



Guidance

CSD-1345A

for completion of the Charity Commission's 'Application for an Order authorising a disposal of charity land to a connected person'

Our publication '**Sales, leases, transfers or mortgages: What trustees need to know about disposing of charity land**' (CC28) (available to download from our website at <http://www.charitycommission.gov.uk/publications/cc28.asp> or from Charity Commission Direct on 0845 300 0218) explains the legal requirements in further detail as well as providing more background information which the trustees may find useful. If you are unfamiliar with this subject, we strongly recommend you read this publication.

You will be making an application because you require our authorisation to carry out the disposal of charity land. By completing this form you will provide us with information we need to process your application.

The following notes will help guide you through the process of completing the application form and there is additional information that you may need to refer to in the section K of CC28.

To begin with we need some basic contact details for your charity and the person completing this form. You will be using this form because you are proposing to dispose of the land to a connected person but it would be useful for us to know if there is any other reason you need our authorisation. We shall then need to know details of:

- the connected person;
- the surveyor, together with his or her report; and
- the land involved and terms of the disposal.

If you need extra space when answering parts of the form, please continue on a separate sheet and note which section of the form it refers to. At the end of the form you will need to make a declaration that the information provided is correct and that certain actions have been undertaken.

Anyone who knowingly or recklessly provides false or misleading information on the form will be guilty of an offence under section 11(1)(b) of the Charities Act 1993.

If you are in doubt about completing any part(s) of this form, we suggest you seek advice from a solicitor or other person qualified to advise on charities.

If there are sections of the form that you cannot complete or parts of the declaration that you cannot make, it does not necessarily mean we will not be able to provide authorisation for the disposal but we may need further information. This could add a delay to the process. Where the application is straightforward and free from complication, we aim to provide the Order within 15 working days of receiving this form. If you need it sooner, please let us know.

Once completed you should return the form to us. If you have email access we can deal with your request more quickly. Please scan the documents and send them to:

enquiries@charitycommission.gov.uk

or send the completed form and associated documents to:

Charity Commission Direct
PO Box 1227
Liverpool
L69 3UG

If you need to contact us by phone, call our Contact Centre on 0845 300 0218.

Section 1

Please provide the charity's registered number and name; if you are unsure about these, you can find them on the Register of Charities (www.charitycommission.gov.uk). If your charity is excepted or exempt from registration, please provide the charity's official name, the Inland Revenue's reference number and the reference number used by us when we were last in touch with your charity. If your charity is exempt, you may not need to complete this form – see notes for Section 2 below.

We also need a point of contact. This may be one of the trustees or it might be another person having competent knowledge of the facts such as the clerk or secretary to the trustees and signing on the trustees' behalf, or the legal adviser in the case. If this person is happy for us to contact them by email, please also provide their email address.

If you have been in touch with us before about this transaction you may already have a reference or case number from us. If so, write it in this section; if not, leave blank. You may wish to enter a reference number you have assigned to this matter for your records.

Section 2

This form is for those cases where the disposal is to a connected person, but please tick any of the boxes that apply. For some of the options given, you may be able to proceed with the disposal without an Order. Please read the following notes.

Section 2A

If your application is for a mortgage or charge to the land, you will not need to complete this form. You may be able to proceed with your proposed transaction if you can comply with all the requirements set out in section 38 of the Charities Act 1993 (1993 Act). See our publication '**Sales, leases, transfers or mortgages: What trustees need to know about disposing of charity land**' (CC28) for more information. If you still cannot proceed on your own, contact us again for advice.

If you have ticked either of the second or third boxes, you do not need an Order from us under section 36 of the 1993 Act to allow you to proceed as both these situations take the transaction outside the scope of the requirements of section 36. However, section 37 (or 39 in the case of a mortgage or charge over land) that deals with statements and certificates that may need to be supplied in disposal cases *does* apply to exempt charities – see our booklet '**Sales, leases, transfers or mortgages: What trustees need to know about disposing of charity land**' (CC28) for more details. In any event, a disposal to a connected person may be self dealing and trustees should take appropriate legal advice with regard to this.

Section 2B

If you have not ticked this box, you will not need to complete the rest of this form. It might be that your disposal does not require our authority – see our booklet '**Sales, leases, transfers or mortgages: What trustees need to know about disposing of charity land**' (CC28) for more details. If the disposal is not to a connected person but you still consider you need an Order from the Charity Commission, please contact Charity Commission Direct (phone number and address on the front page of these notes) with details of your proposed disposal, the reasons you need an Order, and the details of why the disposal is in the interests of the charity.

Section 3A

We need to know the full name of the person or company/organisation to which you are making the disposal.

Section 3B

This section contains a shortened version of the list of connected persons. The full list, as contained in Schedule 5 of the 1993 Act, can be found in section K1 of CC28. We would advise trustees to seek their own legal advice if they are unsure whether a particular person or body is a connected person.

Section 3C

A disposal of charity land to a connected person carries with it issues of conflict of interest. Where you have advertised the disposal, we need to know why you consider the offer made by a connected person is in the best interests of the charity. Is it, for example, the highest bid you have received following the advertising of the disposal or are there other reasons you have for accepting the bid from the connected person? If you have not advertised the disposal, state the reasons you have chosen not to do so or if you have been advised not to

do so. You may have further reasons for considering it is in the best interests of the charity to dispose of the land to a connected person – please state all your reasons, continuing on a separate sheet if necessary.

Section 3D

At the very least we would expect that a connected person is excluded from any meetings or discussions about the decision to dispose of the land and any further discussions about the proposed terms of the disposal. The connected person also should have no 'inside knowledge' of information that might put him or her in a privileged position, for example, information about any other bids or offers from other parties. These precautions may be difficult to implement in some cases, for example where the disposal is to a subsidiary trading company or other company connected with the charity and the trustees of the charity and the directors of the company include some or all of the same people. Whatever the situation, please note down in this section the steps the trustees have taken to ensure that any conflict of interest has been managed.

Section 4

In order to be able to consider your application, it is important for us to get an objective view of the value of the property in question. The best way to do this is for you to obtain a report from a surveyor, generally one who is professionally qualified – this includes a fellow or member of the Royal Institute of Chartered Surveyors (RICS) – and has experience in dealing with the type of land in question. It may be helpful to look at the guidelines set out in the Appendix to these notes.

We would also expect the content of the report to be based on the requirements which apply when trustees are able to carry out a disposal without our authority; these are set out in section K2 of CC28.

Section 4A

If you have ticked the first box in this section, please explain why the trustees consider it is in the best interest of the charity to use an unqualified surveyor or not to use a surveyor at all. Then complete any other parts of this section of the form only where you are able to; for example, where the surveyor is unqualified, enter 'not qualified' in Section 4A(ii) but complete the other parts of the section.

Where the surveyor has produced a report, it may be useful to enter any number he or she has used for reference at Section 4A(v) in case it is needed later.

Obviously the more recent the report the more likely it is to reflect the current value of the property. Please note in Section 4A(vi) when the report is dated. As a broad guideline we suggest it should not be more than 6 months old.

Section 4B

We would expect the surveyor to report in accordance with the Charities (Qualified Surveyors' Reports) Regulations 1992 – see section K2 of CC28. We will not need to see the report at this stage but ask you to state the advice the surveyor has given on the appropriate terms of the proposed disposal (including the sale price or price/terms of the lease) and any advice or directions he or she has given about marketing the land. These are important recommendations and we would expect trustees to follow the professional advice in most cases. We may need to see the report at a later stage in our consideration of your application but we will contact you if this is the case.

In 4B(ii) and 4B(iv) please tick the relevant box. If you have answered 'No' to either of these questions, you will also need to complete 4B(vi).

If you have answered 'Yes' to 4B(iv), the sort of information that would help us at 4B(v) is how, where and when you have advertised the disposal. Was the sale through an estate agent, for example, or were notices posted in the local or national press or on notice boards around the village or town? How long was the property advertised for and how many offers on the property did you receive?

In the more uncommon situations where the trustees have decided not to follow the recommendations made by the surveyor, we shall need to know the reasons for this decision. This is particularly relevant in connection with clauses 4 to 9 of the Regulations – see section K2 of CC28. Please enter this information at 4B(vi).

Section 5A

The requirements of the Charities (Qualified Surveyors' Reports) Regulations 1992 give a good model for what trustees might look for in the report produced by their surveyor – see section K2 of CC28. In Section 5A it would be relevant to give details of:

- the location and measurements of the land;
- its current use; and
- the number and measurements of any buildings on the land together with the number and measurements of the rooms in the buildings.

All measurements given should be in metric.

Section 5B

Where the land is registered you should be able to supply the HM Land Registry number. If it is not registered, giving details of the conveyance or lease by which it was acquired will show the charity's legal interest in the land, together with the terms of the lease. It may be useful for you to refer to the details set out in the surveyor's report – Section 2 of the reporting regulations will help you to note information in this section.

Some land is subject to clauses that may be of benefit to the holders of the land or, alternatively, that limit its use or restrict the activities that may be carried out on the land. This sort of information may be set out in the deeds or the governing document of your charity. It should have been noted by the surveyor so it may also be useful for you to refer to the details set out in the surveyor's report – Section 3 of the reporting regulations will help you to note information in this section.

Section 5C

If the governing document states that the land that is the subject of the disposal is designated land (sometimes called 'specie land'), please tick this box.

Designated land is land that is held on trusts requiring it to be used for a particular purpose or purposes of the charity. For example, a recreation ground charity is likely to hold its land for the specific purpose of it being the recreation ground; an almshouse charity will often hold its land and the almshouses buildings as designated land. If the trustees are proposing to dispose of such land without replacing it, we will almost certainly need to provide additional legal powers before the charity can do so. Even if the trustees are intending to replace the land, they will still need to apply to us for authority if the disposal is to a connected person.

Section 6

Tick the appropriate box that describes the type of disposal. In the right hand column note the actual terms of the disposal or the price achieved.

A fine includes a premium and any other payment or benefit (other than the rent) made to a charity on the grant by it of a lease. If the land that has been leased is permanent endowment of the charity, the fine payment will also be subject to that restriction.

Section 6B

Where the actual price or terms achieved are lower than the valuation, the trustees should have good reasons for considering this is still in the best interests of the charity. Remember, the trustees should aim to achieve the best terms possible in the circumstances of the disposal. However, just because the price achieved is less than the valuation, it does not necessarily mean we will not be able to give our authority.

Section 6C

The trustees are not required to seek views on the disposal (unless they are disposing of designated land without replacing it, when there is a statutory duty to publicise the disposal and invite representations). However, if there has been some opposition to the disposal it would be useful for us to know what that is and how the trustees have dealt with such objections. Again, just because there are objections it does not necessarily mean the trustees should not proceed or that we will withhold our consent.

Section 7: Declaration

In most cases you will be able to tick all the boxes in the right hand column. If one (or more) of the boxes is not ticked, it does not necessarily mean we will not be able to give our consent but we may need to contact you for more information.

- 7d Where your surveyor has produced a report, we would normally expect it to be presented in accordance with The Charities (Qualified Surveyors' Reports) Regulations 1992 – see notes for Section 4 above.
- 7e The trustees should know and understand what power they are using to carry out this disposal. Please tick the appropriate box describing the power on which they are relying as well as the right hand column. If the trustees are not sure, they should consult their own legal adviser.
- 7f Very occasionally a charity's governing document contains a clause which prohibits the disposal of the charity's land to one of its trustees or to connected persons generally. Please make sure you have studied the governing document to ensure there are no such clauses and only tick this box if you are sure there is nothing in it to prevent this transaction. If there is this type of prohibition, please let us know so that we can discuss with you how best to proceed.
- 7g This assumes you *have* obtained a report from a qualified surveyor. If this is not the case, leave this box blank but be sure you have completed the details required at the beginning of Section 4, and at Section 4(vi) if necessary.
- 7h The trustees should be working together for the best interests of the charity. If you are not able to tick this box we suggest the trustees hold a meeting to come to an agreement about the disposal. Where some of the trustees are or have been unable to attend meetings at which the transaction has been discussed, we suggest all those trustees, including those in whom the land is vested, should have been formally notified of the intention to dispose of the property.
- 7i This is usually the minimum we would expect in terms of managing conflict of interest. You may have taken further steps and you will have outlined these in Section 3D of the form. It may not be possible to tick this box where the trustees and directors of a connected trading company, for example, are the same people (as described in Section 3D above). In this case we shall look at the reasons you have given at Section 3D of the application form.

The declarations made in this part of the form should be certified as correct and signed by:

- a) one or more of the trustees; or
- b) some other person having a competent knowledge of the facts such as the clerk or secretary to the trustees and signing on the trustees' behalf.

In either case, we would expect the trustees' minutes to contain evidence that they have authorised the individuals to sign this form on their behalf.

Appendix 1

Qualified surveyor or person believed to have ability to advise on dispositions

Extract from Section 36 of the Charities Act 1993

- (4) For the purposes of subsection (3) above a person is a qualified surveyor if –
- (a) he is a fellow or professional associate of the Royal Institution of Chartered Surveyors or of the Incorporated Society of Valuers and Auctioneers or satisfies such other requirement or requirements as may be prescribed by regulations made by the Secretary of State; and
 - (b) he is reasonably believed by the charity trustees to have ability in, and experience of, the valuation of land of the particular kind, and in the particular area, in question;

and any report prepared for the purposes of that subsection shall contain such information, and deal with such matters, as may be prescribed by regulations so made.

- (5) Where the proposed disposition is the granting of a lease for a term ending not more than seven years after it is granted (other than one granted wholly or partly in consideration of a fine), the charity trustees must, before entering into an agreement for the lease –
- (a) obtain and consider the advice on the proposed disposition of a person who is reasonably believed by the trustees to have the requisite ability and practical experience to provide them with competent advice on the proposed disposition; and
 - (b) decide that they are satisfied, having considered that person's advice, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity.