



## 2008 CHAPTER 12

PROSPECTIVE

### **PART 7** **CHARITY LAND**

#### **Restriction on dispositions**

**57.—**(1) Subject to the following provisions of this section and section 59, no land held by or in trust for a charity shall be disposed of without an order of the Court or of the Commission.

(2) Subsection (1) shall not apply to a disposition of such land if—

(a) the disposition is made to a person who is not—

(i) a connected person (as defined in Schedule 5), or

(ii) a trustee for, or nominee of, a connected person; and

(b) the requirements of subsection (3) or (5) have been complied with in relation to it.

(3) Except where the proposed disposition is the granting of such a lease as is mentioned in subsection (5), the requirements mentioned in subsection (2) (b) are that the charity trustees must, before entering into an agreement for the disposition of the land—

(a) obtain and consider a written report on the proposed disposition from a qualified surveyor instructed by the trustees and acting exclusively for the charity;

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**Changes to legislation:** There are currently no known outstanding effects for the  
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(b) advertise the proposed disposition for such period and in such manner as is advised in the surveyor's report (unless the surveyor has there advised that it would not be in the best interests of the charity to advertise the proposed disposition); and

(c) decide that they are satisfied, having considered the surveyor's report, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity.

(4) For the purposes of subsection (3) a person is a qualified surveyor if—

(a) that person is a fellow or professional associate of the Royal Institution of Chartered Surveyors<sup>F1</sup>... or satisfies such other requirement or requirements as may be prescribed by regulations made by the Department; and

(b) that person is reasonably believed by the charity trustees to have ability in, and experience of, the valuation of land of the particular kind, and in the particular area, in question;

and any report prepared for the purposes of that subsection shall contain such information, and deal with such matters, as may be prescribed by regulations so made.

(5) Where the proposed disposition is the granting of a lease for a term ending not more than 7 years after it is granted (other than one granted wholly or partly in consideration of a fine), the requirements mentioned in subsection (2) (b) are that the charity trustees must, before entering into an agreement for the lease—

(a) obtain and consider the advice on the proposed disposition of a person who is reasonably believed by the trustees to have the requisite ability and practical experience to provide them with competent advice on the proposed disposition; and

(b) decide that they are satisfied, having considered that person's advice, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity.

(6) Where—

(a) any land is held by or in trust for a charity, and

(b) the trusts on which it is so held stipulate that it is to be used for the purposes, or any particular purposes, of the charity,

then (subject to subsections (8) and (9) and without prejudice to the operation of the preceding provisions of this section) the land shall not be disposed of unless the charity trustees have before the relevant time—

(i) given public notice of the proposed disposition, inviting representations to be made to them within a time specified in the notice, being not less than one month from the date of the notice; and

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- (ii) taken into consideration any representations made to them within that time about the proposed disposition.
- (7) In subsection (6) “the relevant time” means—
  - (a) where the charity trustees enter into an agreement to dispose of the land, the time when they entered into that agreement, and
  - (b) in any other case, the time of the disposition.
- (8) Subsection (6) shall not apply to any such disposition of land as is there mentioned if—
  - (a) the disposition is to be effected with a view to acquiring by way of replacement other property which is to be held on the trusts referred to in paragraph (b) of that subsection; or
  - (b) the disposition is the granting of a lease for a term ending not more than 2 years after it is granted (other than one granted wholly or partly in consideration of a fine).
- (9) The Commission may direct—
  - (a) that subsection (6) shall not apply to dispositions of land held by or in trust for a charity or class of charities (whether generally or only in the case of a specified class of dispositions or land, or otherwise as may be provided in the direction), or
  - (b) that that subsection shall not apply to a particular disposition of land held by or in trust for a charity,
if, on an application made to the Commission in writing by or on behalf of the charity or charities in question, the Commission is satisfied that it would be in the interests of the charity or charities for the Commission to give the direction.
- (10) The restrictions on disposition imposed by this section apply notwithstanding anything in the trusts of a charity; but nothing in this section applies—
  - (a) to any disposition for which general or special authority is expressly given (without the authority being made subject to the sanction of an order of the Court) by or under any statutory provision or by any scheme legally established; or
  - (b) to any disposition of land held by or in trust for a charity which—
    - (i) is made to another charity otherwise than for the best price that can reasonably be obtained, and
    - (ii) is authorised to be so made by the trusts of the first-mentioned charity; or
  - (c) to the granting, by or on behalf of a charity and in accordance with its trusts, of a lease to any beneficiary under those trusts where the lease—

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- (i) is granted otherwise than for the best rent that can reasonably be obtained; and
- (ii) is intended to enable the demised premises to be occupied for the purposes, or any particular purposes, of the charity.

#### Textual Amendments

- F1** Words in s. 57(4)(a) repealed (19.1.2013) by [Charities Act \(Northern Ireland\) 2013 \(c. 3\)](#), s. 10(1), Sch. 1 para. 13, 2

#### Supplementary provisions relating to dispositions

**58.**—(1) Any of the following instruments, namely—

- (a) any contract for the sale, or for a lease or other disposition, of land which is held by or in trust for a charity, and
- (b) any conveyance, transfer, lease or other instrument effecting a disposition of such land,

shall state—

- (i) that the land is held by or in trust for a charity,
- (ii) whether the disposition is one falling within paragraph (a), (b) or (c) of subsection (10) of section 57, and
- (iii) if the disposition is not one falling within any of those paragraphs, that the land is land to which the restrictions on disposition imposed by that section apply.

(2) Where any land held by or in trust for a charity is disposed of by a disposition to which subsection (1) or (2) of section 57 applies, the charity trustees shall certify in the instrument by which the disposition is effected—

- (a) (where subsection (1) of that section applies) that the disposition has been sanctioned by an order of the Court or of the Commission (as the case may be), or
- (b) (where subsection (2) of that section applies) that the charity trustees have power under the trusts of the charity to effect the disposition, and that they have complied with the provisions of that section so far as applicable to it.

(3) Where subsection (2) has been complied with in relation to any disposition of land, then in favour of a person who (whether under the disposition or afterwards) acquires an estate in the land for money or money's worth, it shall be conclusively presumed that the facts were as stated in the certificate.

(4) Where—

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(a) any land held by or in trust for a charity is disposed of by a disposition to which subsection (1) or (2) of section 57 applies, but

(b) subsection (2) has not been complied with in relation to the disposition, then in favour of a person who (whether under the disposition or afterwards) in good faith acquires an estate in the land for money or money's worth, the disposition shall be valid whether or not—

- (i) the disposition has been sanctioned by an order of the Court or of the Commission, or
- (ii) the charity trustees have power under the trusts of the charity to effect the disposition and have complied with the provisions of that section so far as applicable to it.

(5) Any of the following instruments, namely—

- (a) any contract for the sale, or for a lease or other disposition, of land which will, as a result of the disposition, be held by or in trust for a charity, and
- (b) any conveyance, transfer, lease or other instrument effecting a disposition of such land,

shall state—

- (i) that the land will, as a result of the disposition, be held by or in trust for a charity, and
- (ii) that the restrictions on disposition imposed by section 57 will apply to the land (subject to subsection (10) of that section).

### **Release of charity rentcharges**

**59.—**(1) Section 57(1) and section 58 shall not apply to the release by a charity of a rentcharge which it is entitled to receive if the release is given in consideration of the payment of an amount which is not less than 9 times the annual amount of the rentcharge.

(2) Where a charity which is entitled to receive a rentcharge releases it in consideration of the payment of an amount not exceeding £500, any costs incurred by the charity in connection with proving its title to the rentcharge shall be recoverable by the charity from the person or persons in whose favour the rentcharge is being released.

(3) The Department may by order—

- (a) amend subsection (1) by substituting a different multiplier for the multiplier for the time being specified there, or
- (b) amend subsection (2) by substituting a different sum for the sum for the time being specified there.

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### **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).

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(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).

#### **Supplementary provisions relating to mortgaging**

**61.—**(1) Any mortgage of land held by or in trust for a charity shall state—

- (a) that the land is held by or in trust for a charity,
- (b) whether the mortgage is one falling within subsection (9) of section 60, and
- (c) if the mortgage is not one falling within that subsection, that the mortgage is one to which the restrictions imposed by that section apply.

(2) Where subsection (1) or (2) of section 60 applies to any mortgage of land held by or in trust for a charity, the charity trustees shall certify in the mortgage—

- (a) (where subsection (1) of that section applies) that the mortgage has been sanctioned by an order of the Court or of the Commission (as the case may be), or
- (b) (where subsection (2) of that section applies) that the charity trustees have power under the trusts of the charity to grant the mortgage, and that they have obtained and considered such advice as is mentioned in that subsection.

(3) Where subsection (2) has been complied with in relation to any mortgage, then in favour of a person who (whether under the mortgage or afterwards) acquires an interest in the land in question for money or money's worth, it shall be conclusively presumed that the facts were as stated in the certificate.

(4) Where—

- (a) subsection (1) or (2) of section 60 applies to any mortgage of land held by or in trust for a charity, but
- (b) subsection (2) has not been complied with in relation to the mortgage,

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then in favour of a person who (whether under the mortgage or afterwards) in good faith acquires an interest in the land for money or money's worth, the mortgage shall be valid whether or not—

- (i) the mortgage has been sanctioned by an order of the Court or of the Commission, or
- (ii) the charity trustees have power under the trusts of the charity to grant the mortgage and have obtained and considered such advice as is mentioned in subsection (2) of that section.

### **Interpretation of Part 7**

**62.—**(1) In this Part—

“land” means land in Northern Ireland;

“mortgage” includes a charge; and

“rentcharge” means a periodical payment charged on land.

(2) Nothing in section 57 or 58 applies to any disposition of land by way of mortgage or other security.



**Status:**

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**Changes to legislation:**

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