



# Charities Act 2011

## 2011 CHAPTER 25

### PART 7

#### CHARITY LAND

##### *Restrictions on mortgages of land in England and Wales*

#### **124 Restrictions on mortgages**

- (1) Subject to subsection (2), no mortgage of land held by or in trust for a charity is to be granted without an order of—
  - (a) the court, or
  - (b) the Commission.
- (2) Subsection (1) does 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.

---

*Status: This is the original version (as it was originally enacted).*

---

- (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 even though 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 regardless of anything in the trusts of a charity; but nothing in this section applies to any mortgage—
- (a) for which general or special authority is given as mentioned in section 117(3) (a), or
  - (b) for which the authorisation or consent of the Secretary of State is required as mentioned in section 117(3)(b).
- (10) Nothing in this section applies to an exempt charity.

## **125 Mortgages: required statements, etc.**

- (1) Any mortgage of land held by or in trust for a charity must state—
- (a) that the land is held by or in trust for a charity,
  - (b) whether the charity is an exempt charity and whether the mortgage is one falling within section 124(9), and
  - (c) if it is not an exempt charity and the mortgage is not one falling within section 124(9), that the mortgage is one to which the restrictions imposed by section 124 apply.

- (2) Where section 124(1) or (2) applies to any mortgage of land held by or in trust for a charity, the charity trustees must certify in the mortgage—
  - (a) (where section 124(1) 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 section 124(2) applies) that 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 section 124(2).
- (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 is conclusively presumed that the facts were as stated in the certificate.
- (4) Subsection (5) applies where—
  - (a) section 124(1) or (2) 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.
- (5) 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 is valid whether or not—
  - (a) the mortgage has been sanctioned by an order of the court or of the Commission, or
  - (b) 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 section 124(2).
- (6) Where section 124(7) applies to any mortgage of land held by or in trust for a charity, the charity trustees must certify in relation to any transaction falling within section 124(7) that they have obtained and considered such advice as is mentioned in section 124(7).
- (7) Where subsection (6) has been complied with in relation to any transaction, then, in favour of a person who (whether under the mortgage or afterwards) has acquired or acquires an interest in the land for money or money's worth, it is conclusively presumed that the facts were as stated in the certificate.

## **126 Mortgages of charity land and land registration**

- (1) Where the mortgage referred to in section 125(1) will be a registrable disposition, the statement required by section 125(1) must be in such form as may be prescribed by land registration rules.
- (2) Where any such mortgage will be one to which section 4(1)(g) of the Land Registration Act 2002 applies—
  - (a) the statement required by section 125(1) must be in such form as may be prescribed by land registration rules, and
  - (b) if the charity is not an exempt charity, the mortgage must also contain a statement, in such form as may be prescribed by land registration rules, that the restrictions on disposition imposed by sections 117 to 121 apply to the land (subject to section 117(3)).
- (3) Where—

---

*Status: This is the original version (as it was originally enacted).*

---

- (a) the registrar approves an application for registration of a person's title to land in connection with such a mortgage as is mentioned in subsection (2),
  - (b) the mortgage contains statements complying with section 125(1) and subsection (2), and
  - (c) the charity is not an exempt charity,
- the registrar must enter in the register a restriction reflecting the limitation under sections 117 to 121 on subsequent disposal.
- (4) Subsections (3) and (4) of section 123 (removal of entry) apply in relation to any restriction entered under subsection (3) as they apply in relation to any restriction entered under section 123(2).