

H4. Can the directors delegate negotiation of the contracts of disposal?

Short answer

If they have the power to do so, yes.

In more detail

The directors may delegate negotiations to the charity's land committee or sub-committee, for example. The committee's job will be to report to the trustees on the question of compliance with any of the requirements. Restrictions or

requirements in connection with the governance of the company will be set out in the Memorandum and Articles and you should look carefully at these before you proceed.

I. Mortgages, loans and grants given on security

Section 38 of the 1993 Act contains similar restrictions on mortgages or charges to secure the repayment of grants and loans or the discharge of any other obligation as there are on trustees disposing of charity land. This section describes these restrictions and the requirements with which you must comply if you are to proceed with these transactions without the need to come to us for our authority.

I1. Do you need our authority to take out a mortgage or to secure the repayment of a loan or grant or any other obligation?

Short answer

In many cases the answer is 'no', as long as you comply with a set of requirements set out in section 38 of the 1993 Act. If you do not or cannot comply with these requirements you will need an Order from us. There are some exemptions from any of these requirements – see section I6.

In more detail

As trustees you can take out a mortgage or secure the repayment of a grant or loan, where the charity's land is required as security, without authority from us or the Court if you follow certain procedures and comply with certain legal requirements. There are slightly different requirements

when you take out a mortgage to secure the discharge of any other proposed obligation. The requirements are in place to show that the loan or grant is necessary, the terms are reasonable and the charity has the ability to repay.

12. What are the requirements when taking out a mortgage to secure the repayment of a loan or grant?



Short answer

Before executing a mortgage you must obtain and consider proper advice given to you in writing. This must state:

- whether the loan or grant is necessary for the charity to pursue the course of action it wants to in connection with loan or grant;
- whether the terms of the loan or grant are reasonable having regard to the status of the charity as the prospective recipient of the loan or grant; and
- the ability of the charity to repay on those terms the sum proposed to be paid by way of loan or grant.

In more detail

To ensure a proper audit trail, you should have:

- all the relevant papers and settled documentation in connection with the transaction;
- a copy of the legal opinion from the charity's adviser to the respective lender confirming the ability of the charity to enter in the arrangements;
- documents giving an indication of any source of finance for the project which is not being provided by the loan or grant;
- a certificate from the charity's accountant, financial adviser or other appropriate person which shows that the charity trustees have obtained and considered proper advice on:

- whether it is reasonable for them to enter into the loan or grant agreement on the terms proposed; and
- the ability of the charity to discharge any obligation, making any payments, which may be imposed upon it as a result of entry into the agreement on those terms, having regard in particular to any existing borrowing and other liabilities of the charity.

Gathering this paperwork is not an essential requirement, unlike the requirements actually to obtain in writing and to consider the advice, but it may be useful to have done so if you were to be challenged at a later date about the proceedings of the transaction.

13. What are the requirements when taking out a mortgage to secure the discharge of any other proposed obligation?



Short answer

In this case you must obtain and consider proper advice on whether it is reasonable for you as the charity trustees to undertake to discharge the obligation, having regard to the charity's purposes.

In more detail

In other words, the obligation you are proposing to secure must be compatible with the purposes of the charity. For example, it may be acceptable for an almshouse charity aiding the elderly and infirm to guarantee a loan to another charity to enable it to provide more almshouses or refurbish its existing housing stock

for use by the elderly and infirm. It would not be acceptable for such an almshouse charity to guarantee a loan for the purpose of building a children's playground.

We recommend that it would be good practice to keep an audit trail similar to that set out in section 12.

14. What about when you want to repay the sums or discharge other obligations after the date of execution of the mortgage?



The answer

There is no requirement to take advice before paying off loans or discharging obligations.

15. What is meant by ‘proper advice’?



Short answer

For the purposes of this section of the Act, this is the advice of a person you reasonable believe to be qualified by ability and experience of financial matters and who has no financial interest in relation to the loan, grant or other transaction in connection with which his or her advice is given.

In more detail

We recommend that the person you choose to give advice should be professionally qualified as well as possessing the abilities and experience mentioned in the legislation as set out

above. This could be the charity’s accountant or financial adviser, for example. The person may be another officer, or employee of the charity or one of the charity trustees.

16. Are there any exemptions from these provisions?

Short answer

Some charities set up under an Act of Parliament or subject to other statutory provision are specifically excluded or exempt from complying with the requirements of section 38 of the Charities Act because of the power provided in the founding or subsequent documentation.

In more detail

You should look carefully at the documentation concerning the trusts of your charity or any subsequent paperwork. From this you should be able to discover if your charity is set up with powers either under an Act of Parliament or other statutory provision. You should study the wording carefully to see if the wording states that your

charity is excepted or exempt from the requirements of section 38 of the Charities Act. Alternatively, your charity may be the subject of a Scheme that has a similar effect. Again, you should look carefully at the wording of any Scheme and, if you are not sure, you should take legal advice before proceeding further.

17. Do you need to provide statements and certificates in a similar way as when making a disposal of land?



Short answer

Yes.

In more detail

In any mortgage of land held by or in trust for a charity it must state:

- that the land is held by or in trust for a charity; and
- whether the charity is an exempt charity and therefore the restrictions do not apply or it is exempt through one of the circumstances mentioned in section 16; or
- if it is not exempt from the restrictions and is therefore subject to them.

In addition, where the mortgage is subject to the restrictions of the Act, you must certify either that:

- we or the Court have sanctioned the mortgage by an Order; or
- that you have power under the trusts to grant the mortgage and that you have complied with the requirements set out in section 12 or 13 above.

Where the mortgage secures further loans or grants or obligations to be undertaken after the date of the mortgage, the trustees must not take on such further loans or grants or undertake further obligations unless, before doing so, they take proper advice as set out in section 12 above.

18. What if you cannot comply with these requirements?

Short answer

In such circumstances you must come to us for an Order giving our authorisation for the mortgage.

In more detail

This situation is likely to be less usual now that amendments have been made to the 1993 Act. However, if you do need to come to us for an Order we will want to see evidence of why you consider that:

- the loan or grant is necessary for the charity to pursue the course of action you want to in connection with loan or grant;
- the terms of the loan or grant are reasonable having regard to the status of the charity as the prospective recipient of the loan or grant; and
- the charity has the ability to repay on those terms the sum proposed to be paid by way of loan or grant.

J. Further information and advice

The Charity Commission produces a wide range of publications and website guidance giving information and advice to charity trustees and the general public on a number of issues relating to charity law and regulation. The full list of publications is on our website.

We have listed a selection of other organisations and publications which can be used as sources of information.

J1. Charity Commission publications

The list of our publications below is a selection based on some of the issues identified in this guidance.

The Essential Trustee: What you need to know (CC3)

The Hallmarks of an Effective Charity (CC10)

Exempt Charities (CC23)

Acquiring Land (CC33)

Changing your Charity's Governing Document (CC36)

Operational Guidance

OG22 Borrowing and mortgages

OG54 Disposals of charity interests in property

Charity Commission website publications

On the front page of the Commission's website there is a link to an area called 'Apply for it'. Under the title 'Selling your charity's land' you will find links to printable versions of:

Application for disposal to a connected person – CSD1345A; and

CSD1345B Disposing of charity land – sales or leases – what you need to know

You can also find a link to our information sheet:

SCU10 Disposals of land and buildings with particular reference to recreation ground charities

To obtain copies of any of our other publications you can either:

view and print them from our website;

email us at enquiries@charitycommission.gov.uk;

order during opening hours – 08:00-20:00 Monday to Friday and 09:00-13:00 Saturdays – by telephoning us on 0845 300 0218; or

write to Charity Commission Direct, PO Box 1227, Liverpool, L69 3UG

J2. External organisations

The Land Registry

The Land Registry registers title to land in England and Wales and records dealings (for example, sales and mortgages) with registered land.

Land Registry
32 Lincoln's Inn Fields
London
WC2A 3PH
(DX1098 London/Chancery Lane WC2).

Tel: 020 7917 8888

Fax: 020 7955 0110

Email: enquiries.pic@landregistry.gov.uk

Website: www.landregistry.gov.uk

Royal Institute of Chartered Surveyors (RICS)

RICS is the leading source of land, property, construction and related environmental knowledge. It supports members worldwide, promotes best practice, represents consumers' interests and provides impartial advice to society, businesses, governments and global organisations.

The Royal Institution of Chartered Surveyors
12 Great George Street
Parliament Square
London
SW1P 3AD
United Kingdom

Tel: 020 7222 7000
Fax: 020 7222 9430

Enquiries:

RICS Contact Centre
Surveyor Court
Westwood Way
Coventry CV4 8JE

Email: contactrics@rics.org
Website: www.rics.org.uk

J3. Other publications

Land Registry's Practice Guide LRPg 014 'Charities'

www.landregistry.gov.uk/assets/library/documents/lrpg014.pdf

K. Appendices

K1. Definition of “connected person” as set out in Schedule 5 of the Charities Act 1993 as amended by the Charities Act 2006

1.
 - (1) In section 36(2) of this Act "connected person", in relation to a charity, means any person who falls within sub-paragraph (2) -
 - (a) at the time of the disposition in question, or
 - (b) at the time of any contract for the disposition in question.
 - (2) The persons falling within this sub-paragraph are -
 - (a) a charity trustee or trustee for the charity;
 - (b) a person who is the donor of any land to the charity (whether the gift was made on or after the establishment of the charity);
 - (c) a child, parent, grandchild, grandparent, brother or sister of any such trustee or donor;
 - (d) an officer, agent or employee of the charity;
 - (e) the spouse or civil partner of any person falling within any of the sub-paragraphs (a) to (d) above;
 - (ea) a person carrying on business in partnership with any person falling within any of the sub-paragraphs (a) to (e) above;
 - (f) an institution which is controlled-
 - (i) by any person falling within any of the sub-paragraphs (a) to (ea) above, or
 - (ii) by two or more such persons taken together; or
 - (g) a body corporate in which -
 - (i) any connected person falling within any of sub-paragraphs (a) to (f) above has a substantial interest, or
 - (ii) two or more such persons, taken together, have a substantial interest.

2.

- (1) In paragraph 1(2)(c) above "child" includes a stepchild and an illegitimate child.
- (2) For the purposes of paragraph 1(2)(e) above a person living with another as that person's husband or wife shall be treated as that person's spouse.
- (3) Where two persons of the same sex are not civil partners but live together as if they were, each of them shall be treated for those purposes as the civil partner of the other.

3.

For the purposes of paragraph 1(2)(f) above a person controls an institution if he is able to secure that the affairs of the institution are conducted in accordance with his wishes.

4.

- (1) For the purposes of paragraph 1(2)(g) above any such connected person as is there mentioned has a substantial interest in a body corporate if the person or institution in question -
 - (a) is interested in shares comprised in the equity share capital of that body of a nominal value of more than one-fifth of that share capital, or
 - (b) is entitled to exercise, or control the exercise of, more than one-fifth of the voting power at any general meeting of that body.
- (2) The rules set out in Part 1 of Schedule 13 to the Companies Act 1985 (rules for interpretation of certain provisions of that Act) shall apply for the purposes of sub-paragraph (1) above as they apply for the purposes of section 346(4) of that Act ("connected persons" etc).
- (3) In this paragraph "equity share capital" and "share" have the same meaning as in that Act.

K2. Extract from Statutory Instrument 1992 No. 2980 The Charities (Qualified Surveyors' Reports) Regulations 1992

SCHEDULE

INFORMATION TO BE CONTAINED IN, AND MATTERS TO BE DEALT WITH BY, QUALIFIED SURVEYORS' REPORTS

1. (1) A description of the relevant land and its location, to include-
 - (a) the measurements of the relevant land;
 - (b) its current use;
 - (c) the number of buildings (if any) included in the relevant land;
 - (d) the measurements of any such buildings; and
 - (e) the number of rooms in any such buildings and the measurements of those rooms.
- (2) Where any information required by sub-paragraph (1) above may be clearly given by means of a plan, it may be so given and any such plan need not be drawn to scale.

2. Whether the relevant land, or any part of it, is leased by or from the charity trustees and, if it is, details of-
 - (a) the length of the lease and the period of it which is outstanding;
 - (b) the rent payable under the lease;
 - (c) any service charge which is so payable;
 - (d) the provisions in the lease for any review of the rent payable under it or any service charge so payable;
 - (e) the liability under the lease for repairs and dilapidations; and
 - (f) any other provision in the lease which, in the opinion of the surveyor, affects the value of the relevant land.

3. Whether the relevant land is subject to the burden of, or enjoys the benefit of, any easement or restrictive covenant or is subject to any annual or other periodic sum charged on or issuing out of the land except rent reserved by a lease or tenancy.
4. Whether any buildings included in the relevant land are in good repair and, if not, the surveyor's advice-
 - (a) as to whether or not it would be in the best interests of the charity for repairs to be carried out prior to the proposed disposition;
 - (b) as to what those repairs, if any, should be; and
 - (c) as to the estimated cost of any repairs he advises.
5. Where, in the opinion of the surveyor, it would be in the best interests of the charity to alter any buildings included in the relevant land prior to disposition (because, for example, adaptations to the buildings for their current use are not such as to command the best market price on the proposed disposition), that opinion and an estimate of the outlay required for any alterations which he suggests.
6. Advice as to the manner of disposing of the relevant land so that the terms on which it is disposed of are the best that can reasonably be obtained for the charity, including-
 - (a) where appropriate, a recommendation that the land should be divided for the purposes of the disposition;
 - (b) unless the surveyor's advice is that it would not be in the best interests of the charity to advertise the proposed disposition, the period for which and the manner in which the proposed disposition should be advertised;
 - (c) where the surveyor's advice is that it would not be in the best interests of the charity to advertise the proposed disposition, his reasons for that advice (for example, that the proposed disposition is the renewal of a lease to someone who enjoys statutory protection or that he believes someone with a special interest in acquiring the relevant land will pay considerably more than the market price for it); and

- (d) any view the surveyor may have on the desirability or otherwise of delaying the proposed disposition and, if he believes such delay is desirable, what the period of that delay should be.
7. (1) Where the surveyor feels able to give such advice and where such advice is relevant, advice as to the chargeability or otherwise of value added tax on the proposed disposition and the effect of such advice on the valuations given under paragraph 8 below.
- (2) Where either the surveyor does not feel able to give such advice or such advice is not in his opinion relevant, a statement to that effect.
8. The surveyor's opinion as to-
- (a) the current value of the relevant land having regard to its current state of repair and current circumstances (such as the presence of a tenant who enjoys statutory protection) or, where the proposed disposition is a lease, the rent which could be obtained under it having regard to such matters;
 - (b) what the value of the relevant land or what the rent under the proposed disposition would be-
 - (i) where he has given advice under paragraph 4 above, if that advice is followed; or
 - (ii) where he has expressed an opinion under paragraph 5 above, if that opinion is acted upon; or
 - (iii) if both that advice is followed and that opinion is acted upon;
 - (c) where he has made a recommendation under paragraph 6(a) above, the increase in the value of the relevant land or rent in respect of it if the recommendation were followed;
 - (d) where his advice is that it would not be in the best interests of the charity to advertise the proposed disposition because he believes a higher price can be obtained by not doing so, the amount by which that price exceeds the price that could be obtained if the proposed disposition were advertised; and

(e) where he has advised a delay in the proposed disposition under paragraph 6(d) above, the amount by which he believes the price which could be obtained consequent on such a delay exceeds the price that could be obtained without it.

9. Where the surveyor is of the opinion that the proposed disposition is not in the best interests of the charity because it is not a disposition that makes the best use of the relevant land, that opinion and the reasons for it, together with his advice as to the type of disposition which would constitute the best use of the land (including such advice as may be relevant as to the prospects of buying out any sitting tenant or of succeeding in an application for change of use of the land under the laws relating to town and country planning etc.).

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