

## Registered charities and the disposal of land

Registered (and excepted) charities must go through a valuation procedure before entering into a transaction for the disposal (i.e. sale, letting and granting of rights) of charity land. The procedure can sometimes cause confusion, appearing at first sight to be technical and complicated.

### What does the procedure involve?

The legislative provisions in sections 117 to 121 of the Charities Act 2011 are in fact based on long established principles of charity law. These principles should be kept in mind when interpreting the statutory requirements. The principles make it easier to understand process and to fill in some of the gaps when applying the statutory provisions to the practical realities of selling, letting or otherwise dealing with land.

The basic scheme of sections 117 to 121 of the Charities Act 2011 is that, before a charity disposes of land or any interest in that land (usually including administrative or operational buildings), the charity trustees should take valuation advice from a qualified surveyor to ensure that they transact on the best terms that can reasonably be obtained for the charity.

### Does it apply to me and my charity?

The procedure does not apply to all charities. It does not apply to 'exempt' charities that are not registered at the Charity Commission, and which are generally not subject to the provisions of the Charities Act 2011. However, it does apply to charities which are not registered but are subject to the provisions of the Charities Act 2011, which include a number of charities (for example some places of worship and scout groups) that are still excepted from registration by virtue of the fact that their turnover is less than £100,000 per annum.

### Does it apply to all land transactions?

The provisions do not apply to all transactions involving land made by registered or excepted charities. For example they do not apply to disposals between charities where the disposal is within the disposing charity's powers. The provisions do not apply to any disposals of land in Scotland. Furthermore, the provisions do not apply to dealings with land that are not in strict legal terms disposals of land. For example they do not apply to the exercise of a break right, to certain variations of leases, or to 'licences', which are the grant of rights of occupation over land that do not bring with them the status of temporary ownership conferred by a lease.

### Short leases

There is a separate regime that applies only to leases of land of seven years or under at a full rental. In this case, there is a more 'light touch' regime which in particular does not require the involvement of a qualified surveyor. Oddly, whilst this lighter touch regime applies to the *grant* of a short lease, it does not apply to the assignment (transfer) or the surrender of a short lease, both of which would require a charity to use the full valuation procedure.

## What about freehold or long leasehold land?

Generally, the requirements for longer leases and for sales of land are that prior to entering into the transaction itself, or any contract that binds the charity into the disposition, the charity trustees must obtain and consider written advice from a fellow or a professional associate of the Royal Institution of Chartered Surveyors. The advice must include certain prescribed information and advice under the Qualified Surveyor's Regulations 1992. The charity trustees must advertise the land if/as advised by the qualified surveyor, and subject to that decide on the basis of the advice that any transaction that they enter into for the disposition of the land is on the best terms that can reasonably be obtained for the charity.

The issue with respect to the sale of valuable interests in charity land, whether freehold or long leasehold, is often that it is difficult to understand how the provisions are meant to apply. The wording of the statute appears in the first instance to suggest that charity trustees must have agreed a transaction before they obtain the qualified surveyor's advice, but that does not really make sense when you then consider the charity trustees must advertise the land in the manner advised by the qualified surveyor. As a result of this advertising, in many cases they could become aware of some other potential transactions that they could enter into.

Charity trustees can use the same surveyor to initially advise on the marketing of their land to ultimately give the section 119 report on which the decision to enter into the contract for disposal, or the disposal itself is based.

## Key principles for trustees to consider

In reality, sections 117 to 121 of the Charities Act 2011 should be considered in the context of the way that land transactions actually work. The provisions in fact reflect a number of principles that affect and govern the behaviour of charity trustees:

- they should act in a business-like manner
- they should take professional advice where appropriate
- they should manage conflicts of interest
- overall they are responsible for the strategic management of the charity

The important thing is that charity trustees should consider a disposal of land in the context of the overall strategy of the charity and ensure that they are getting best value for their land. In doing so, they are required by statute to take a particular kind of advice and they should view that advice as they should any other professional advice, and consider more than just what the statute requires.

You can find out more about the process of disposing of land at our [seminar on Tuesday 11 October](#).

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