



Charities Act 1993 (repealed)

1993 CHAPTER 10

PART V

CHARITY LAND

36 Restrictions on dispositions.

- (1) Subject to the following provisions of this section and section 40 below, no land held by or in trust for a charity shall be sold, leased or otherwise disposed of without an order of the court or of the Commissioners.
- (2) Subsection (1) above shall not apply to a disposition of such land if—
 - (a) the disposition is made to a person who is not—
 - (i) a connected person (as defined in Schedule 5 to this Act), or
 - (ii) a trustee for, or nominee of, a connected person; and
 - (b) the requirements of subsection (3) or (5) below have been complied with in relation to it.
- (3) Except where the proposed disposition is the granting of such a lease as is mentioned in subsection (5) below, the charity trustees must, before entering into an agreement for the sale, or (as the case may be) for a lease or other disposition, of the land—
 - (a) obtain and consider a written report on the proposed disposition from a qualified surveyor instructed by the trustees and acting exclusively for the charity;
 - (b) advertise the proposed disposition for such period and in such manner as the surveyor has advised in his report (unless he has there advised that it would not be in the best interests of the charity to advertise the proposed disposition); and
 - (c) decide that they are satisfied, having considered the surveyor's report, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity.
- (4) For the purposes of subsection (3) above a person is a qualified surveyor if—

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- (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.
- (6) Where—
- (a) any land is held by or in trust for a charity, and
 - (b) the trusts on which it is so held stipulate that it is to be used for the purposes, or any particular purposes, of the charity,
- then (subject to subsections (7) and (8) below and without prejudice to the operation of the preceding provisions of this section) the land shall not be sold, leased or otherwise disposed of unless the charity trustees have previously—
- (i) given public notice of the proposed disposition, inviting representations to be made to them within a time specified in the notice, being not less than one month from the date of the notice; and
 - (ii) taken into consideration any representations made to them within that time about the proposed disposition.
- (7) Subsection (6) above shall not apply to any such disposition of land as is there mentioned if—
- (a) the disposition is to be effected with a view to acquiring by way of replacement other property which is to be held on the trusts referred to in paragraph (b) of that subsection; or
 - (b) the disposition is the granting of a lease for a term ending not more than two years after it is granted (other than one granted wholly or partly in consideration of a fine).
- (8) The Commissioners may direct—
- (a) that subsection (6) above shall not apply to dispositions of land held by or in trust for a charity or class of charities (whether generally or only in the case of a specified class of dispositions or land, or otherwise as may be provided in the direction), or
 - (b) that that subsection shall not apply to a particular disposition of land held by or in trust for a charity,

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if, on an application made to them in writing by or on behalf of the charity or charities in question, the Commissioners are satisfied that it would be in the interests of the charity or charities for them to give the direction.

- (9) The restrictions on disposition imposed by this section apply notwithstanding anything in the trusts of a charity; but nothing in this section applies—
- (a) to any disposition for which general or special authority is expressly given (without the authority being made subject to the sanction of an order of the court) by any statutory provision contained in or having effect under an Act of Parliament or by any scheme legally established; or
 - (b) to any disposition of land held by or in trust for a charity which—
 - (i) is made to another charity otherwise than for the best price that can reasonably be obtained, and
 - (ii) is authorised to be so made by the trusts of the first-mentioned charity;or
 - (c) to the granting, by or on behalf of a charity and in accordance with its trusts, of a lease to any beneficiary under those trusts where the lease—
 - (i) is granted otherwise than for the best rent that can reasonably be obtained; and
 - (ii) is intended to enable the demised premises to be occupied for the purposes, or any particular purposes, of the charity.
- (10) Nothing in this section applies—
- (a) to any disposition of land held by or in trust for an exempt charity;
 - (b) to any disposition of land by way of mortgage or other security; or
 - (c) to any disposition of an advowson.
- (11) In this section “land” means land in England or Wales.

37 Supplementary provisions relating to dispositions.

- (1) Any of the following instruments, namely—
- (a) any contract for the sale, or for a lease or other disposition, of land which is held by or in trust for a charity, and
 - (b) any conveyance, transfer, lease or other instrument effecting a disposition of such land,
- shall state—
- (i) that the land is held by or in trust for a charity,
 - (ii) whether the charity is an exempt charity and whether the disposition is one falling within paragraph (a), (b) or (c) of subsection (9) of section 36 above, and
 - (iii) if it is not an exempt charity and the disposition is not one falling within any of those paragraphs, that the land is land to which the restrictions on disposition imposed by that section apply.
- (2) Where any land held by or in trust for a charity is sold, leased or otherwise disposed of by a disposition to which subsection (1) or (2) of section 36 above applies, the charity trustees shall certify in the instrument by which the disposition is effected—
- (a) (where subsection (1) of that section applies) that the disposition has been sanctioned by an order of the court or of the Commissioners (as the case may be), or

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- (b) (where subsection (2) of that section applies) that the charity trustees have power under the trusts of the charity to effect the disposition, and that they have complied with the provisions of that section so far as applicable to it.
- (3) Where subsection (2) above has been complied with in relation to any disposition of land, then in favour of a person who (whether under the disposition or afterwards) acquires an interest in the land for money or money's worth, it shall be conclusively presumed that the facts were as stated in the certificate.
- (4) Where—
- (a) any land held by or in trust for a charity is sold, leased or otherwise disposed of by a disposition to which subsection (1) or (2) of section 36 above applies, but
 - (b) subsection (2) above has not been complied with in relation to the disposition, then in favour of a person who (whether under the disposition or afterwards) in good faith acquires an interest in the land for money or money's worth, the disposition shall be valid whether or not—
 - (i) the disposition has been sanctioned by an order of the court or of the Commissioners, or
 - (ii) the charity trustees have power under the trusts of the charity to effect the disposition and have complied with the provisions of that section so far as applicable to it.
- (5) Any of the following instruments, namely—
- (a) any contract for the sale, or for a lease or other disposition, of land which will, as a result of the disposition, be held by or in trust for a charity, and
 - (b) any conveyance, transfer, lease or other instrument effecting a disposition of such land,
- shall state—
- (i) that the land will, as a result of the disposition, be held by or in trust for a charity,
 - (ii) whether the charity is an exempt charity, and
 - (iii) if it is not an exempt charity, that the restrictions on disposition imposed by section 36 above will apply to the land (subject to subsection (9) of that section).

^{F1}(6)

- (7) Where—
- (a) the disposition to be effected by any such instrument as is mentioned in subsection (1)(b) or (5)(b) above will be a registered disposition, or
 - (b) any such instrument will on taking effect be an instrument [^{F2}in relation to which section 123A] of the ^{M1}Land Registration Act 1925 (compulsory registration of title) applies,
- the statement which, by virtue of subsection (1) or (5) above, is to be contained in the instrument shall be in such form as may be prescribed.
- (8) Where—
- (a) an application is duly made—
 - (i) for registration of a disposition of registered land, or
 - (ii) for registration of a person's title under a disposition of unregistered land, and

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- (b) the instrument by which the disposition is effected contains a statement complying with subsections (5) and (7) above, and
- (c) the charity by or in trust for which the land is held as a result of the disposition is not an exempt charity,

the registrar shall enter in the register, in respect of the land, a restriction in such form as may be prescribed.

(9) Where—

- (a) any such restriction is entered in the register in respect of any land, and
 - (b) the charity by or in trust for which the land is held becomes an exempt charity,
- the charity trustees shall apply to the registrar for the restriction to be withdrawn; and on receiving any application duly made under this subsection the registrar shall withdraw the restriction.

(10) Where—

- (a) any registered land is held by or in trust for an exempt charity and the charity ceases to be an exempt charity, or
- (b) any registered land becomes, as a result of a declaration of trust by the registered proprietor, land held in trust for a charity (other than an exempt charity),

the charity trustees shall apply to the registrar for such a restriction as is mentioned in subsection (8) above to be entered in the register in respect of the land; and on receiving any application duly made under this subsection the registrar shall enter such a restriction in the register in respect of the land.

(11) In this section—

- (a) references to a disposition of land do not include references to—
 - (i) a disposition of land by way of mortgage or other security,
 - (ii) any disposition of an advowson, or
 - (iii) any release of a rentcharge falling within section 40(1) below; and
- (b) “land” means land in England or Wales;

and subsections (7) to (10) above shall be construed as one with the ^{M2}Land Registration Act 1925.

Textual Amendments

- F1** S. 37(6) repealed (1.1.1997) by 1996 c. 47, s. 25(2), **Sch. 4** (with s. 24(2), 25(4)); S.I. 1996/2974, **art. 2**
- F2** Words in s. 37(7)(b) substituted (1.4.1998) by 1997 c. 2, s. 4(1), **Sch. 1 Pt. I para. 6(1)**; S.I. 1997/3036, **art. 2(b)**, **art. 2**

Marginal Citations

- M1** 1925 c. 21.
- M2** 1925 c. 21.

38 Restrictions on mortgaging.

- (1) Subject to subsection (2) below, no mortgage of land held by or in trust for a charity shall be granted without an order of the court or of the Commissioners.

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- (2) Subsection (1) above shall not apply to a mortgage of any such land by way of security for the repayment of a loan where the charity trustees have, before executing the mortgage, obtained and considered proper advice, given to them in writing, on the matters mentioned in subsection (3) below.
- (3) Those matters are—
- (a) whether the proposed loan is necessary in order for the charity trustees to be able to pursue the particular course of action in connection with which the loan is sought by them;
 - (b) whether the terms of the proposed loan are reasonable having regard to the status of the charity as a prospective borrower; and
 - (c) the ability of the charity to repay on those terms the sum proposed to be borrowed.
- (4) For the purposes of subsection (2) above proper advice is the advice of a person—
- (a) who is reasonably believed by the charity trustees to be qualified by his ability in and practical experience of financial matters; and
 - (b) who has no financial interest in the making of the loan in question;
- and such advice may constitute proper advice for those purposes notwithstanding that the person giving it does so in the course of his employment as an officer or employee of the charity or of the charity trustees.
- (5) This section applies notwithstanding anything in the trusts of a charity; but nothing in this section applies to any mortgage for which general or special authority is given as mentioned in section 36(9)(a) above.
- (6) In this section—
- “land” means land in England or Wales;
- “mortgage” includes a charge.
- (7) Nothing in this section applies to an exempt charity.

39 Supplementary provisions relating to mortgaging.

- (1) Any mortgage of land held by or in trust for a charity shall state—
- (a) that the land is held by or in trust for a charity,
 - (b) whether the charity is an exempt charity and whether the mortgage is one falling within subsection (5) of section 38 above, and
 - (c) if it is not an exempt charity and the mortgage is not one falling within that subsection, that the mortgage is one to which the restrictions imposed by that section apply;
- and where the mortgage will be a registered disposition any such statement shall be in such form as may be prescribed.

[^{F3}(1A) Where any such mortgage will be one falling within section 123(2) of the Land Registration Act 1925—

- (a) the statement required by subsection (1) above shall be in such form as may be prescribed; and
- (b) if the charity is not an exempt charity, the mortgage shall also contain a statement, in such form as may be prescribed, that the restrictions on

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disposition imposed by section 36 above apply to the land (subject to subsection (9) of that section).

(1B) Where—

- (a) an application is duly made for registration of a person's title to land in connection with such a mortgage as is mentioned in subsection (1A) above, and
- (b) the mortgage contains statements complying with subsections (1) and (1A) above, and
- (c) the charity is not an exempt charity,

the registrar shall enter in the register, in respect of the land, a restriction in such form as may be prescribed; and section 37(9) above shall apply in relation to any such restriction as it applies in relation to one entered in pursuance of section 37(8).]

(2) Where subsection (1) or (2) of section 38 above applies to any mortgage of land held by or in trust for a charity, the charity trustees shall certify in the mortgage—

- (a) (where subsection (1) of that section applies) that the mortgage has been sanctioned by an order of the court or of the Commissioners (as the case may be), or
- (b) (where subsection (2) of that section applies) that the charity trustees have power under the trusts of the charity to grant the mortgage, and that they have obtained and considered such advice as is mentioned in that subsection.

(3) Where subsection (2) above has been complied with in relation to any mortgage, then in favour of a person who (whether under the mortgage or afterwards) acquires an interest in the land in question for money or money's worth, it shall be conclusively presumed that the facts were as stated in the certificate.

(4) Where—

- (a) subsection (1) or (2) of section 38 above applies to any mortgage of land held by or in trust for a charity, but
- (b) subsection (2) above has not been complied with in relation to the mortgage, then in favour of a person who (whether under the mortgage or afterwards) in good faith acquires an interest in the land for money or money's worth, the mortgage shall be valid whether or not—
 - (i) the mortgage has been sanctioned by an order of the court or of the Commissioners, or
 - (ii) the charity trustees have power under the trusts of the charity to grant the mortgage and have obtained and considered such advice as is mentioned in subsection (2) of that section.

^{F4}(5)

(6) In this section—

“mortgage” includes a charge, and “mortgagee” shall be construed accordingly;

“land” means land in England or Wales;

[^{F5}and subsections (1) to (1B) above shall be construed as one with the Land Registration Act 1925.]

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Textual Amendments

- F3** S. 39(1A)(1B) inserted (1.4.1998) by 1997 c. 2, s. 4(1), **Sch. 1 Pt. I para. 6(2)**; S.I. 1997/3036, **art. 2(b)**
- F4** S. 39(5) repealed (1.1.1997) by 1996 c. 47, s.,25(2), Sch. 4 (with s. 24(2), 25(3)(4)(5); S.I. 1996/2974, **art. 2**
- F5** Words in s. 39(6) substituted (1.4.1998) by 1997 c. 2, s. 4(1), **Sch. 1 Pt.I para. 6(3)**; by S.I. 1997/3036, **art. 2(b)**

40 Release of charity rentcharges.

- (1) Section 36(1) above shall not apply to the release by a charity of a rentcharge which it is entitled to receive if the release is given in consideration of the payment of an amount which is not less than ten times the annual amount of the rentcharge.
- (2) Where a charity which is entitled to receive a rentcharge releases it in consideration of the payment of an amount not exceeding £500, any costs incurred by the charity in connection with proving its title to the rentcharge shall be recoverable by the charity from the person or persons in whose favour the rentcharge is being released.
- (3) Neither section 36(1) nor subsection (2) above applies where a rentcharge which a charity is entitled to receive is redeemed under sections 8 to 10 of the ^{M3}Rentcharges Act 1977.
- (4) The Secretary of State may by order amend subsection (2) above by substituting a different sum for the sum for the time being specified there.

Marginal Citations

- M3** 1977 c. 30.

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