

The Charities Act 2022

Changes to the rules for the disposal of charity land

The purpose of this note is to outline the rules governing the disposal of charity land and how these rules are impacted by the Charities Act 2022 ("the Act"). The provisions of the new legislation which relate to land are due to come into force in **June 2023**.

This note applies to property which is held by a Charity and is subject to the rules governing disposals in accordance with the Charities Act 2011.

In a church context, this will apply to dispositions of land and buildings owned by a PCC but not to dispositions of Glebe or Parsonage land, which are governed by the Church Property Measure 2018.

CHARITIES ACT 2011 – FAMILIAR CURRENT ('OLD') REQUIREMENTS

When a charity is disposing of its land, whether by the sale of the freehold or the grant/renewal of a lease of more than 7 years, they must comply with the following requirements, to:

- obtain and consider a written report on the proposed disposition from a qualified surveyor instructed by the trustees,
- advertise the proposed disposition in the manner and for the period 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
- decide that they are satisfied, having considered the report that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity.

Where the disposition is by way of a lease for a term of less than 7 years, the requirements are to:

- obtain (best done in writing) 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
- 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.

If the charity trustees are not able to comply with these requirements, then the consent of the Court or the Charity Commission must be obtained before there can be any dealing with the land.

CHARITIES ACT 2022 CHANGES TO THE FAMILIAR ('NEW') REQUIREMENTS

The Act makes changes to:

- a. who can provide the advice,
- b. what the advice should cover, and
- c. the form it may take; and
- d. removes the automatic requirement to advertise a proposed disposal in the manner advised by the surveyor.

WHO CAN GIVE THE ADVICE?

The Act expands the choice of advisers who can give the advice by removing reference to "qualified surveyor" and replacing it with "designated advisor". Advisors need not be members of the RICS and can include fellows of the National Association of Estate Agents and the Central Association of Agricultural Valuers.

Section 21(2) of the Act also specifically allows charity trustees, officers and employees to provide a report or advice (under s.119(1)(a) and s.124(2) CA2011) to the charity on land disposals and this may be in the course of their employment with the charity.

WHAT THE ADVICE SHOULD COVER?

The new advice requirement is significantly simplified, requiring trustees to obtain a report which deals with the following:

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

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

The report should also include a self-certification by the advisor that they:

- Have the appropriate expertise and experience to provide the advice that is required, and
- Do not have any interest that conflicts or would appear to conflict with that of the charity.

THE FORMAT OF THE ADVICE

The Act does not specifically oblige trustees to obtain a written report. In theory therefore a report could be given verbally at a meeting and recorded in minutes.

We would always advise that any such advice should be confirmed in writing, if only by email, so that there is a future record which can be shared with others if necessary – eg in the case of a PCC, with the Diocesan Authority.

WHO THE RESTRICTIONS WILL APPLY TO

The restrictions apply only to land where the whole of the land being disposed of is held:

- either by a charity solely for its own benefit and not as a nominee or in trust for another person, or
- in trust solely for that charity (where it is an unincorporated charity).

CHARITY TO CHARITY DISPOSITIONS

Section 18 of the Act amends the exceptions to the general restrictions on disposing of or mortgaging charity land to, amongst other things, confirm that the 'new' restrictions apply only to disposals (to another charity) which are solely intended to further the disposing charity's purposes. This means that the exception will not apply if the disposition is:

- a commercial transaction (that is, a transaction intended to achieve the best price that can reasonably be obtained for the disposing charity); or
- a social investment.

The requirement for the disposition to be authorised by the trusts of the disposing charity is deleted. The purpose here is to make it clear that it is not necessary for the charity's governing document to include an express provision authorising a disposition for it to fall within

the exception. However, this will not allow a charity to make a disposition that is not permitted by its governing document (such as a transfer at an undervalue to a charity with incompatible charitable purposes).

INFORMATION TO BE INCLUDED IN CERTAIN INSTRUMENTS

s.23 of the Act requires charities to include in a contract for a disposition a statement:

- That the disposition has been sanctioned by an order of the court or the commission; or
- That there is a power under the trusts of the charity to effect the disposition and that s.117-121 of the Charities Act 2011 have been complied with.

The new rules mean that the requirement to include statements in charity land disposal documents will be the same at each stage of the transaction (contract and completion).

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This briefing note is not intended to be an exhaustive statement of the law and should not be relied on as legal advice to be applied to any particular set of circumstances. Instead, it is intended to act as a brief introductory view of some of the legal considerations relevant to the subject in question.