



# Charities Act 2011

## 2011 CHAPTER 25

### PART 7

#### CHARITY LAND

##### *Restrictions on dispositions of land in England and Wales*

#### **117 Restrictions on dispositions of land: general**

(1) No land held by or in trust for a charity is to be conveyed, transferred, leased or otherwise disposed of without an order of—

- (a) the court, or
- (b) the Commission.

But this is subject to the following provisions of this section, sections 119 to 121 (further provisions about restrictions on dispositions) and section 127 (release of charity rentcharges).

(2) Subsection (1) does 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 section 118), or
  - (ii) a trustee for, or nominee of, a connected person, and
- (b) the requirements of—
  - (i) section 119(1) (dispositions other than certain leases), or
  - (ii) section 120(2) (leases which are for 7 years or less etc.),have been complied with in relation to it.

(3) The restrictions on disposition imposed by this section and sections 119 to 121 apply regardless of anything in the trusts of a charity; but nothing in this section or sections 119 to 121 applies to—

- (a) 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—

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- (i) any statutory provision contained in or having effect under an Act, or
- (ii) any scheme legally established,
- (b) any disposition for which the authorisation or consent of the Secretary of State is required under the Universities and College Estates Act 1925,
- (c) 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
- (d) 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.
- (4) Nothing in this section or sections 119 to 121 applies to—
  - (a) any disposition of land held by or in trust for an exempt charity,
  - (b) any disposition of land by way of mortgage or other security, or
  - (c) any disposition of an advowson.

## **118 Meaning of “connected person” in s.117(2)**

- (1) In section 117(2) “connected person”, in relation to a charity, means any person who falls within subsection (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 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 paragraphs (a) to (d),
  - (f) a person carrying on business in partnership with any person falling within any of paragraphs (a) to (e),
  - (g) an institution which is controlled—
    - (i) by any person falling within any of paragraphs (a) to (f), or
    - (ii) by two or more such persons taken together, or
  - (h) a body corporate in which—
    - (i) any connected person falling within any of paragraphs (a) to (g) has a substantial interest, or
    - (ii) two or more such persons, taken together, have a substantial interest.
- (3) Sections 350 to 352 (meaning of child, spouse and civil partner, controlled institution and substantial interest) apply for the purposes of subsection (2).

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## **119 Requirements for dispositions other than certain leases**

- (1) The requirements mentioned in section 117(2)(b) 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 is advised in the surveyor's report (unless it advises 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.
- (2) Subsection (1) does not apply where the proposed disposition is the granting of such a lease as is mentioned in section 120(1).
- (3) For the purposes of subsection (1) a qualified surveyor is a person who—
  - (a) is a fellow or professional associate of the Royal Institution of Chartered Surveyors or satisfies such other requirement or requirements as may be prescribed by regulations made by the Minister, and
  - (b) 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.
- (4) Any report prepared for the purposes of subsection (1) must contain such information, and deal with such matters, as may be prescribed by regulations made by the Minister.

## **120 Requirements for leases which are for 7 years or less etc.**

- (1) Subsection (2) applies where the proposed disposition is the granting of a lease for a term ending not more than 7 years after it is granted (other than one granted wholly or partly in consideration of a fine).
- (2) The requirements mentioned in section 117(2)(b) 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.

## **121 Additional restrictions where land held for stipulated purposes**

- (1) Subsection (2) applies 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.

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- (2) The land must not be conveyed, transferred, leased or otherwise disposed of unless the charity trustees have before the relevant time—
- (a) given public notice of the proposed disposition, inviting representations to be made to them within a time specified in the notice, which must be not less than one month from the date of the notice, and
  - (b) taken into consideration any representations made to them within that time about the proposed disposition.
- (3) Subsection (2)—
- (a) is subject to subsections (5) and (6), and
  - (b) does not affect the operation of sections 117 to 120.
- (4) In subsection (2) “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.
- (5) Subsection (2) does 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 subsection (1) (b), or
  - (b) the disposition is the granting of a lease for a term ending not more than 2 years after it is granted (other than one granted wholly or partly in consideration of a fine).
- (6) The Commission may, if the condition in subsection (7) is met, direct—
- (a) that subsection (2) is not to 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 subsection (2) is not to apply to a particular disposition of land held by or in trust for a charity.
- (7) The condition is that the Commission, on an application made to it in writing by or behalf of the charity or charities in question, is satisfied that it would be in the interests of the charity or charities for the Commission to give the direction.

## **122 Instruments concerning dispositions of land: required statements, etc.**

- (1) Subsection (2) applies to any of the following instruments—
- (a) a 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) a conveyance, transfer, lease or other instrument effecting a disposition of such land.
- (2) An instrument to which this subsection applies must 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 disposition is one falling within section 117(3)(a), (b), (c) or (d), and

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- (c) if it is not an exempt charity and the disposition is not one falling within section 117(3)(a), (b), (c) or (d), that the land is land to which the restrictions on disposition imposed by sections 117 to 121 apply.
- (3) Where any land held by or in trust for a charity is conveyed, transferred, leased or otherwise disposed of by a disposition to which section 117(1) or (2) applies, the charity trustees must certify in the instrument by which the disposition is effected—
  - (a) (where section 117(1) applies) that the disposition has been sanctioned by an order of the court or of the Commission (as the case may be), or
  - (b) (where section 117(2) applies) that the charity trustees have power under the trusts of the charity to effect the disposition and have complied with sections 117 to 121 so far as applicable to it.
- (4) Where subsection (3) 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 is conclusively presumed that the facts were as stated in the certificate.
- (5) Subsection (6) applies where—
  - (a) any land held by or in trust for a charity is conveyed, transferred, leased or otherwise disposed of by a disposition to which section 117(1) or (2) applies, but
  - (b) subsection (3) has not been complied with in relation to the disposition.
- (6) 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 is valid whether or not—
  - (a) the disposition has been sanctioned by an order of the court or of the Commission, or
  - (b) the charity trustees have power under the trusts of the charity to effect the disposition and have complied with sections 117 to 121 so far as applicable to it.
- (7) Subsection (8) applies to any of the following instruments—
  - (a) a 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) a conveyance, transfer, lease or other instrument effecting a disposition of such land.
- (8) An instrument to which this subsection applies must state—
  - (a) that the land will, as a result of the disposition, be held by or in trust for a charity,
  - (b) whether the charity is an exempt charity, and
  - (c) if it is not an exempt charity, that the restrictions on disposition imposed by sections 117 to 121 will apply to the land (subject to section 117(3)).
- (9) In this section and section 123 references to a disposition of land do not include references to—
  - (a) a disposition of land by way of mortgage or other security,
  - (b) any disposition of an advowson, or
  - (c) any release of a rentcharge falling within section 127(1).

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### 123 Charity land and land registration

- (1) Where the disposition to be effected by any such instrument as is mentioned in section 122(1)(b) or (7)(b) will be—
  - (a) a registrable disposition, or
  - (b) a disposition which triggers the requirement of registration,
 the statement which, by virtue of section 122(2) or (8), is to be contained in the instrument must be in such form as may be prescribed by land registration rules.
- (2) Where the registrar approves an application for registration of—
  - (a) a disposition of registered land, or
  - (b) a person's title under a disposition of unregistered land,
 and the instrument effecting the disposition contains a statement complying with section 122(8) and subsection (1), the registrar must enter in the register a restriction reflecting the limitation under sections 117 to 121 on subsequent disposal.
- (3) 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 must apply to the registrar for the removal of the entry.
- (4) On receiving any application duly made under subsection (3) the registrar must remove the entry.
- (5) 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 must apply to the registrar for such a restriction as is mentioned in subsection (2) to be entered in the register in respect of the land.
- (6) On receiving any application duly made under subsection (5) the registrar must enter such a restriction in the register in respect of the land.

#### *Restrictions on mortgages of land in England and Wales*

### 124 Restrictions on mortgages

- (1) Subject to subsection (2), no mortgage of land held by or in trust for a charity is to be granted without an order of—
  - (a) the court, or
  - (b) the Commission.
- (2) Subsection (1) does not apply to a mortgage of any such land if the charity trustees have, before executing the mortgage, obtained and considered proper advice, given to them in writing, on the relevant matters or matter mentioned in subsection (3) or (4) (as the case may be).
- (3) In the case of a mortgage to secure the repayment of a proposed loan or grant, the relevant matters are—

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- (a) whether the loan or grant is necessary in order for the charity trustees to be able to pursue the particular course of action in connection with which they are seeking the loan or grant,
  - (b) 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
  - (c) the ability of the charity to repay on those terms the sum proposed to be paid by way of loan or grant.
- (4) In the case of a mortgage to secure the discharge of any other proposed obligation, the relevant matter is whether it is reasonable for the charity trustees to undertake to discharge the obligation, having regard to the charity's purposes.
- (5) Subsection (3) or (as the case may be) subsection (4) applies in relation to such a mortgage as is mentioned in that subsection whether the mortgage—
  - (a) would only have effect to secure the repayment of the proposed loan or grant or the discharge of the proposed obligation, or
  - (b) would also have effect to secure the repayment of sums paid by way of loan or grant, or the discharge of other obligations undertaken, after the date of its execution.
- (6) Subsection (7) applies where—
  - (a) the charity trustees of a charity have executed a mortgage of land held by or in trust for a charity in accordance with subsection (2), and
  - (b) the mortgage has effect to secure the repayment of sums paid by way of loan or grant, or the discharge of other obligations undertaken, after the date of its execution.
- (7) In such a case, the charity trustees must not after that date enter into any transaction involving—
  - (a) the payment of any such sums, or
  - (b) the undertaking of any such obligations,unless they have, before entering into the transaction, obtained and considered proper advice, given to them in writing, on the matters or matter mentioned in subsection (3) (a) to (c) or (4) (as the case may be).
- (8) For the purposes of this section proper advice is the advice of a person—
  - (a) who is reasonably believed by the charity trustees to be qualified by ability in and practical experience of financial matters, and
  - (b) who has no financial interest in relation to the loan, grant or other transaction in connection with which the advice is given;and such advice may constitute proper advice for those purposes even though the person giving it does so in the course of employment as an officer or employee of the charity or of the charity trustees.
- (9) This section applies regardless of anything in the trusts of a charity; but nothing in this section applies to any mortgage—
  - (a) for which general or special authority is given as mentioned in section 117(3) (a), or
  - (b) for which the authorisation or consent of the Secretary of State is required as mentioned in section 117(3)(b).
- (10) Nothing in this section applies to an exempt charity.

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## **125 Mortgages: required statements, etc.**

- (1) Any mortgage of land held by or in trust for a charity must 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 section 124(9), and
  - (c) if it is not an exempt charity and the mortgage is not one falling within section 124(9), that the mortgage is one to which the restrictions imposed by section 124 apply.
- (2) Where section 124(1) or (2) applies to any mortgage of land held by or in trust for a charity, the charity trustees must certify in the mortgage—
  - (a) (where section 124(1) applies) that the mortgage has been sanctioned by an order of the court or of the Commission (as the case may be), or
  - (b) (where section 124(2) applies) that 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 section 124(2).
- (3) Where subsection (2) 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 is conclusively presumed that the facts were as stated in the certificate.
- (4) Subsection (5) applies where—
  - (a) section 124(1) or (2) applies to any mortgage of land held by or in trust for a charity, but
  - (b) subsection (2) has not been complied with in relation to the mortgage.
- (5) 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 is valid whether or not—
  - (a) the mortgage has been sanctioned by an order of the court or of the Commission, or
  - (b) 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 section 124(2).
- (6) Where section 124(7) applies to any mortgage of land held by or in trust for a charity, the charity trustees must certify in relation to any transaction falling within section 124(7) that they have obtained and considered such advice as is mentioned in section 124(7).
- (7) Where subsection (6) has been complied with in relation to any transaction, then, in favour of a person who (whether under the mortgage or afterwards) has acquired or acquires an interest in the land for money or money's worth, it is conclusively presumed that the facts were as stated in the certificate.

## **126 Mortgages of charity land and land registration**

- (1) Where the mortgage referred to in section 125(1) will be a registrable disposition, the statement required by section 125(1) must be in such form as may be prescribed by land registration rules.



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- (2) Where any such mortgage will be one to which section 4(1)(g) of the Land Registration Act 2002 applies—
  - (a) the statement required by section 125(1) must be in such form as may be prescribed by land registration rules, and
  - (b) if the charity is not an exempt charity, the mortgage must also contain a statement, in such form as may be prescribed by land registration rules, that the restrictions on disposition imposed by sections 117 to 121 apply to the land (subject to section 117(3)).
- (3) Where—
  - (a) the registrar approves an application for registration of a person's title to land in connection with such a mortgage as is mentioned in subsection (2),
  - (b) the mortgage contains statements complying with section 125(1) and subsection (2), and
  - (c) the charity is not an exempt charity,the registrar must enter in the register a restriction reflecting the limitation under sections 117 to 121 on subsequent disposal.
- (4) Subsections (3) and (4) of section 123 (removal of entry) apply in relation to any restriction entered under subsection (3) as they apply in relation to any restriction entered under section 123(2).

#### *Release of charity rentcharges*

### **127 Release of charity rentcharges**

- (1) Section 117(1) does 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 10 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 £1,000, any costs incurred by the charity in connection with proving its title to the rentcharge are recoverable by the charity from the person or persons in whose favour the rentcharge is being released.
- (3) Neither section 117(1) nor subsection (2) of this section applies where a rentcharge which a charity is entitled to receive is redeemed under sections 8 to 10 of the Rentcharges Act 1977.

### **128 Power to alter sum specified in s.127(2)**

The Minister may by order amend section 127(2) by substituting a different sum for the sum for the time being specified there.

#### *Interpretation*

### **129 Interpretation**

- (1) In sections 117 to 126 “land” means land in England and Wales.
- (2) In sections 124 to 126 “mortgage” includes a charge.

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(3) Sections 123 and 126 are to be construed as one with the Land Registration Act 2002.

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