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CHARITIES ACT 2022
CHANGES TO THE DISPOSAL OF LAND BY
CHARITY TRUSTEES

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The Charities Act 2022 (the **Act**) makes wide ranging changes to the way in which charities operate and will implement the vast majority of recommendations made by the Law Commission report in 2017, including many to simplify and to provide greater flexibility in relation to the way charities deal with land.

The Act was passed in February 2022, but its provisions are being implemented in stages. Outlined below are those which came into force on 14 June 2023 (subject to two sets of saving provisions which apply to decisions made by trustees in relation to permanent endowment yet to be determined by the Charity Commission). A third stage to implement the remaining provisions is expected by the end of 2023 (rather than Autumn 2023). In addition to further changes to the rules relating to charity land, these provisions include changes to the rules on amending governing documents for charities, charity mergers and the Charity Commission's powers to appoint charity trustees and authorise remuneration.

Provisions of the Act which came into force on 14 June 2023

Charities must comply with certain legal requirements before they *dispose* of charity land. *Disposal* can include selling, transferring or leasing charity land. The Act will simplify some of these legal requirements which currently prohibit the disposal of charity land without an order of the court or Charity Commission or without obtaining a report from a qualified surveyor.

The changes will include:

1. An expansion of the exceptions to restrictions which currently apply where land is held jointly with a charity
2. Widening the category of designated advisers who can provide charities with advice on certain disposals, and confirming that a trustee, officer or employee can provide advice on a disposal if they meet the relevant requirements
3. Giving trustees discretion to decide how to advertise a proposed disposal of charity land
4. Removing the requirement for charities to get Charity Commission authority to grant a residential lease to a charity employee for a short periodic or fixed term tenancy

Expansion to the restrictions on dealing with charity land

Currently, restrictions apply to disposals of charity land to ensure that charities obtain the "best terms" before disposing of land. However, these restrictions also apply where, for example a trustee holds land on trust for multiple beneficiaries, only one of which is a charity. The Act amends these provisions so that the restrictions will only apply:

- where a charity owns land both legally and beneficially
- where a trustee holds land on bare trust for a single charity
- where land is left to a charity in a will and the executor has appropriated the land to the charity, or
- where a charity owns land as one of several tenants in common but is disposing of only its share

And will not apply:

- where a charity is one of several beneficial joint tenants of land and the entirety of the land is being disposed of by the trustee of the land
- where a charity is one of several tenants in common of the land and the entirety of the land is being disposed of by the trustee of the land
- where land which is being disposed of is left to, and has been appropriated or assented to, multiple beneficiaries under a will, one or more of which is a charity, or
- where a trustee holds land on trust for multiple beneficiaries, one or more of which is a charity

Also excluded from the restrictions will be disposals of charity land by liquidators, receivers, administrators and mortgagees.

The Act also addresses the provisions which apply in relation to charity-to-charity disposals which, in certain circumstances may be made for less than “the best price”. The current provisions are designed to protect against disposals at an undervalue but recognise that other motivating factors apply, for example where the purchasing charity intends to use it for charitable purposes which align with those of the seller.

Designated advisers

The current statutory requirements on trustees provide that before charity trustees enter into any agreement for the sale, lease or other disposition of land, they must obtain and consider a written report (known as a *s119 report*) on the proposed disposition from a *qualified surveyor* who must

- be a fellow or professional associate of the Royal Institution of Chartered Surveyors (or satisfy such other requirements as may be prescribed by regulations)
- have ability in, and experience of, valuing land that is the same kind of land and in the same area as the land being disposed of

Sections 19 and 20 of the Act implement the Law Commission’s recommendation that the category of advisers is expanded to include fellows of the National Association of Estate Agents and fellows of the Central Association of Agricultural Valuers, with the additional substitution of references to a *qualified surveyor* with a “designated adviser” – a term which is thought better to reflect an expanded category of advisers who may not be members of the Royal Institution of Chartered Surveyors.

Additionally section 21 of the Act inserts a new section to enable qualified charity trustees, officers and employees to provide a report or advice including where they do so in the course of their employment by the charity.

On the one hand, these amendments will give charity trustees greater flexibility in their choice of adviser – however, less sophisticated trustees may find this creates uncertainty in their choice. Where trustees provide advice, careful consideration must be given to potential conflicts of interest.

Written Report

The s119 report must contain the information and deal with matters that are prescribed by the Charities (Qualified Surveyors' Reports) Regulations 1992/2980. These will be repealed by the Designated Adviser Regulations 2023 when sections 19 and 20 of the Act come into force.

The new regulations significantly simplify the currently very prescriptive requirements for what must be included in the report, replacing them with the following broad categories of advice which must be included:

- The value of the relevant land
- Any steps which could be taken to enhance that value
- Whether and, if so, how the relevant land should be marketed
- Anything else which could be done to ensure that the terms on which the disposition is made are the best that can be obtained for the charity

Any other matters which the designated adviser believes should be drawn to the attention of the charity trustees.

The Act removes the statutory requirement to advertise a proposed disposal as advised in the s119 report. Instead, the charity is obliged to consider any advice on advertising by the designated adviser, but there is no longer a statutory requirement for the charity to follow that advice.

In addition, the designated adviser will be able to self-certify that they:

- Have the ability in, and experience of, the valuation of land of the particular kind, and in the particular area, in question
- Do not have any interest that conflicts, or would appear to conflict, with that of the charity

Other matters

Connected persons

Currently, disposals of charity land to an employee are prohibited because employees of a charity fall within the definition of connected persons for purposes of the Charities Act 2011, unless they are authorised by the Charity Commission. Section 22 of the Act creates an exception to this prohibition in the case of the grant of a short fixed-term or periodic tenancy to an employee of a charity to use as their home. It will still be necessary to obtain advice on the grant of such a lease, but there will no longer be a requirement for Charity Commission consent.

Statements

In addition to the current requirement that a conveyance of charity land contains a statement that the statutory requirements regarding the disposal of charity land have been complied with – that is that the trustees have obtained and considered relevant advice, or the court or Charity Commission has authorised the transaction – the contract for sale will also have to contain the same statement.

The second amendment concerns the protection of purchasers. As is currently the case with the statement in the conveyance, the statement in the contract is now conclusively presumed to be true in favour of the person enforcing the contract. Additionally, as currently applies to a conveyance, where the statement is required but has been omitted, the contract is enforceable by a person who has entered into the contract in good faith, as if the trustees had complied with the statutory requirements.

This means that a charity will no longer be able to rely on its failure to comply with its statutory obligations in order to avoid completing a contract.

Using permanent endowment

Permanent endowment is property that your charity must keep rather than spend.

The Act will introduce new statutory powers to enable:

- charities to spend, in certain circumstances, from a 'smaller value' permanent endowment fund of £25,000 or less without Commission authority
- certain charities to borrow up to 25% of the value of their permanent endowment fund without Commission authority
- charities that have opted into a total return approach to investment to use permanent endowment to make social investments with a negative or uncertain financial return, provided any losses are offset by other gains

Charities that cannot use the statutory powers will require Charity Commission authority.

Further provisions which apply to charity land:

- relating to disposals by liquidators, provisional liquidators, receivers, mortgagees or administrators
- relating to the taking out of mortgages by liquidators, provisional liquidators, receivers, mortgagees or administrators, and
- changes about what must be included in statements and certificates for both disposals and mortgages

are expected to come into force at the end of 2023.

These notes do not contain or constitute legal advice, and no reliance should be placed on them. If you have any questions, please do not hesitate to speak to your usual contact at Maurice Turnor Gardner LLP.