



2008 CHAPTER 12

PART 7

CHARITY LAND

Restrictions on mortgaging

60.—(1) Subject to subsection (2), no mortgage of land held by or in trust for a charity shall be granted without an order of the Court or of the Commission.

(2) Subsection (1) shall not apply to a mortgage of any such land if the charity trustees have, before executing the mortgage, obtained and considered proper advice, given to them in writing, on the relevant matters or matter mentioned in subsection (3) or (4) (as the case may be).

(3) In the case of a mortgage to secure the repayment of a proposed loan or grant, the relevant matters are—

- (a) whether the loan or grant is necessary in order for the charity trustees to be able to pursue the particular course of action in connection with which they are seeking the loan or grant;
- (b) whether the terms of the loan or grant are reasonable having regard to the status of the charity as the prospective recipient of the loan or grant; and
- (c) the ability of the charity to repay on those terms the sum proposed to be paid by way of loan or grant.

(4) In the case of a mortgage to secure the discharge of any other proposed obligation, the relevant matter is whether it is reasonable for the charity trustees to undertake to discharge the obligation, having regard to the charity's purposes.

(5) Subsection (3) or (as the case may be) subsection (4) applies in relation to such a mortgage as is mentioned in that subsection whether the mortgage—

- (a) would only have effect to secure the repayment of the proposed loan or grant or the discharge of the proposed obligation, or
 - (b) would also have effect to secure the repayment of sums paid by way of loan or grant, or the discharge of other obligations undertaken, after the date of its execution.
- (6) Subsection (7) applies where—
- (a) the charity trustees of a charity have executed a mortgage of land held by or in trust for a charity in accordance with subsection (2), and
 - (b) the mortgage has effect to secure the repayment of sums paid by way of loan or grant, or the discharge of other obligations undertaken, after the date of its execution.
- (7) In such a case, the charity trustees must not after that date enter into any transaction involving—
- (a) the payment of any such sums, or
 - (b) the undertaking of any such obligations,
- unless they have, before entering into the transaction, obtained and considered proper advice, given to them in writing, on the matters or matter mentioned in subsection (3)(a) to (c) or (4) (as the case may be).
- (8) For the purposes of this section proper advice is the advice of a person—
- (a) who is reasonably believed by the charity trustees to be qualified by ability in and practical experience of financial matters; and
 - (b) who has no financial interest in relation to the loan, grant or other transaction in connection with which the advice is given;
- and such advice may constitute proper advice for those purposes notwithstanding that the person giving it does so in the course of employment as an officer or employee of the charity or of the charity trustees.
- (9) This section applies notwithstanding anything in the trusts of a charity; but nothing in this section applies to any mortgage for which general or special authority is given as mentioned in section 57(10)(a).