



# Charities Act 1993 (repealed)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 [<sup>F1</sup>conveyed, transferred], leased or otherwise disposed of without an order of the court or of [<sup>F2</sup>the Commission].
- (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, [<sup>F3</sup>the requirements mentioned in subsection (2)(b) above are that] 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 <sup>F4</sup>Minister]; 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), <sup>F5</sup>the requirements mentioned in subsection (2)(b) above are that] 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 <sup>F6</sup>conveyed, transferred], leased or otherwise disposed of unless the charity trustees have <sup>F7</sup>before the relevant time]—
- (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.
- <sup>F8</sup>(6A) In subsection (6) above “the relevant time” means—
- (a) where the charity trustees enter into an agreement for the sale, or (as the case may be) for the lease or other disposition, the time when they enter into that agreement, and
  - (b) in any other case, the time of the 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) <sup>F9</sup>The Commission] may direct—

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- (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,
- if, on an application made to them in writing by or on behalf of the charity or charities in question, [<sup>F10</sup>the Commission is satisfied] that it would be in the interests of the charity or charities [<sup>F11</sup>for the Commission] 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
  - [<sup>F12</sup>(aa) to any disposition for which the authorisation or consent of the Secretary of State is required under the Universities and College Estates Act 1925; 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.

#### Textual Amendments

- F1** Words in s. 36(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 128(2)(a)**; S.I. 2007/309, art. 2, Sch.
- F2** Words in s. 36(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 128(2)(b)**; S.I. 2007/309, art. 2, Sch.
- F3** Words in s. 36(3) inserted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 128(3)**; S.I. 2007/309, art. 2, Sch.
- F4** Word in s. 36(4)(a) substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 4(o)**
- F5** Words in s. 36(5) inserted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 128(4)**; S.I. 2007/309, art. 2, Sch.
- F6** Words in s. 36(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 128(5)(a)**; S.I. 2007/309, art. 2, Sch. (with art. 6(1))

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- F7** Words in s. 36(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 128(5)(b)**; S.I. 2007/309, art. 2, Sch. (with art. 6(1))
- F8** S. 36(6A) inserted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 128(6)**; S.I. 2007/309, art. 2, Sch. (with art. 6(1))
- F9** Words in s. 36(8) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 128(7)(a)**; S.I. 2007/309, art. 2, Sch.
- F10** Words in s. 36(8) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 128(7)(b)**; S.I. 2007/309, art. 2, Sch.
- F11** Words in s. 36(8) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 128(7)(c)**; S.I. 2007/309, art. 2, Sch.
- F12** S. 36(9)(aa) inserted (1.6.2010 immediately after 2006 c. 50, s. 11(3) comes into force, see S.I. 2010/503, art. 2, Sch. 1) by The Charities Act 2006 (Changes in Exempt Charities) Order 2010 (S.I. 2010/500), art. 1, **Sch. 1 para. 4(2)** (with Sch. 2)

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**Modifications etc. (not altering text)**

- C1** S. 36 excluded (27.2.2010) by The Charities Act 2006 (Commencement No.7, Transitional and Transitory Provisions and Savings) Order 2010 (S.I. 2010/503), **Sch. 2 para. 9**

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**Changes to legislation:**

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