



Open Spaces Act 1906

1906 CHAPTER 25 6 Edw 7

POWER TO TRANSFER OPEN SPACES AND BURIAL GROUNDS TO LOCAL AUTHORITIES

- 2 Power of trustees under local Act to transfer open space to local authority or admit other persons to enjoyment thereof.**
- (1) Where an open space is, in pursuance of a local or private Act of Parliament, placed under the care and management of trustees or other persons (in this section referred to as trustees), with a view to the preservation and regulation thereof as a garden or open space, the trustees may, in pursuance of a special resolution, and with the consent, signified by a special resolution, of the owners and occupiers of any houses which front upon the open space, or of which the owners and occupiers are liable to be specially rated for the maintenance of the open space,—
- (a) convey, for or without any consideration, to any local authority, their estate or interest in the open space or, if they have no such estate or interest, transfer to any local authority the entire care and management of the open space, to the end that the space may be preserved for the enjoyment of the public; or
 - (b) grant, for or without any consideration, to any local authority any term of years or other limited interest in or any right or easement over the open space; or
 - (c) make any agreement with any local authority for the opening to the public of the open space and the care and management thereof by the local authority, either at all times or at any specified time or times; or
 - (d) notwithstanding anything in the Act or any instrument under which the trustees are constituted or act, admit persons not owning, occupying, or residing in any house fronting on the open space to the enjoyment of the open space, either at all times or at any specified time or times, and regulate the admission of such persons thereto on such terms and conditions as the trustees think proper.
- (2) Where the freehold of the open space and the freehold of all or the greater part of the houses round the open space are vested in the same person the powers conferred by this section shall not be exercised without the consent of that person.
- (3) Any such conveyance, transfer, grant, or agreement shall be made, if the trustees are a corporation, by an instrument under the common seal of the trustees, and if the

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trustees are not a corporation, by an instrument [^{F1}executed as a deed by] any five of the trustees, or of all the trustees if for the time being they are less than five in number.

- (4) Any conveyance, transfer, grant, or agreement under this section shall be deemed a good execution of the trusts, powers, and duties imposed or conferred upon the trustees by the Act or instrument under which they are constituted or act, and where the trustees convey their entire interest in, or transfer the entire care and management of, the open space they shall, on the execution of the conveyance or transfer, be relieved and discharged from all trusts, powers, and duties under the Act or instrument or otherwise with reference to the open space.
- (5) The trustees shall hold any purchase money or rent paid for or in respect of the open space in trust for the benefit of the persons or class of persons for whose benefit the open space was previously preserved and managed by the trustees, or, as the case may be, for the benefit of the objects to which any rates previously imposed in respect of the open space had been applied, and such persons or class of persons shall be discharged either absolutely, or, if the grant was for a term of years or other limited interest, during the continuance of that interest, from any special rate or other obligation previously imposed on them in respect of the open space.

Textual Amendments

- F1** Words in s. 2(3) substituted (N.I) (15.11.2005) by [The Law Reform \(Miscellaneous Provisions\) \(Northern Ireland\) Order 2005 \(S.I. 2005/1452\)](#), art. 1(2), **Sch. 1 para. 12**; S.R. 2005/494, art. 2(1)(c)

3 Transfer to local authority of spaces held by trustees for purposes of public recreation.

- (1) Where any land is held by trustees (not being trustees elected or appointed under any local or private Act of Parliament) upon trust for the purposes of public recreation, the trustees may, in pursuance of a special resolution, transfer the land to any local authority by a free gift absolutely or for a limited term, and, if the local authority accept the gift, they shall hold the land on the trusts and subject to the conditions on and subject to which the trustees held the same, or on such other trusts and subject to such other conditions (so that the land be appropriated to the purposes of public recreation) as may be agreed on between the trustees and the local authority with the approval of the [^{F2}Charity Commission].
- (2) Subject to the obligation of the land so transferred being used for the purposes of public recreation, the local authority may hold the land as and for the purposes of an open space under this Act.

Textual Amendments

- F2** Words in s. 3(1) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), **Sch. 8 para. 12**; S.I. 2007/309, art. 2, Sch.

4 Transfer by charity trustees of open space to local authority.

- (1) Where an open space is vested in trustees, other than such as are mentioned in the foregoing provisions of this Act, for any charitable purpose and as part of their trust estate, and it appears to the majority of the trustees that the open space is no longer

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required for the purposes of their trust, or may with advantage to the trust be dealt with under this section, the trustees may, in pursuance of a special resolution, [^{F3}and in accordance with subsection (1A)], convey or demise the open space to any local authority on such terms as they may agree, and the local authority shall thenceforth be entitled to hold the same as an open space on the terms and under the conditions specified in the conveyance or demise, or on such terms or under such conditions as may be so authorised or approved, or as the court may from time to time order, as the case may be.

- [^{F4}(1A) The trustees act in accordance with this subsection if they convey or demise the open space as mentioned in subsection (1)—
- (a) with the sanction of an order of the Charity Commission or with that of an order of the court to be obtained as provided in the following provisions of this section, or
 - (b) in accordance with such provisions of [^{F5}sections 117(2) and 119 to 121 of the Charities Act 2011] as are applicable.]
- (2) The court for the purposes of this section shall [^{F6}in England and Wales be either the High Court or the county court and, in Northern Ireland, shall] be either the High Court or the county court [^{F7}of the district in which the whole or any part of the open space is situate].
- (3) An order of the court for the purposes of this section may be made upon application by the trustees, in manner directed by rules of court, and the court, before making any order, may direct such inquiries to be made, such consents to be obtained, and notice to be given to such persons, as to the court seem expedient, and may make such order thereon as in the discretion of the court appears proper.
- [^{F8}(4) [^{F9}Section 337 of the Charities Act 2011 (provisions as to orders under that Act) applies to any order of the Charity Commission under this section as it applies to orders made by it under that Act.]

Textual Amendments

- F3** Words in s. 4(1) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), [Sch. 8 para. 13\(2\)](#); S.I. 2007/309, art. 2, Sch.
- F4** S. 4(1A) inserted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), [Sch. 8 para. 13\(3\)](#); S.I. 2007/309, art. 2, Sch.
- F5** Words in s. 4(1A)(b) substituted (E.W.) (14.3.2012) by [Charities Act 2011 \(c. 25\)](#), s. 355, [Sch. 7 para. 8\(1\)](#) (with s. 20(2), Sch. 8)
- F6** Words in s. 4(2) inserted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 9 para. 115](#); S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F7** Words in s. 4(2) repealed (N.I.) (31.10.2016) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\)](#), s. 106(2), [Sch. 1 para. 39](#), [Sch. 9 Pt. 1](#) (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)
- F8** S. 4(4) added (1.8.1993) by [1993 c. 10](#), s. 98(1), [Sch. 6 para. 2](#)
- F9** S. 4(4) substituted (E.W.) (14.3.2012) by [Charities Act 2011 \(c. 25\)](#), s. 355, [Sch. 7 para. 8\(2\)](#) (with s. 20(2), Sch. 8)
- F10** Words in s. 4(4) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), [Sch. 8 para. 13\(4\)\(a\)](#); S.I. 2007/309, art. 2, Sch.
- F11** Word in s. 4(4) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), [Sch. 8 para. 13\(4\)\(b\)](#); S.I. 2007/309, art. 2, Sch.

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5 Transfer to local authority by owners of open spaces subject to rights of user.

(1) Where any open space is subject to rights of user for exercise and recreation in the owners or occupiers, or both, of any houses round or near the same, whether the rights are secured by covenant or not, the owner of the open space may, with the consent, signified by a special resolution, of such owners or occupiers, or both, as the case may require,—

- (a) convey to any local authority his estate or interest in the open space in trust for the enjoyment of the public; or
- (b) grant to any local authority in trust as aforesaid any term of years or other limited interest in or any right or easement over the open space; or
- (c) make an agreement with any local authority for the opening to the public of the open space and the care and management thereof by the local authority either at all times or at any specified times:

and thereupon the owner shall be discharged from any liability to any person entitled to any right of user in respect of any act done in accordance with the consent so given.

(2) Where any person has any term of years or other limited interest in any such open space this section shall apply to him with reference to that interest in like manner as it applies to the owner of the open space.

(3) Where any open space is used as a place of exercise and recreation for the inhabitants of certain houses, and the property and right of user is vested in one or more persons as owners or occupiers of the houses, those owners and occupiers (if any) may convey to a local authority in trust for the public a right to enter upon, use, and enjoy the open space subject to such terms and conditions as may be agreed upon.

6 Transfer of disused burial grounds to local authority.

The owner of any disused burial ground may convey the burial ground to, or grant any term of years or other limited interest therein to, or make any agreement with, any local authority for the purpose of giving the public access to the burial ground, and preserving the same as an open space accessible to the public and under the control of the local authority, and for the purpose of improving and laying out the same.

7 Power of corporation, &c. to convey land for open space.

(1) Any corporation (other than a municipal corporation) or persons having power, either with or without the consent of any other corporation or persons, to sell any land may, but with the like consent (if any), convey, for or without any consideration, to any local authority that land, or any part thereof, for the purpose of the same being preserved as an open space for the enjoyment of the public under this Act, and may so convey the same with or without conditions, and the local authority may accept the land for that purpose, and, if conditions are imposed, subject to such conditions.

(2) Where a corporation having power under this section to convey land are themselves a local authority, this section shall enable the authority to appropriate their land as an open space for the enjoyment of the public, and shall, with the necessary modifications, apply to the appropriation in like manner as it applies to the conveyance.

(3) F12

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Textual Amendments

F12 S. 7(3) repealed by [Parish Councils Act 1957 \(c. 42\)](#), [Sch. 2](#)

8 Special resolutions and consents.

- (1) A resolution shall for the purposes of this Act be a special resolution when it has been—
 - (a) passed by a majority of at least two-thirds of the persons present at a meeting summoned as herein-after provided; and
 - (b) confirmed by another resolution passed by a majority of at least two-thirds of the persons present at a meeting summoned as herein-after provided and held after an interval of not less than one month from the first meeting.
- (2) A meeting of trustees for the purposes of this Act shall be summoned by a notice stating generally the object of the meeting, which notice shall be left at or sent by post, at least one month before the date of the meeting, to the last known or usual place of abode of each trustee.
- (3) A meeting of owners and occupiers of houses under this Act shall be summoned by a notice stating generally the object of the meeting, which notice shall be left at, or sent through the post to, each of such houses, at least one month before the date of the meeting, and shall be inserted as an advertisement at least three times in any two or more papers circulating in the neighbourhood.
- (4) If at any meeting of trustees or of owners and occupiers under this Act a resolution with respect to an open space is rejected, no meeting of the trustees, or, as the case may be, the owners or occupiers, shall be called or held with the same object and with respect to the same open space until the expiration of three years from the date of the rejection.
- (5) A meeting of owners or occupiers of houses for the purposes of this Act shall not be held between the first day of August in one year and the thirty-first day of January in the following year.

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