

## **Registered charitable housing associations and the statutory procedure for disposal of charity land**

Around a third of housing associations registered with the housing regulator (currently for most purposes the Homes and Communities Agency or HCA) are also registered charities.

The Housing and Planning Act 2016 provided for changes to the extent to which such registered providers (RPs) are required to comply with charity regulation with respect to disposals of land.

These changes came into effect as of 6 April 2017.

### **Background**

A 'disposal' of land by an RP includes not just a sale, but any other grant of a legal interest in land, such as a letting or the grant of an easement.

Section 171(1) of the Housing and Regeneration Act 2008, which came into force in April 2010, provided that in general 'a private registered provider may dispose of land'.

However, under section 172 of that Act, such disposals were subject to HCA consent where such land was a 'dwelling' that was 'social housing'.

Meanwhile, disposal of property interests by registered and excepted (but not exempt) charities is regulated by sections 117-119 of the Charities Act 2011.

At first sight, section 117 of that Act appears to indicate that Charity Commission (or court) consent will be required for a disposal of land.

However, in most circumstances, in practice this is not the case because either:

- (a) the charity can 'self-certify' by following a statutory valuation procedure under section 119 or 120 of the Act; or
- (b) one of the exemptions listed in section 117(3) and 117(4) of the Act will apply, meaning that neither the statutory valuation procedure nor Charity Commission/court consent will be required (although of course charities and trustees must follow appropriate procedures to ensure that their assets are used in furtherance of the charity's objects and observe other principles of charity law).

There has always been a question as to whether the statutory procedures relating to disposals of land by RPs under the Housing and Regeneration Act apply as well as, or instead of, those set out in the Charities Act.

### **What was the previous position?**

Under section 117(3)(a)(i) of the Charities Act, one of the exceptions to the consent or valuation procedure outlined above is where 'general or special authority' for the disposal is expressly given by a statute.

The Charity Commission appear in their [guidance](#) to have taken the view that obtaining necessary consents under section 172 of the Housing and Regeneration Act would have triggered this exception.

However they do not in that guidance address the fact that a wide range of property disposals to which section 172 did not apply could be carried out without any consent at all under the Housing and Regeneration Act, and do not indicate in that guidance whether their view is that the Charities Act provisions applied to such disposals.

### **What has changed?**

The 2016 Housing and Planning Act repealed section 172 of the Housing and Regeneration Act, removing the requirement for HCA consent to the disposal of a social housing dwelling.

In light of this change, the Commission has now issued guidance confirming that the provisions of sections 117-121 of the Charities Act will apply to all disposals of land by registered charities that are also RPs.

There is not a lot of logical coherence to this, since it is arguable for the reasons outlined above that the Charities Act requirements already applied to the disposal of land by RPs, subject to the other statutory exceptions. However the clarity of the Commission's position, in the context of what is a confusing clash of concepts and terminology in statutes enacted for different purposes, is welcome.

### **What further changes are likely in the future?**

The law relating to sections 117-121 of the Charities Act is in fact under review, the Law Commission being due to report on the matter in September. The Law Commission's view has been that the more exact strictures of the procedures under sections 117-121 are cumbersome and that there should instead be a more general obligation on charity trustees to ensure that advice is obtained in circumstances where they think this is appropriate.

Of course that is not necessarily what the Law Commission will recommend in its final report. The need for clarity, rather than vagueness, may have been illustrated by the Charity Commission [Inquiry Report](#) relating to the Spiritualist Association of Great Britain published on 30 March 2017, where the failure by the charity trustees to take the required statutory steps was regarded as 'basic and serious mismanagement'.

On the other hand, it might be argued that the complexity of various statutory obligations is a barrier to understanding by volunteer charity trustees, and that the kind of simplification that has been carried out with respect to the Housing and Regeneration Act might well be of benefit to registered charities if applied to the Charities Act provisions.

James McCallum will be exploring these issues, amongst others, in his September MBL seminars: '[Land Transactions Involving Charities](#)'.

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