

Disposing of Charity Land

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What is this guidance about?

1. This guidance describes the duties of charity trustees when they convey, transfer, lease, mortgage or otherwise dispose of land belonging to their charity. These duties are set out in the Charities Act 1993, in particular in sections 36-40 of that Act.

Meaning of words and expressions used

2. In this guidance:

The **1993 Act** means the Charities Act 1993 as amended by the Charities Act 2006.

An **exempt charity** is a charity falling within Schedule 2 to the 1993 Act. These include organisations such as universities and most state schools. **Exempt charities** are largely outside our jurisdiction, because other arrangements exist to supervise and regulate them. They cannot be registered with us. Further guidance is contained in **Exempt Charities (CC23)**.

Trustees means **charity trustees**. The charity trustees are the people responsible under the governing document for controlling the charity's management and administration. In the governing document they might be called committee members, governors, directors or some other title. Sometimes a charity also has custodian or holding trustees, whose function is restricted to holding its property. Custodian or holding trustees have no power to make management decisions and must act on the lawful instructions of the **charity trustees**.

Land means land in England and Wales with or without buildings, and includes any estate or interest in land, such as a lease, a right of way, or an easement.

Designated land, which is sometimes referred to as 'specie land', means land which is held on trust for the purposes, or any particular purposes, of the charity.

Disposal of land is used as a shorthand for sales, leases, grants of rights of way or other rights, exchanges of land, and all other transactions in which trustees part with or grant an interest in their land **except** for the release of a rentcharge and the granting of a mortgage. These two matters are dealt with in their own sections. Before the disposal is completed, the two parties will usually enter into an agreement for disposal (eg by an "exchange of contracts"). An agreement for disposal is not itself a disposal and is not something to which we can give our consent.

A charity's **governing document** is any document setting out the charity's purposes and, usually, how it is to be administered. It may be a trust deed, constitution, memorandum and articles of association, will, conveyance, or Scheme of the Commission.

The **trusts** of a charity means the provisions contained in the governing document(s) of the charity.

Permanent endowment is property of the charity (including land, buildings, cash or investments) which the trustees may not spend as if it were income. It must be held permanently, sometimes to be used in furthering the charity's purposes, sometimes to produce an income for the charity. The trustees cannot normally spend permanent endowment

without our authority. Please see **Expenditure and Replacement of Permanent Endowment (CC38)**.

Connected person includes:

- a trustee of or for the charity (this includes holding and custodian trustees);
- a donor of any land to the charity;
- close relatives, ie children, parents, grandchildren, grandparents and brothers or sisters;
- employees, officers, or agents of the charity;
- the spouses, civil partners or “common law” partners of all such persons;
- a person in business partnership with any people in the above categories;
- institutions controlled by such persons; and
- companies in which such persons have a substantial interest.

The precise meaning of **connected person** is given in Schedule 5 to the 1993 Act. We would advise trustees to seek their own legal advice or contact us if they are unsure whether a particular person or body is a **connected person**.

Fine includes a premium and any other payment or benefit (other than rent) made to a charity on the grant by it of a lease. If the land that has been leased is permanent endowment of the charity the fine payment will also be subject to that restriction.

Does this guidance apply to exempt charities?

Must or **need** are used to refer to actions that trustees, or their agents or employees, are obliged to take by law.

When we use terms such as the trustees **should** or we **suggest, recommend** or **advise** we are referring to actions which the trustees, their agents or employees could take and which we consider to be good practice, but which are not legal requirements.

3. The requirements relating to the disposal and mortgaging of charity land in the 1993 Act do not, for the most part, apply to exempt charities. However, sections 37 and 39 of the 1993 Act **do** apply to exempt charities. These sections are referred to in paragraphs 51 to 56.

Trustees' general duties in relation to their land

4. The trustees of any charity which owns land have certain general duties in relation to it. These duties are prescribed by law, and not by us. They apply whether the land is used by the charity for its own purposes, or whether the land is let to produce an income for the charity. These general duties are:

- trustees are individually and jointly responsible for the protection, management and supervision of the land;
- in managing the land, trustees must act **only** in the interests of the charity and its beneficiaries;
- trustees must act honestly and use the same degree of care as they would prudently exercise in dealing with their own business affairs;

- they must maintain overall control of the management of their land;
- trustees must seek advice from independent professional advisers acting exclusively for the charity;
- any decision to dispose of or mortgage land must be taken by the trustees acting together; and
- when disposing of, or mortgaging, land belonging to their charity, trustees should not leave the conduct of the transaction unsupervised in the hands of a single trustee. We strongly recommend that any employee, clerk or adviser (however trusted) is not left unsupervised while carrying out a disposal or mortgage of land. However, it may be possible for trustees to delegate the procedures for section 36 in an appropriate manner either under the terms of the charity's governing document or under section 11(3) of the Trustee Act 2000.

5. The rest of this guidance is divided into three Parts. Each part describes a different set of procedures which must be followed before trustees can:

- carry out any disposal of their charity's land (*Part A: (paragraphs 6-59)*);
- mortgage their charity's land (*Part B: (paragraphs 60-65)*); or
- voluntarily release a rentcharge (*Part C: (paragraphs 66-71)*).

Part A: Disposals of Land

6. This part covers all such transactions other than mortgages and the release of rentcharges. As indicated above, an agreement for a disposal is not itself a disposal.

7. Trustees must consider four issues:

(a) Do they have power to dispose of the land?

8. Most charities have a power of sale in their governing document. The trustees can rely on that power when they intend to dispose of charity land. If such a power exists, trustees should ensure that any conditions attached to that power are fulfilled; for example some governing documents state that a public meeting should be held before land is disposed of. Powers of sale which have the proviso "subject to the consent of the Commission" or "the Secretary of State" can be used without such consent provided the trustees follow the regulations set out in this guidance.

9. If the trusts of a charity do not permit the disposal of its land, but the trustees wish to do so, they can often rely on the powers contained in Section 6(1) of the Trusts of Land and Appointment of Trustees Act 1996. That section gives trustees all the powers of an absolute owner which, of course, includes a power of sale. If the governing document requires that the land be used for a specific purpose (eg as a recreation ground) the trustees should use the proceeds of any sale to purchase land to be used for a similar purpose. If the trustees do not intend to replace designated land, a Scheme will usually be required to authorise the sale and make provision for the proceeds of sale. This is

What steps should trustees consider before disposing of land belonging to their charity?

because such a sale involves a change in the trust purposes on which the land is held. If a Scheme is needed, trustees should approach us before the disposal takes place. If the trustees do not wish to buy replacement property, they should contact us for advice before proceeding with a disposal.

10. If the land forms part of the permanent endowment of the charity then the proceeds of sale will also be permanent endowment and cannot normally be applied without an Order from us. The two exceptions to this are:

- where it is proposed to purchase replacement property to be used for the purposes of the charity; or
- where the land sold was used to produce an investment income in which case the proceeds can normally be used to purchase investments designed to generate income. The investments would however be permanent endowment and must be retained (see paragraph 12 for more information on disposals of investment land).

(b) Is the disposal beneficial to the charity?

11. Trustees sometimes wish to dispose of land used for carrying out the charity's purposes, in order to acquire other land to replace it. In doing so, they must ensure that the replacement land is as, or more, suitable for carrying out the charity's purposes than the land being sold.

12. Where trustees are disposing of land which is let to produce an income for the charity, they must be satisfied that the sale of the land is more beneficial to the charity than the retention of the land. Trustees may need to seek professional advice on the long-term potential

of the land, especially whether there are any steps which they can take to enhance the income it generates or if it may be suitable for development. They will also need to compare the income which the land would yield if they retained it, with the income they could obtain by selling it and investing the sale proceeds.

13. If trustees are considering granting a lease or an easement over part of their land, they should take into account the effect that this would have on the current and future:

- use of the land; and
- value of the land.

14. When granting a lease or tenancy, trustees will usually need to take legal advice about the terms of the lease or tenancy agreement. If they do not take such advice, they may find that they have given the tenant security of tenure, or a right to renew the lease or buy the land outright, which they did not intend.

15. The trustees must consider disposals only from the point of view of what is in the best interests of the charity. Some disposals may arouse hostility from, for example, the local community, neighbouring landowners, tenants of the property or even in some cases from existing beneficiaries. Trustees need always to be able and prepared to justify any particular disposal by showing why it is in the best interests of the charity, both now and in the future.

(c) Are the terms of the disposal the best that can be obtained for the charity?

16. Charity trustees must always secure the best terms reasonably obtainable when they dispose of or lease land belonging to their charity. This means that trustees must:

- seek professional advice on the timing and method of the disposal;
- ensure that the land is marketed in a way which will encourage the most offers; and
- accept the best financial offer which is made for the land, except where there are other special factors.

17. These matters are dealt with at greater length in paragraphs 38-41.

(d) Is our consent to the disposal needed?

18. Usually, no. If trustees follow the statutory requirements in relation to the type of disposal they are carrying out (contained in sections 36 to 40 of the 1993 Act) before entering into an agreement for disposal they will not need to obtain our consent. This is true regardless of whether the land is permanent endowment or whether it has been occupied for the purposes of the charity provided that, where it is designated land, the sale of the land does not involve a change in the trust purposes on which the land is held. A sale with the intention of purchasing replacement land will not involve a change of purpose unless retention of that particular piece of land is part of the trusts eg as may be the case with a building of particular historical interest. **We will only give our consent to a disposal where trustees are unable to follow the statutory requirements.** We would advise trustees to ask their solicitor to consider whether consent is needed and ensure that the disposal is carried out in accordance with the statutory requirements. If trustees are still in doubt after taking legal advice, we will be able to give further advice.

What statutory requirements must trustees follow to avoid the need for consent?

19. Our consent would be required if:

- the disposal was to a connected person;
- the surveyor was unable to recommend the terms of the transaction;
- the trustees did not wish to use a surveyor;
- the surveyor the trustees used was not qualified as set out in the 1993 Act (see paragraph 30); or
- the trustees fail to follow the statutory requirements before they enter into an agreement to dispose.

20. The answer depends on the type of disposal. There are two sets of requirements, one each for:

- leases for seven years or less where no premium or other fine is paid to the charity; and
- all other disposals, including leases for seven years or less with a premium or other fine, leases for more than seven years (with or without a premium or fine), sales of land, exchanges of land and grants of options, rights of way and other easements.

21. However, where the express authority for the disposal is contained in an Act of Parliament, a statutory instrument, or a Scheme of the Court or of ours, these requirements need not be followed, nor is our consent needed in such cases. See also paragraphs 48 and 50 for other circumstances where the restrictions on disposal do not apply.

Leases for seven years or less where the charity receives no premium or other fine

22. Trustees will not need our consent to grant a lease of land for seven years or less if all the following requirements are satisfied:

- no premium or fine is charged for the lease;
- trustees obtain and consider the advice of a person they reasonably believe to have the ability and experience to advise them competently on the granting of the lease;
- trustees satisfy themselves, taking into account the views of their adviser, that the terms they are receiving for the lease are the best that can reasonably be obtained in the circumstances;
- the land is to be leased to someone who is not a "connected person"; and
- they meet the statutory requirements before entering into an agreement for disposal.

23. These requirements are set out in sections 36(1), (2) and (5) of the 1993 Act.

24. We recommend that trustees choose their adviser carefully, since that selection is their responsibility alone. They need to satisfy themselves that the person they wish to consult has the ability and experience to advise them competently on the terms of the lease. This includes advice on the covenants and the rent, and on whether the lease is, overall, one into which it would be advisable to enter.

25. Where land is let for a short period, it is particularly important to ensure that the trustees will be able to take possession of it at the end of the term. Trustees will need to avoid giving the tenants security of tenure which would allow them to continue in occupation, and they should ensure that they obtain advice on the matter.

Other transactions, including leases for more than seven years, leases for premiums or other fines, freehold sales, grants of easements, rights and options, exchanges of land

26. An Order of the Court or ourselves is not needed to authorise such transactions if they comply with all of the following requirements set out in section 36 of the 1993 Act:

- obtain and consider a written report on the proposed disposal from a qualified surveyor instructed by the trustees and acting exclusively for the charity (there are special requirements both for the surveyor's qualifications and, for the contents of the surveyor's report, which are explained below);
- advertise the property in accordance with the surveyor's advice, if the surveyor advises that advertising or marketing the property would not be in the best interests of the charity, then the property need not be advertised (but please see paragraphs 42 and 47 below);
- having considered the surveyor's report, the trustees must satisfy themselves that the terms of the disposal they intend to make are the best that can reasonably be obtained;

What if the land is being acquired under a compulsory purchase order?

- the person to whom the trustees are selling or otherwise disposing of the land is not a "connected person"; and
- they meet the statutory requirements before entering into an agreement for disposal.

27. Charity land can be affected by a compulsory purchase order like any other land. If a compulsory purchase order is made on charity land, the trustees still have a duty to ensure that the compensation paid is the best that can reasonably be obtained. To that end it will generally be in the charity's interests for the trustees to negotiate with the acquiring authority, rather than to allow the acquisition to proceed strictly in accordance with the compulsory purchase procedure.

28. Professional advice is recommended in order to help the trustees decide how best to proceed, even in cases in which they do not need to comply with the requirements of section 36 of the 1993 Act. Allowing the disposal to proceed strictly in accordance with the compulsory purchase procedure has the disadvantage that, if the trustees do not have a power of sale, the compensation must be paid into court.

29. Trustees who do not have a power of sale can either rely on the statutory power of sale conferred by the compulsory purchase legislation (which takes the disposal outside section 36 but has the disadvantage mentioned above) or seek assistance from us. If the trustees already have a power of sale, the compensation need not be paid into court. They will, however, need to comply with the requirements of section 36.

What are the requirements for the surveyor's qualifications?

30. The surveyor must be a fellow or member of the Royal Institution of Chartered Surveyors (RICS). A surveyor qualified in this way will be entitled to use the letters FRICS, or MRICS after their name.

31. In addition, the surveyor must have ability in, and experience of, valuing land of the type the trustees are selling (eg farmland, freehold residential property, light industrial units, or whatever) in the area where the trustees' land is situated.

32. Trustees should satisfy themselves, that the surveyor they intend to instruct to act for them, possesses these qualifications, ability and experience.

33. The above three paragraphs relate to section 36 (3) of the 1993 Act and not 36 (5).

What must the surveyor's report contain?

34. The surveyor's report must be in writing and must deal with the matters laid down in the Charities (Qualified Surveyors' Reports) Regulations 1992 (SI 1992/2980). Copies of the regulations may be obtained from Her Majesty's Stationery Office; they are not available from us. When instructing a surveyor to act for them, it is the trustees responsibility to make sure that the surveyor is aware of these regulations, as the surveyor's report(s) must cover everything contained within them. These regulations require the surveyor to comment, amongst other things, on:

- whether the land or buildings are in good order and if any work needs to be done before the sale;
- whether the land or buildings are subject to any restrictions, easements etc;

- advice on how best to sell the land; and
- the surveyors opinion on the value of the property.

35. The regulations will not, in some cases, cover **all** the matters on which trustees would wish to receive advice. We would advise trustees to urge their surveyor to report to them on any other matters which the surveyor feels are relevant in the circumstances, or on which the trustees wish to receive advice. The surveyor could, for example, always be asked to assess the offers actually made for the land and give a positive recommendation if they believe that one offer represents the best obtainable in the circumstances. In some cases the surveyor may need, for instance, to give specific advice about the effect of a sale on the value of adjoining land retained by the trustees. It may also be that trustees will need to receive more than one report, at different stages of the transaction.

36. The above two paragraphs also relate to Section 36 (3) of the 1993 Act and not section 36 (5).

37. We recommend that trustees view the regulations as setting out the minimum information and advice which they will need to consider before disposing of any property.

38. The legal requirement is that trustees must satisfy themselves that they have secured the best terms reasonably obtainable in the circumstances. Normally this means that they must accept the highest offer they receive, if they are satisfied that it has been made in good faith. There may, however, sometimes be other elements in the proposed sale which will benefit

Must the trustees always obtain the best price?

the charity or advance its purposes. For example, if the charity owns adjoining land and is seeking a restrictive covenant or easement in favour of that land over the land being sold, or the land is being sold to another charity with similar purposes (see paragraph 48).

39. Until they have signed a legally enforceable contract with a purchaser, trustees are obliged to consider any other offers they receive, even when they have already accepted an offer. There may, however, be occasions where the trustees doubt, on reasonable grounds, a purchaser's intention or ability to complete the purchase. In such cases they may properly accept a lower offer, provided that their professional advisers agree with that conclusion.

40. Trustees cannot sell at less than the best price simply in order to avoid selling to a purchaser whom they find objectionable: the interests of a charity must come before the trustees' personal preferences. However, trustees may reject an offer where they have reasonable grounds for believing that the purchaser will use the land in a way which will either:

- affect other land which they are retaining; or
- be directly contrary to the purposes of the charity.

41. Where they accept a lower price, they must be clear that this is to the overall advantage of the charity. The surveyor or other adviser **must** be instructed to assess the value of any non-monetary elements in an offer.

Land held by a charity for specific purposes

42. There are additional rules concerning the disposal of any land which is required under the charity's trusts to be used by the charity for the purposes or a particular purpose of the charity, for example as a recreation ground or as an almshouse. These rules are set out in sections 36(6) to (8) of the 1993 Act.

43. In such cases, before entering into an agreement for the disposal, the trustees are required to give public notice of their intention to dispose of the land and consider any representations made following such notice during a prescribed period of time (at least, one month). The purpose of this is to allow people who may be affected by the disposal of the land to give their views to the trustees. However, these rules do not apply if:

- the trustees are intending to acquire other land to be held on the same trusts by way of replacement for the land being disposed of;
- the trustees are granting a lease for two years or less, receiving only a rent and levying no premium or fine;
- we have given a direction that the rules do not apply to the charity generally, or the particular disposal in question; or
- we have given a direction in relation to a class of charity.

How must public notice be given?

44. There are no specific legal requirements about the notice, except that it must invite people to give their views to the trustees by a particular date. This date must be at least a month after the notice is published.

Can the requirement to give public notice be waived?

45. The form and extent of the notice will depend on the size and type of the charity. In the case of a local charity it will usually be acceptable for the trustees to put up a notice on the property itself and to insert a second notice in a local newspaper. Larger charities, or charities with specialised activities, will have to consider advertising in newspapers of wider circulation or in specialised publications connected with the charity's activities. In publishing the notices, it is recommended that trustees aim to reach as many beneficiaries, and other people who may have an interest in the charity, as is possible at reasonable cost.

46. Yes. If the trustees consider they have a good reason why public notice ought not to be given they can apply to us, in writing, for a waiver from the provisions of section 36(6). Any such application should set out, in as much detail as possible, why the trustees believe that it would be in the best interests of the charity not to publish the notice. We will then consider whether a waiver can be granted. Any representations made to the trustees within the time stated in the notice must be considered. Trustees are not obliged to act in accordance with any representations they may receive, but they should carefully consider them and not reject them out of hand. It is recommended that they keep minutes of their discussions about the representations and the conclusions which they reached.

Can land be sold by auction?

47. Yes, but since the identity of the purchaser is not known beforehand, trustees cannot be sure that the purchaser will not be a "connected person". At any auction of charity land we strongly recommend that the conditions of sale make it clear that, if the purchaser of the charity's land turns out to be a "connected

Are there special conditions when one charity is selling to another?

person" the sale will be conditional on our consent being obtained. The statutory requirements (section 36(3) or (5)) must be complied with prior to the date of the auction or it will be necessary to obtain consent from ourselves.

48. Sometimes the trustees of a charity will wish to sell or lease land, for less than its full value, to another charity. Where such a disposal is authorised by the trusts of the disposing charity then, under section 36(9)(b) of the 1993 Act, the trustees need not comply with the statutory requirements for disposals described above. Nor do the trustees need to seek our consent to the transaction. Briefly, a disposal can be regarded as authorised by the trusts of the disposing charity if:

- there is nothing in the trusts which specifically prohibits the disposal;
- the disposal is a means of making use of the charity's assets in furtherance of its charitable purposes, for example, if a charity existed to provide playing fields, it could be acceptable for that charity to convey some suitable land to a local recreational charity for that purpose; or
- it has a power under its trusts to convey or sell its land to the recipient charity.

49. If the trustees have any doubt about whether the trusts authorise the proposed disposal, they could contact us for advice.

Are there special conditions when a charity grants a lease to a beneficiary of the charity?

50. Yes. Provided that the lease:

- is authorised by the trusts of the charity;
- is for less than the best rent that can reasonably be obtained; and
- is intended to enable the property leased to be occupied for the purposes, or a particular purpose, of the charity,

then under section 36(9)(c) to the 1993 Act, the trustees do not have to follow the statutory requirements described above for the granting of leases. Nor do they have to obtain our consent. These special conditions will apply where, for example, a charity which provides accommodation for elderly people in need, leases flats to such people for less than the market rent.

How will a purchaser of charity land know that the trustees have followed the legal requirements correctly?

51. Section 37 of the 1993 Act requires trustees, disposing of charity land, to include certain statements and certificates in the contract which they make with the purchaser, and also in the conveyance, lease, transfer or other deed or document which effects the disposal. Section 39 of the 1993 Act imposes similar requirements in relation to mortgage deeds. These statements will make it plain to the purchaser that they are buying or leasing land from a charity as opposed to a private individual or a commercial company. They will also protect the purchaser's title to the land if it later becomes clear that the trustees disposed of the land without following the statutory requirements.

52. The statements or certificates are intended, in summary to show:

- that the land being disposed of belongs to a charity and that the trustees have power to dispose of it;
- which, if any, statutory requirements the trustees are obliged to follow in connection with the disposal; and
- either that the appropriate statutory requirements have been followed or that our consent or that of the Court has been obtained.

53. If trustees certify that they have followed the statutory requirements in connection with the disposal when they have **not** followed them, the disposal is still valid in the purchaser's favour provided that the purchase was made in good faith for money or money's worth. The trustees may be liable for any loss to the charity arising from their improper actions and may have to repay that loss from their personal resources. If trustees enter into an agreement for a disposal without complying with the statutory requirements as appropriate any agreement will be subject to the disposal receiving our consent.

54. Some of the statements required to be included in contracts and sale documents for registered land must be worded in a form laid down by rules of the Land Registrar. These rules are:

- the Land Registration (Charities) Rules 1992 (SI 1992/3005);
- the Land Registration (Charities) Rules 1993 (SI 1993/1704);
- the Land Registration Rules 1995 (SI 1995/140); and
- the Land Registration Rules 1996 (SI 1996/2975).

Are there any rules concerning deeds of which trustees need to be particularly aware?

55. In other cases, the wording is for the charity's solicitor (or licensed conveyancer) to decide. They are responsible for seeing that contracts and deeds giving effect to the charity land transactions are in the correct form.

56. The obligations of trustees in respect of these statements and certificates are complicated, and this guidance has given only a general indication of them.

57. Yes. There are two issues of which we recommend that trustees take particular note:

- Firstly the parties to any deed or transfer must include the individuals, or corporate body, who act as custodian or holding trustee(s).
- Secondly, it is not necessary for all the trustees to sign the deed. Under section 82 of the 1993 Act two or more trustees can execute a document on behalf of the trustees.

58. We advise that trustees ask their legal adviser to ensure that the document is technically correct.

59. If the land is vested in the name of the Official Custodian for Charities, it is normally sufficient for him to be a party to any deed which effects the disposal, he need not actually execute the deed. However, under some circumstances the Official Custodian might have been made custodian of the land as a means of protecting the property of the charity. If that is the case and the trustees are disposing of the land under section 36 and without an Order, it will be necessary for the Official Custodian to personally execute the deed. The trustees legal advisers need to be made aware of this possibility and advise the trustees accordingly.

Part B: Mortgages

60. A mortgage includes a charge over a charity's land. Trustees may, without our consent, and providing they have an express power to do so, grant a mortgage over charity land as security for any purpose (including the repayment money they have borrowed or grants) provided they can meet the two requirements laid down in section 38 of the 1993 Act. If they cannot meet these requirements they must seek consent before they sign or create the mortgage or charge. The two requirements are:

- They must obtain and consider the advice of someone who they reasonably believe has sufficient ability in, and practical experience of, financial matters to give them sound advice. This person can be an officer or employee of the charity, but must not have any financial interest in the loan which the trustees are taking out.
- The adviser must provide the trustees with advice in writing on three matters:
 - whether the loan or grant is necessary in order for the trustees to be able to pursue the particular course of action in connection with which the loan or grant is sought;
 - whether the terms of the loan or grant are reasonable, given the charity's status as a borrower; and
 - the charity's ability to repay the loan or grant on the terms agreed with the lender.

61. Trustees may also, without our consent, and providing they have a power to do so, grant a mortgage over charity land as security for any

obligation, such as a commitment to use land for a specific purpose or to carry out (or refrain from carrying out) a certain course of action. This is provided they take proper, written advice from someone qualified as described in the first bullet point in paragraph 60 on whether it is reasonable for them to undertake to discharge the obligation, having regard to the charity's purposes.

62. However, where the express authority for the mortgage is contained in an Act of Parliament, a statutory instrument, or a Scheme of the Court or the Commission, these requirements need not be followed. Nor is our consent needed in such cases. The Trusts of Land and Appointment of Trustees Act 1996 does not affect the need for trustees to follow section 38 in respect of mortgages.

63. As with deeds relating to other land transactions, mortgage deeds must contain certain statements and certificates. The purpose of these is described in paragraph 51 above. It is the responsibility of the trustees' solicitor to see that the necessary statements and certificates are included in the deed in the correct form.

Unsecured loans

64. Where trustees take out a loan (such as an overdraft) which is not secured by a mortgage or charge against any property of the charity, it is advisable to ensure that the charity has sufficient assets to discharge the loan if the charity suffers a sudden loss of income. It is recommended that trustees always seek professional advice along the lines set out above before taking out any substantial unsecured loan.

65. The statutory restrictions on mortgaging charity land (section 38 of the 1993 Act) do not apply to unsecured loans, even though the

trustees' right to indemnify themselves against the cost of servicing the loan is secured on the whole of the trust property (including any land). But if trustees propose to sell, or otherwise dispose of, trust land in order to recoup the costs of servicing an unsecured loan, we would advise that they first discuss the matter with us. They do not have the same wide powers to realise their security as does someone to whom land has been expressly charged to secure a borrowing. It may be appropriate to consider ways of satisfying the lender which do not involve the sale of property which might be vital to the continued existence of the charity.

Part C: Rentcharges

What is a rentcharge?

66. A rentcharge is a regular payment which the owner of a particular piece of land is obliged to make to another person (often a charity), other than under a lease or mortgage. The obligation to make this payment to the charity falls on whoever owns the land, and continues from one owner to the next. Rentcharges are usually payable annually and are often for very small sums. Because the amount payable is fixed, its real value is continually eroded by inflation; and under the Rentcharges Act 1977 nearly all rentcharges will be extinguished without compensation in the year 2037.

What can trustees do about rentcharges?

67. We recommend that charity trustees who receive rentcharge payments consider releasing any rentcharge to which they are entitled, by voluntary agreement with the landowner for a lump sum. Releasing a rentcharge involves negotiating with the land-owner for a single payment equivalent to a number of years' annual payments; in return the land owner is released from the duty to make annual payments. Many land-owners will be willing to co-operate with trustees in this, since it relieves them of the trouble and cost involved in making the payment every year.

68. Although a rentcharge is an interest in land, the 1993 Act treats it differently from other interests in land (such as leases and rights of way). The following rules apply:

- if a charity which is entitled to receive a rentcharge releases the rentcharge for a sum of money not less than ten times the annual rentcharge payment, our consent is not required (eg a rentcharge for £20 released for a sum of not less than £200);

- but where the release price is less than ten times the annual payment, our consent will be required; and
- if the sum received by the charity for the release is less than £500, then any costs incurred by the charity in proving its legal title to the rentcharge must be paid by the land owner to whose land the rentcharge is attached.

69. It is important to note that a disposal of a rentcharge under sections, 8-10 of the 1977 Act is a disposal falling within section 36 (9)(a) but section 37 will still apply.

70. We will not generally give consent where the release price is substantially less than ten times the annual payment, unless the trustees show that it is in the interests of the charity for the rentcharge to be released.

71. Where a charity is entitled to receive rentcharge payments, but the land-owner refuses or neglects to make the regular payments, then we have power to take legal proceedings against the land owner for recovery of the arrears. Trustees who have difficulties in this respect can contact us for assistance.

Changes from the previous version of this guidance

Additional information regarding definition of fine. Minor and consequential amendments have been made to keep the text as up to date as possible.

Further Reference

For further information you may find it useful to refer to the following Charity Commission publications:

- CC2 Charities and the Charity Commission
- CC3 The Essential Trustee: What you need to know
- CC13 The Official Custodian for Charities' Land Holding Service
- CC18 Use of Church Halls for Other Charitable Purposes
- CC27 Providing Alcohol on Charity Premises
- CC33 Acquiring Land
- CC36 Amending Charities' Governing Documents: Orders & Schemes
- CC38 Expenditure and Replacement of Permanent Endowment
- CC44 Small Charities: Transfer of Property, Alteration of Trusts, Expenditure of Capital
- CC60 The Hallmarks of an Effective Charity

Mae'r rhan fwyaf o'n cyhoeddiadau ar gael yn Gymraeg. Am wybodaeth ar y cyhoeddiadau sydd ar gael ffoniwch Comisiwn Elusennau Uniongyrchol ar 0845 300 0218.

For a complete list of all our publications, audio-cassettes and video, please ask for:

- CC1 Charity Commission Publications

To obtain copies of any of the above publications you can either:

- view and print from our website:
www.charitycommission.gov.uk;
- order during opening hours - Monday to Friday 08:00 - 20:00 and 09:00 - 13:00 Saturdays by telephoning us on **0845 300 0218**; or
- write to **Charity Commission Direct, PO Box 1227, Liverpool, L69 3UG.**

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