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| Disposal of Charity Land |
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| OG548 |
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**OG548 Disposal of charity land**

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**Please Note**

**Phase 3 of the Charities Act 2022 changed the statements that must be included in disposal documentation. This OG sets the post-Charities Act 2022 position. Please note the changes made by the Charities Act 2022 will not apply to statements in disposal documents where they were entered into before 7 March 2024 but the completion is after 7 March 2024. In these cases, the ‘old’ rules relating to s.122 statements and saving provisions will apply. If you are unsure which rules apply to your case, seek legal advice.**

# Policy Statement/Overview

The default rule is that trustees cannot proceed with a disposal of charity land without an order from the court or the Commission authorising them to do so, unless it falls outside the regime (such as because it is owned by an exempt charity) or certain requirements are met.

Trustees do not need to obtain an order from the Commission if the disposal of land satisfies two requirements:

* the disposition is made to a person who is not a “connected person”, or a trustee or nominee for a connected person; and
* the charity trustees obtain and consider advice on the disposition from a designated adviser. (NOTE: There are different rules relating to the adviser requirements for dispositions of short leases – [see section B10](#_B10_Short_leases).)

In most cases, trustees will therefore not need to ask the Commission for our authority to dispose of their charity’s land as the disposal will satisfy the two requirements above.

There are further requirements where the disposal is of “designated land”, which are explained in section [B4.6](#_B4_Disposal_to) and [B5](#_B5_Disposal_of) of this guidance. Designated land is land held by the charity on specific charitable trusts which require the land to be used for a particular purpose or purposes of the charity. Some examples of land which may be designated land are recreation grounds, churches, schools or almshouses.

We will only give our authority where it is needed and not, for instance, because the trustees do not want to comply with the requirements set out above. Most commonly, our authority is needed for disposals to connected persons. Where a disposal is to a connected person, we need to be sure the trustees have:

* the power to make the disposal
* managed any conflict-of-interest issues
* understood the value of the asset(s) of which they are disposing and followed the advice of their designated adviser

ensured the disposal is in the best interests of the charity and the terms are the best that can reasonably be obtained.

# Summary of the guidance

This guidance covers the situations where the Commission needs to be involved in the disposal of charity land, and explains what information we will need to see and what we will take into consideration when deciding whether to give our authority for a disposal.

The guidance does not give details about the requirements with which trustees must comply when they can dispose of their charity’s land without our authority – this information is set out in our guidance for trustees ([CC28](https://www.gov.uk/government/publications/sales-leases-transfers-or-mortgages-what-trustees-need-to-know-about-disposing-of-charity-land-cc28)).

If the property to be sold was granted under any of the Acts that mean that Reverter might apply (this would usually be one of the School Sites Acts of the 1840s and 50s), caseworkers should first refer to OG27 - Reverter of Sites Act 1987 for the additional issues that this brings. This is because ‘a trust for sale’ may have arisen under section 1 of the Reverter of Sites Act 1987 because the land was originally given subject to a proviso that the land would revert to the estate of the grantor if it ceased to be used for the specified purposes.

# Casework Guidance

## B1 Top things to know about disposals of charity land

|  |  |  |
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|  |  | See |
| 1. | Trustees must have power under the trusts of their charity to dispose of their charity’s land. This will usually either be:     * an express power in the charity’s governing document; or * a statutory power, such as (for trustees of unincorporated charities only) s.6 Trusts of Land and Appointment of Trustees Act 1996. | [B4.6](#_B4.6_Do_the) |
| 2. | The default position set out in s117(1) of the Charities Act 2011 (the “2011 Act”) is that all disposals of charity land need an Order from us or the court, unless certain requirements are met. | [E2.1](#_E2.1_When_do) |
| 3. | Trustees do not need an order from us if the disposal of land satisfies two requirements:   * the disposition is made to a person who is not a “connected person”, or a trustee or nominee for a connected person; and * the charity trustees obtain and consider advice on the disposition from a designated adviser. The advice required differs depending on whether the disposition is a lease for a term of seven years or less which is not granted in consideration of a fine or premium (“a short lease”) or any other disposition – less stringent requirements apply to the former than the latter – see section [B10](#_B10_Short_leases). NOTE: A fine or premium is a lump sum or other benefit, not including rent, paid to a charity on the granting of the lease. |  |
| 4. | Our authority for a disposal will be needed:   * if the disposal is to a connected person; * if the trustees consider that the land disposal is so small or of such low value that it would be disproportionate and not a good use of a charity’s resources to obtain a report from an adviser or cannot otherwise comply with the statutory regime; or * the disposal is made at an undervalue or otherwise on terms that are not the best that can reasonably be obtained. |  |
| 5. | The trustees will need to manage any conflicts of interest, and consider any unauthorised trustee benefit, particularly when disposing of land to a connected person. | [B4.7](#_B4.7_Have_the) |
| 6. | Trustees always need our authority when disposing of their charity’s land to a connected person (unless the charity is an exempt charity). Connected person is defined in s.118 of the 2011 Act. | [B4](#_B4_Disposal_to) and [E1.3](#_E1.3_Connected_person) |
| 7. | In some circumstances disposals are exempt from complying with the s.117 – 121 requirements. These circumstances are set out in s.117(3): and include where the disposal is:   * made under a special authority contained in an Act (including Church of England Measure) or Scheme; * part of an insolvency process; or * made to another charity in furtherance of the transferor charity’s purposes and is not with a view to achieving the best price and is not a social investment for the purposes of Part 14A of the 2011 Act. See [E2.3](#_E2.3_Disposals_to).   NOTE: Until 19 May 2025 any disposition for which the authorisation or consent of the Secretary of State is required under the Universities and Colleges Estates Act 1925 (UCEA 1925) will also sit outside the statutory regime pursuant to s.117(3)(a). After this date, the relevant provisions in the UCEA 1925 provisions will be repealed and so only those universities and colleges to which the UCEA 1925 applied and which have amended their statutes to provide suitable authority will be able to rely on this exemption and so remain outside this statutory regime. (See [E2.5](#_E2.5_Authority_granted)) | [B2](#_B2_When_can) and [E2.1](#_E2.1_When_do), [E2.3](#_E2.3_Disposals_to) and [E2.5](#_E2.5_Authority_granted) |
| 8. | Trustees are legally required to provide certain statements in the disposal documentation. The statement must say:   * that the land is held by or on trust for a charity * whether the charity is exempt * if the charity is not exempt, whether the disposition falls within s.117(3) (and so does not need to comply with the Charities Act 2011 requirements) * if the charity is not exempt and the disposal does not fall within s.117(3), whether the disposal is either:   + authorised by Order; or   + the charity has power to dispose of the property and has complied with the requirements in s.117 – 121 Charities Act 2011.   Where the statements are provided, it is presumed for the purposes of enforcing the contract that the statements are true. | See section [B14](#_B14_Statements)  the [Land Registry Practice Guide LRPG 014 ‘Charities’](https://www.gov.uk/government/publications/charities-advice-for-applications-to-be-sent-to-land-registry/practice-guide-14-charities)  See also [B7](#_B7_What_happens) saving provisions |
| 9. | For disposals other than short leases (see section [B10](#_B10_Short_leases)), trustees must obtain and consider a written report on the proposed disposition from a designated adviser instructed by the trustees and acting exclusively for the charity.    They must decide that they are satisfied, having considered the adviser’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. | [B4.8](#_B4.8_Adviser’s_report) |
| 10. | Where designated land is being disposed of without replacement, the trustees will normally need to seek the Commission’s consent to a s.280A(8)(a) resolution to amend the charity’s objects before the disposal, to enable the land to be sold.  There are additional public notice requirements when trustees are disposing of designated land without replacement – but there are some exceptions to when public notice is required.  NOTE: Where the objects have been changed before the sale in a way which means that the property is no longer designated land, the charity will not have to comply with the additional notice requirements under s.121. This is because the land will not be designated at the point of sale. | [B5](#_B5_Disposal_of) |

## B2 When can trustees dispose of their charity land without our authority?

Trustees do not need an order from us (or the court) if the disposal of land satisfies two requirements:

* the disposition is made to a person who is not a “connected person”, or a trustee or nominee for a connected person (“Requirement 1”); and

* the charity trustees obtain and consider advice on the disposition (“Requirement 2”).

The advice needed in Requirement 2 differs depending on whether the disposition is:

* a lease for a term of seven years, or less, which is not granted in consideration of a fine or premium; or
* any other disposition.

Less stringent requirements apply to the former than the latter (see [B10](#_B10_Short_leases)).

There are further requirements where the disposal is of “designated land” – see [CC28](https://www.gov.uk/government/publications/sales-leases-transfers-or-mortgages-what-trustees-need-to-know-about-disposing-of-charity-land-cc28).

In some cases, trustees are not bound by the restrictions or the requirements set out in s117 or s119/120, for example where:

* authority is given under a Scheme or an Act of Parliament (including a Church of England Measure).
* the disposalis to a charity for nil value or a nominal sum to further the transferor charity’s purposes. If a transferor charity’s purposes are narrower than, but entirely within, the transferee charity’s purposes, the transferee charity will hold the land as a special trust for the transferor charity’s narrower purposes only. NOTE: A disposal of charity land where the disposing charity trustees’ intention is both to achieve a financial return and to achieve their charity’s purpose is a social investment. A disposal that is a social investment is not exempt from complying with the Part 7 requirements - which means the trustees need to meet the s.117 or s.119/120 requirements. [See E.2.3](#_E2.3_Disposals_to).
* the disposal is a lease to a beneficiary otherwise than for the best rent that can reasonably be obtained to enable the premises to be occupied for the purposes of the charity.
* the disposal is by an exempt charity (See [CC23 Exempt Charities](https://www.gov.uk/government/publications/exempt-charities-cc23)).
* the disposal is a mortgage or an advowson (see section [E1.5).](#_E1.5_Advowson)
* the disposal is being made as part of an insolvency process or by a mortgagee

the land in question is not held on trust solely for the benefit of the charity and its purposes – such as where executors hold real estate on trust under a will for a number of beneficiaries, one of which is a charity.

* NOTE: Until 19 May 2025 any disposition for which the authorisation or consent of the Secretary of State is required under the Universities and Colleges Estates Act 1925 (UCEA 1925) will also sit outside the statutory regime pursuant to s.117(3)(a). After this date, the relevant provisions in the UCEA 1925 provisions will be repealed and so only those universities and colleges to which the UCEA 1925 applied and which have amended their statutes to provide suitable authority will be able to rely on this exemption and so remain outside this statutory regime. (See [E2.5](#_E2.5_Authority_granted))

More information about these situations is set out under the [Legal/Policy/Accountancy Framework at section E2.1](#_E2.1_When_do) .

Also for further details about complying with s119/120 of the 2011 Act, see [CC28](https://www.gov.uk/government/publications/sales-leases-transfers-or-mortgages-what-trustees-need-to-know-about-disposing-of-charity-land-cc28)*.*

## B3 When do we need to be involved with disposal of land?

We need to be involved with a disposal of charity land when:

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| **Reason** | **Comment** | **See** |
| **Most common reasons** | |  |
| The disposal is to a connected person | The disposal is to a connected person as defined in s118. | [B4](#_B4_Disposal_to) |
| The trustees say they are unable to comply with the statutory framework | The trustees cannot (or claim they cannot) comply for some reason with the requirements of s119 or s120. For instance, they say they are unable to obtain an adviser’s report.  We will not make an Order simply because trustees do not want to comply with the requirements in sections s119 or s120. There needs to be a reason why they are unable to comply. | [B6](#_B6_Trustees_can’t) |
| The disposal is made at an undervalue | It is a disposal for less than the best price but it is not to another charity in furtherance of the transferor charity’s purposes or to a beneficiary or beneficiaries (i.e. it is not permitted under s.117(3)(c)). | [B8](#_B8_Disposals_for) |
| **Less common reasons** | |  |
| The trustees have no power to sell the land | This is most likely to be because the land is designated land and, because of the terms of the proposed disposal,   * The charity does not have the power to dispose of the land and cannot use the statutory power; and/or * if their governing document is a scheme, the trustees are prohibited from disposing of the land by a provision in the scheme and they are unable to amend their governing document. | [B9](#_B9_No_power) |
| The disposal is of designated land |  |  |
| The trustees do not intend to replace the designated land disposed of and need our consent to a s.280A(8)(a) resolution (or, in rare cases, for us to make a cy pres scheme) to change the charitable purposes for which the designated land is held. | [B5](#_B5_Disposal_of) |
| We are asked to give a direction waiving the requirement to give notice of the disposal of designated land under s121(6) following an application in writing from the trustees. | [B5.4](#_B5.4_Waiver_of) |
| The trustees did not comply with the Part 7 requirements for selling land when they should have done so. | The trustees have disposed of land in circumstances when they would not usually need to come to us, but they have not complied with the requirements of s119 or s120, or included the statements required in the disposal contract and instrument by s.122, **before** entering into the contract for the disposal. | [B7](#_B7_What_happens) |
| Land vested in OC during a statutory inquiry | The trustees wish to dispose of land we have vested in the Official Custodian (OC) under s76(3)(c) as part of, or following, an inquiry. | [B11](#_B11_Land_vested) |
| Disposal of a rentcharge | In certain circumstances, but uncommonly, we need to be involved in the disposal of a rentcharge. | [B12](#_B12_Rentcharges) |

The following sections set out when and how we need to be involved in disposals of land.

## B4 Disposal to a connected person

S.117 prohibits the disposal of charity land to any person falling within the definition of “connected person” without authority from us (or the court). This requirement provides a statutory framework to manage conflicts of interest by capturing a wide range of transactions where a conflict might arise. It ensures that, in those defined cases, there is independent oversight of such transactions.

However, just because the person to whom a proposed disposition is to be made is not on the statutory list of connected persons, this does not mean that there is no conflict of interest. It just means that a specific authority from us (or the court) is not required but the trustees will still need to identify conflicts and manage them accordingly. If you are unclear about any aspect of conflict either under the statutory framework or generally, you should refer to our guidance in “Conflicts of interest: a guide for charity trustees ([CC29](https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29))” and seek legal advice.

### B4.1 Who is a connected person?

* Someone who is closely connected with the charity, such as:
  + a trustee, agent, officer or employee (excepting the grant of a tenancy to an employee as explained in B4.2 below) or their close relatives or spouse/civil partner
  + a donor of land to the charity or their close relatives or spouse/civil partner
  + people in business with any of the above
  + an institution or body corporate controlled by any of the above or in which any of the above have a substantial interest.
* For a full list see [s118 of the Charities Act](https://www.legislation.gov.uk/ukpga/2011/25/section/118).
* Also see section [E1.3](#_E1.3_Connected_person) and [section D](#_D__) that contain information on managing conflicts of interest in relation to disposals to:
  + recently retired trustees
  + the widow or widower of a trustee.
* Additional information is also set out in [section D](#_D__) in relation to disposals to
  + a subsidiary trading company
  + a director of a company and necessary approval by members of the company.

### B4.2 Do the trustees need an Order in these cases?

Yes, in almost all cases – the exceptions to this are if:

* the disposing charity is an exempt charity (s117(4) of the Charities Act 2011)
* the disposal is excepted under s117(3) of the Charities Act 2011 – see section [E2.1](#_E2.1_When_do) (for example the disposal is sanctioned by an Act of Parliament, Church of England Measure or Scheme or is a disposition by a liquidator, provisional liquidator, receiver, mortgagee or an administrator).

NOTE: Until 19 May 2025 any disposition for which the authorisation or consent of the Secretary of State is required under the Universities and Colleges Estates Act 1925 (UCEA 1925) will also sit outside the statutory regime pursuant to s.117(3)(a). After this date, the relevant provisions in the UCEA 1925 provisions will be repealed and so only those universities and colleges to which the UCEA 1925 applied and which have amended their statutes to provide suitable authority will be able to rely on this exemption and so remain outside this statutory regime. (See [E2.5](#_E2.5_Authority_granted))

* the disposal is to a person who is an employee of the charity, and the disposal is the grant of a tenancy:

(a) for a fixed term of one year or less, or which is a periodic tenancy, and the period is one year or less; and

(b) which confers the right to occupy a dwelling as a home.

This covers situations where a charity provides an employee with accommodation by way of an assured shorthold tenancy (AST), including at below market rent, to facilitate the employee’s work or for some other reason. **The lease must be granted for a term of less than a year (an AST is usually granted for 6 months) but the charity as Landlord can allow the employee to hold over and remain in occupation for a period that continues for longer than a year.** This is acceptable as this type of tenancy doesn’t provide security of tenure to the employee if the charity wishes to recover possession under the statutory regime. In all other circumstances, an employee is a connected person.

Otherwise it is a **legal requirement** that any disposal to a connected person needs an Order from us.

These cases carry the potential for risk because the charity is disposing of valuable assets to someone who is connected to the charity, a situation that creates a conflict of interest because:

* on one hand the charity has a duty to achieve the best terms reasonably obtainable for the transaction
* on the other hand, the connected person will want to obtain the property for terms that best suit him/her, which may be less than the charity is trying to realise from the disposal.

The trustees must confirm (and be able to demonstrate if required) they have managed this conflict of interest properly and that the disposal is in the best interests of the charity.

In these circumstances an Order:

* provides assurance that the transaction has been managed properly and is in the best interests of the charity
* can help avoid the risk of challenge or criticism.

NOTE: s.122 sets out the statements which must be included in contracts and instruments disposing of charity land (see [B14](#_B14_Statements)). If a property is sold to a connected person without an Order from the Commission, the “saving provisions” may apply in some limited cases – see [B7.3 below](#_B7.3_–_Saving).

### B4.3 How do the trustees apply for our authority and what information do they need to provide?

Trustees use the [online application form](https://www.gov.uk/guidance/sell-or-lease-property-to-someone-connected-to-your-charity) to give us the information we need to decide whether or not we can make the Order (see [section B4.5](#_B4.5_Can_we)) – but there is nothing to stop a caseworker asking for more information if needed.

The online form asks for:

* information about the connected person – who it is and how they are connected
* if the connected person had any involvement in the decision to dispose of the land
* how the trustees made the decision to dispose of the land to this person and what options were considered
* why the disposal is in the best interests of the charity
* information on the trustees’ power to sell the land (and if there is any prohibition)
* a summary of the contents of the designated adviser’s report (see [section B4.8](#_B4.8_Adviser’s_report))
* details of the land, including if it is designated land
* the type and terms of the disposal – sale price or terms of the lease
* how the trustees have resolved issues raised in any opposition to the disposal

### B4.4 Initial assessment and allocation of work

The application will be assessed against the Commission’s risk framework. This will determine whether it can be dealt with as a ‘routine’ application or will require greater scrutiny and possible compliance action in accordance with working procedures.

In assessing risk, the following factors will be relevant:

* the value of the transaction
* if there is evidence of undue personal benefit – for example the sale price is below the adviser’s estimate of the sum to be expected
* the trustees have not obtained an adviser’s written report
* the trustees are not following advice in the adviser’s report
* there is a history of disputes or problems within the charity relating to a property sale or sales
* the property is designated land and there is no power of sale
* the disposal is controversial and may pose a risk to public trust and confidence in the charity and/or there is media and parliamentary interest, such as a disposal of a building of national or local importance (NOTE: in such cases the property may be designated land).

This is not an exhaustive list and each application should be dealt with on a case-by-case basis.

### B4.5 Can we make the Order or not?

It is the responsibility of the trustees to supply us with correct information. We therefore accept the declarations made by the trustees or those acting for them that the information provided is correct. The application form draws the applicant’s attention to s.60 of the 2011 Act, making it clear it is an offence for a person to knowingly or recklessly provide the Commission with false or misleading information.

In assessing the application, the caseworker should consider the following:

|  |  |
| --- | --- |
|  | See Section |
| Does the charity own the title to the land? | [B4.9](#_B4.9_Do_the) |
| Do the trustees have the power to make the disposal? | [B4.6](#_B4.6_Do_the) |
| If it is designated land, do the trustees have power to dispose of it? | [B4.6](#_B4.6_Do_the), [B5](#_B5_Disposal_of) |
| Have the trustees managed any conflict of interest? | [B4.7](#_B4.7_Have_the) |
| Have the trustees obtained a written report from a designated adviser that contains the necessary advice requirements and the adviser’s self-certification that they have the appropriate expertise and experience and do not have a conflict of interest? (NOTE: different requirements if the disposition is of a short lease - see [B10)](#_B10_Short_leases) | [B4.8](#_B4.8_Adviser’s_report) |
| If the designated adviser recommends marketing the property, have the trustees followed this advice or do they have good reasons for not doing so? (NOTE: different requirements if the disposition is of a short lease - see [B10](#_B10_Short_leases)) | [B4.8](#_B4.8_Adviser’s_report) |
| Have the trustees achieved the best terms that can reasonably be obtained in the circumstances of the disposal? | [B4.10](#_B4.10_Are_we) |
| Is the disposal in the best interest of the charity? | [B4.11](#_B4.11_Is_the) |

If we are satisfied the trustees have addressed all these issues properly, then it is likely we will be able to make the Order under s117(1) of the 2011 Act. However, if we consider any one or more of these criteria are not met, we may need to contact the trustees for further information. **If you are unsure, seek legal advice.**

If, once the trustees have provided us with all the information, we are still not satisfied that the trustees have achieved suitable resolution of these matters, we would expect to refuse to give our authority. A decision note should be made to accurately set out why a decision to decline authority has been made. It would be advisable to seek advice from the legal team in drawing the factors together as a decision not to make a s117(1) order is appealable to the Tribunal.

### B4.6 Do the trustees have the power to make the disposal?

We will accept the trustees’ declaration on the application form that they have the power to dispose of the property, unless we have reason to doubt this (for example the name or objects of the charity indicate it has designated land and there is no intention to purchase replacement land with similar amenity value).

The form reminds the applicant that it is an offence to knowingly or recklessly provide us with false or misleading information. If we have doubts, we may ask the trustees about their power to dispose of the land, particularly if there are other compliance issues.

1. **Unincorporated** **charities**

If there is no power of sale in the governing document, the trustees could:

* rely on the power in the Trusts of Land and Appointment of Trustees Act 1996 (TLAT 1996); or

* rely on the power to amend the charity’s governing document in s.280A of the 2011 Act to introduce a power of sale in respect of land which is not designated land and is held for the general purposes of an unincorporated charity.

Where the charity is **unincorporated** the trustees (or the corporate trustee of the unincorporated charity) can generally use the statutory power of sale in s.6 TLAT 1996. However, this may not always be the case:

* Where the governing document contains an express prohibition on disposal, the governing document should be amended to remove the express prohibition so that the statutory power can be used (see [B9](#_B9_No_power) below).
* Where the trustees wish to sell designated land in order to purchase replacement land to be used for the same purposes as the original land, they will normally be able to rely on the statutory power of sale.
* If the trustees are proposing to sell only a small part of the designated land that is not needed to further the charity’s purposes, the trustees can only use the statutory power if they can demonstrate that the sale is in the best interests of the charity and conducive to achievement of its purposes. This may be possible to demonstrate, depending on the specific trusts on which the land is held and the particular circumstances of the situation.
* If the trustees are proposing to sell off all the designated land and not purchase replacement land of equivalent amenity value, the statutory power will not normally be available. This is because it will not normally be possible for the trustees to demonstrate that the sale is in the best interests of the charity and conducive to achievement of its purposes (although this may depend on the specific trusts on which the land is held).
* Trustees cannot use the statutory power of sale to sell specie land. ‘Specie’ land is a type of designated land that is held on trusts that make it fundamental to the charity’s purposes. The statutory power of sale cannot be used for this type of land as the trusts are linked to the specific property and so cannot be disposed of or swapped without defeating the purpose of the charity. For example, if a charity held ‘Shakespeare’s House’ and the trusts related to preserving ‘Shakespeare’s House’, they could not exchange it for another property that was not Shakespeare’s House as the trusts could no longer be carried out.

Selling designated land without replacement

Designated land is land that is settled on specific charitable trusts held by the charity and required to be used for a particular purpose or purposes of the charity. Land held for a specific purpose of the charity is held on distinct trusts. This means that the land cannot be dealt with in a way which would mean it could not be used for the purposes for which it is held. Therefore, if the trustees wish to sell designated land without purchasing a replacement of equivalent amenity value, it is likely that they will need to change the designated land’s charitable purposes so that the proposed sale and use of the proceeds is consistent with the new purposes. This would then enable the trustees to rely on the statutory power of sale in s.6 TLAT to dispose of the designated land, as it would have new purposes (i.e. it would no longer be designated) at the point of disposal.

The trustees can amend the purposes for which designated land is held by passing a resolution under s.280A(8)(a) to alter the trust’s objects, subject to obtaining our consent (or, in rare cases, we may agree to make a cy pres scheme). See OG518-01 Amending governing documents: An overview and OG518-02 Amending governing documents – Processing regulated alterations and OG518-03 Amending Purposes

Once the trustees have changed the charity’s purposes so that the land is no longer designated, they can usually use the TLAT power of sale.

If the governing document is a scheme and contains an express prohibition against disposal, the trustees are not able to use the statutory power in s.280A, or an express power of amendment in their governing document, to remove the prohibition themselves. The trustees would need a scheme to remove this prohibition. If the governing document is not a scheme, the trustees should able to use the statutory power in s.280A, or an express power in their governing document, to remove the prohibition themselves. [See B9](#_B9_No_power).

Seek Legal advice if unsure which method is most appropriate.

1. **Incorporated charities**:

Where the charity is **incorporated**, check there is no prohibition in the governing document that prevents them disposing of the property.

The articles of association of a charitable company will usually include a power to sell land. If necessary, a charitable company can alter its articles to include such a power.

Similarly, a CIO constitution will usually include a power to sell land. If not, the CIO should be able to alter its constitution to include a power of sale. It is noted that the wide power in s.216 of the 2011 Act will often be sufficient to enable a CIO to sell land as it confers the power on a CIO to “*do anything which is calculated to further its purposes or is conductive or incidental to doing so*”.

Royal Charter Bodies usually have the power to sell land in their Royal Charter or Byelaws. If they do not, they can use the power in s.280C to amend their governing document to include a power of sale.

A statutory corporation will only have the power to sell its corporate property if the governing statute provides an express or implied power to do so.

Where an incorporated charity is the trustee of land held as designated land or investment permanent endowment, they cannot use their corporate power of sale because they hold the designated land or permanently endowed land on separate “special” trust. (For more information on Special Trusts, see OG46). The corporate trustee will need to follow the rules for selling designated land or land held as investment permanent endowment set out above.

There may also be some other statutory power the trustees could use – see section [E3.2](#_E3.2_Powers_that) of this guidance.

### B4.7 Have the trustees followed the correct procedures and dealt with the conflict of interest?

Trustees are required to set out in the online form how they made the decision to dispose of the land to the connected person. In that explanation you should check that the trustees have explained **how** they have managed the conflict of interest. If more information is needed, see information for trustees in the [conflict of interest pages on our website](https://www.gov.uk/guidance/managing-conflicts-of-interest-in-a-charity). We will not automatically require sight of minutes of meetings where the issue was discussed/decided, but if there is doubt caseworkers may ask the trustees to send these.

If we ask for further details, we will need to see evidence that the connected person has not:

* been present at any discussions concerned with the transaction
* had access to ‘inside information’ about other parties interested in the disposal.

In some cases, it may be difficult to achieve exclusion of connected persons from discussions. For example, where the connected person is a subsidiary trading company and the trustees are also the directors of the company, it can be impossible for them not to discuss the disposal or make an unconflicted decision as they are the same people involved on both sides. In such cases, if there are not a sufficient number of unconflicted trustees available to make an unconflicted decision, the trustees will need to appoint a sufficient number of additional non-conflicted trustees. Where this is not possible, the trustees will need to apply to the Commission for an order to allow a conflicted decision to be made. This will require an understanding on our part of the steps the trustees wish to take in the best interests of the charity. Depending upon the circumstances, we would expect to see that:

* they have obtained an independent valuation from a designated adviser
* they have given sufficient external advertising to the disposal or explained why this is not appropriate
* they have considered other offers or can explain why other offers have not been sought
* the connected person’s offer is comparable with or exceeds the other offers – it should be at least equal to the valuation and preferably still the highest bid or an explanation as to why such a comparison is not appropriate.

Having seen evidence of the above, we will need to be satisfied that the proposed disposal is expedient in the interests of the charity.

### B4.8 ****Adviser’s**** report and details of the land

We should be sure that the trustees:

* know exactly what they are proposing to dispose of; and
* understand the value of their charity’s land (their adviser should report in accordance with [The Charities (Dispositions of Land: Designated Advisers and Reports) Regulations 2023 (the “**Regulations**”)](https://www.legislation.gov.uk/uksi/2023/467/contents/made).

**NOTE:** The Regulations do not apply to dispositions of short leases (see section [B10](#_B10_Short_leases)).

**Adviser’s report**

There is a default requirement that trustees obtain advice from a suitably qualified person (“a designated adviser”). The advice requirements are set out in the Regulations, which also list those property professionals who are qualified to give advice to trustees.

Qualified charity trustees, officers and employees can give advice.

Trustees have flexibility to choose an adviser that is best placed to provide advice in relation to a transaction, given that different transactions will need tailored treatment.

The adviser must self-certify that they:

* + have the appropriate expertise and experience to provide the advice that is required;

* + do not have any interest that conflicts, or would appear to conflict, with that of the charity.

In order to check that the trustees have complied with the advice requirement (other than for short leases, see [B10](#_B10_Short_leases)):

* we ask trustees in the online form to provide us with key information from the adviser’s report:
* the value of the land
* whether to market the land
* what terms the trustees are considering accepting
* if there is any opposition to the proposed disposal, trustees are asked to provide details and explain the steps they have taken to resolve these issues.
* we ask if the trustees have followed their adviser’s advice on marketing and value and, if they have not, we ask for the reasons why not:
  + if there is no marketing, when the adviser advises the disposal should be marketed, we will need to know why and how the trustees have managed to achieve suitable publicity;
  + if the trustees have not followed advice about the value of the land or terms of the disposal, again we need to know why.

The trustees do have discretion to decide whether to market the property, even if the adviser has recommended it. However, the trustees must be satisfied, having considered the report, that the transaction achieves the “best terms”. Therefore, if the report recommends marketing and the trustees disregard this advice, it is more difficult for them to be satisfied that they have complied with their duties in Part 7. They may, though, choose to market the property, but not exactly as their adviser had recommended. The reasons for the trustees’ decision should be fully documented and, if we have doubts about it, we can ask to see their justification document.

(NOTE: Until the implementation of the Charities Act 2022, trustees were required to advertise the disposal for such period and in such manner as was advised in a report from a surveyor - unless it advised that it would not be in the best interests of the charity to advertise it. The trustees now have discretion to decide on marketing.)

We will not necessarily need to see the full report, but we may request it if we think we need more information than the trustees have provided. See the guidance on assurance and verification].

If we think there is a possibility that the land has been undervalued or the adviser’s report is not full enough, seek legal advice.

**Details of the land**

* If the land is registered with the Land Registry, we will need the registered number and the full postal address of the land as well as details of any lease to which the land is subject.
* Where the land is not registered (which is becoming increasingly unusual), we will need the full postal address or a brief description of the land, details of the conveyance or lease under which the charity acquired the land and details of any lease to which the land is subject.
* We will use this information when describing the land in the Order.

### B4.9 Do the trustees hold the legal title to the land?

The trustees need to make a declaration on the form that they own the legal interest in the land they propose to dispose of. We cannot determine the title to land (s.70(1) of the 2011 Act) and, even if we authorise a disposal, that does not conclusively determine the charity’s title to the property. If there is any doubt over the title, the trustees should not proceed without taking their own legal advice.

### B4.10 Are we satisfied with the type and terms of the disposal?

The trustees need to tell us what type of disposal they are proposing and the terms on which they are proposing to make it. Caseworkers should:

* compare the adviser’s estimate of the sum to expect with the return from the disposal – if there is a significant difference between the two then we will need to understand why
* ask for more information if necessary
* be satisfied the disposal will achieve the best terms for the charity reasonably obtainable in the circumstances.

### B4.11 Is the disposal in the best interests of the charity?

Trustees are duty bound to achieve the best terms they can reasonably obtain for the charity in the circumstances of the disposal and should provide us with sufficient reasons for deciding the disposal is in the best interests of the charity. We should consider all the information provided in the online form. The factors that we might consider here are whether or not the:

* trustees have achieved at least the minimum sum to be expected as advised by their adviser
* offer they propose to accept from the connected person is at least very close to or above any other offers
* disposal will impact on the:
  + ability of the charity to continue to carry out its objects
  + beneficiaries of the charity
* trustees have plans in place to use the proceeds of the disposal and these plans will at least maintain or are an improvement on the charity’s ability to further its objects and/or serve its beneficiaries.

See also section [D2](#_D2_Disposals_by) for more information with disposals by building preservation trusts.

## B5 Disposal of designated land

Designated land is land that is settled on specific charitable trusts held by the charity and required to be used for a particular purpose or purposes of the charity. Some examples of land which may be designated land are recreation grounds or land on which there are churches, schools or almshouses.

**IMPORTANT NOTE: LEGAL ADVICE SHOULD BE SOUGHT BEFORE RESPONDING TO ANY QUERIES RELATING TO THE TOTAL OR PARTIAL DISPOSAL OF DESIGNATED LAND (EVEN IF THE AREA TO BE DISPOSED OF IS NOT DEEMED TO BE SIGNIFICANT) OR WHERE THERE IS ANYTHING COMPLEX OR POTENTIALlY CONTROVERSIAL ABOUT THE CASE.**

### B5.1 Do trustees always need to come to us when disposing of designated land?

Trustees only need to come to us if:

* they do not have power to make the disposal;
* they require a waiver from the requirement to give notice of the disposal of the designated land; or
* the disposal is to a connected party (see Section [B4](#_B4_Disposal_to)).

No power of disposal

If, after the disposal, it will be possible to carry on the purposes of the charity, the trustees may be able to rely on the statutory power of sale in TLAT 1996. For more information on the statutory power of sale, see [B4.6](#_B4.6_Do_the) above.

This is likely to be where:

* the land is being replaced with other suitable land of equal amenity value; or
* the land being disposed of is only a small part of the designated land and there will be little or no effect on the charity’s ability to carry out the purposes for which the remainder of the land is held. The trustees can only use the statutory power if they can demonstrate that the sale is in the best interests of the charity and conducive to achievement of its purposes. In these circumstances, the proceeds of sale are held on the same trusts as the designated land. If those trusts are sufficiently wide for the proceeds to be applied to support the use of the remaining land for the purposes of the charity, they may be so applied. If not, the trustees will need to pass a resolution under s.280A(8) (or, rarely, apply for a cy pres scheme) to provide for the proceeds to be used, for example as investment permanent endowment to provide income to support the land’s upkeep.

If, after the disposal, it would not be possible to carry on the purposes of the charity, those purposes will need to be changed prior to the sale to enable the sale to be made in the best interests of the charity. Unless the governing document confers power on the trustees to amend the charitable objects, the trustees would usually be able to use the statutory power of amendment in s.280A(8)(a) of the 2011 Act or, in exceptional cases they may need to apply for a cy pres scheme, to alter the charity’s purposes. See OG518 – 01, 02, 03 and 06 on Amendments to governing documents.

We use the term ‘specie land’ to refer to a type of designated land that is a specific property held on trusts that make it fundamental to the charity’s purposes. The statutory power of sale cannot be used for this type of land as the trusts are linked to the specific property and so cannot be disposed of or swapped without defeating the purpose of the charity. For example, if a charity held ‘Shakespeare’s House’ and the trusts related to preserving ‘Shakespeare’s House’, they could not exchange it for another property that was not Shakespeare’s House as the trusts could no longer be carried out.

### B5.2 Requirement to give public notice prior to disposal of designated land

Section 121 of the 2011 Act imposes a requirement on trustees to give public notice when disposing of designated land that is not being replaced – this is different from advertising to get the best terms. Apart from our possible involvement in giving consent to a change of objects when designated land is being disposed of, we might also become involved as the trustees may apply to us for a waiver from the requirement to give public notice.

However, now that unincorporated charities can use the statutory power in s.280A(8)(a) to amend their purposes, rather than the Commission needing to make a cy pres scheme, it is anticipated that fewer charities will apply to the Commission for a waiver from the public notice requirement. This is because, if a charity wants to sell designated land and not replace it, instead of seeking a cy pres scheme to confer a power of sale and provide new purposes which will attach to the proceeds of the sale, the trustees will apply for consent to amend the purposes for which the designated land is held using s.280A(8)(a). Once our consent to the change of purposes is given, the purposes for which the land is held will be changed by the resolution on the date that resolution comes into force. If that date is before the land is sold, the land will no longer be designated land at the point of sale. In practice, this means that:

* the trustees will generally be able to rely on the statutory power to sell the land (s.6 TLATA); and
* the trustees will not be required to give public notice under s.121 (or seek a waiver);

because the land will no longer be designated when it is sold.

Therefore, it is anticipated that public notice under s.121 (or the need to request a waiver if the charity did not want to comply) would only be likely in circumstances where:

* the Commission considered it needed to make a cy pres scheme because the trustees could not use s.280A(8)(a) to amend the purposes and so made a scheme (i) to confer a power of sale on the trustees and (ii) to provide new purposes for the proceeds of the sale (in this situation the land is still designated at the point of sale so still subject to the s.121 public notice requirement);
* the disposal involves only a small part of the designated land and will not affect the ability to carry out the purposes of the charity; or
* the disposal is a lease of the land that will not affect the ability to carry out the purposes of the charity.

**Exceptions from this requirement**

The requirement to give s.121 public notice does not apply:

* S.121(5) – if the designated land is being replaced or the disposal is by way of a lease for not more than 2 years with no fine or premium
* S.121(6) and (7) – if we make a direction that s.121(2) does not apply to dispositions of land held by or in trust for a charity or class of charities.

Trustees would need to make an application in writing by or on behalf of the charity or class of charities seeking the waiver. When considering the application we must be satisfied that it would be in the interests of the charity or charities for us to give the direction granting the waiver.

**Read section** [**B5.4**](#_B5.4_Waiver_of) **below if you are considering a waiver application.**

### B5.3 Form of notice

The 2011 Act does not set out when or where the notice should be published nor dictate the contents of the notice. These are matters for the trustees to decide but we may give the following advice if asked:

**Content of the notice**

The minimum we would recommend the trustees to include in the notice is:

* a statement that it is a notice for the purposes of s.121(2) of the Charities Act 2011
* the name of the charity
* the date by which representations are required – to comply with s.121(2)(a) this must be not less than one month from the date of the notice
* the full address or description of the land
* the nature of the disposal (freehold sale, lease for x years, etc.)
* if appropriate, the manner in which the trustees propose to market the property
* the full postal and/or email address to which representations should be sent

There is no legal requirement about the content of the notice, and it is up to the trustees to decide what to include.

**Timing of the notice**

The trustees can give notice as soon as they have formed a general intention to dispose of the designated land and how they have decided to market it. If the trustees are considering a change of purposes to enable them to use the statutory power of sale and provide for the application of the proceeds in a different way, this need not delay the giving of publicity under s.121. The trustees do not have to wait until they have the power of sale before they give notice of their intention to dispose of the land. In any case the trustees must comply with this s.121 requirement before entering into an agreement for the disposal (sale, lease or other disposal). If the trustees fail to do this, the disposal will be invalid.

**Publication of the notice**

As many people as possible in the beneficial area should have the opportunity to see the notice, bearing in mind the cost of giving public notice, especially beneficiaries who may be affected by the disposal. The trustees are best placed to decide what form the publication should take in the circumstances of the charity. For instance, placing a notice on the property to be disposed of and using the charity’s website and social media.

However the trustees decide to publish the notice, they should be able to justify their decisions if challenged.

### ****B5.4 Waiver of requirement to give public notice of the disposal****

The trustees or their representative may apply in writing for a waiver from the requirement to give public notice of a disposal of designated land that will not be replaced. (See section [B5.2](#_B5.2_Requirement_to) for information about the requirement for such a notice.)

Before we give such a waiver, from the case put forward by the trustees, we must be sure that it is in the best interests of the charity to do so.

Some examples of when we might consider it appropriate to grant a waiver are:

* there has already been significant public discussion/consultation of the proposed disposal (for example public notice has already been given in relation to a s.280A(8) resolution, scheme that was made or other consent provided to amend the charity’s governing document to facilitate the sale) and it is not controversial;
* where the disposal involves only a small part of the land and will not affect the ability to carry out the purposes of the charity and it is understood not to be controversial;
* an urgent transaction that is not significant to the trusts of the charity, e.g. an easement or lease which does not materially affect the trusts in designated land and:
  + the urgency of the transaction means that there is no time for notice; or
  + the costs of notice are too high in relation to the consideration to be received by the charity; and
  + the transaction is not controversial.
* where the trusts of the charity itself impose a more onerous duty of public notice on the trustees than s.121, e.g. in the case of a village hall where the trustees are required to call a public meeting before disposing of the land that, in itself, will give publicity of the disposal and a chance for members of the public or others affected by the disposal to make representations;
* a voluntary conveyance under threat of a compulsory purchase order;
* where the trustees justifiably consider there to be a real danger of the sale falling through, perhaps because the purchaser wishes to complete very quickly and may not be able to tolerate a month’s delay. In such cases we should try to establish the risks that might be involved – for example we might wish to:
  + check whether there appear to be good grounds for believing that a sale could be lost by a month’s delay;
  + establish whether the sale might provoke objections – in which case we may be less likely to grant a waiver;
  + find out the reasons why the trustees did not publicise the disposal earlier.

Such cases are likely to be quite rare and we would only give the direction after we are fully satisfied that the disposal, without the publicity normally required under s121, is the best way to proceed in the light of our enquiries.

* where there is a likelihood of the sale falling through because a developer or special interest purchaser will withdraw if their offer is publicised through giving of the public notice. In this situation the trustees would need to put forward a very strong case that the purchaser has genuinely good reasons for not wanting publicity and that these reasons weigh more heavily than the need to protect the interests of the beneficiaries.
* in rare cases where a charity makes a large number of routine transactions, we can make a general Order exempting them from the requirement of notice under s121 – this is something we have done for the National Trust and the Canal and River Trust.

When we receive the application for waiver, we should be satisfied we have sufficient information to enable full consideration of the case. We should take into account the consequences for the beneficiaries (for example, does it interfere with the use or enjoyment of the property); it is up to the trustees to make a very good case and convince us that a direction should be given. **A direction under this section should not be given lightly**.

### B5.5 Controversial disposals of designated land

Where we are considering an application for consent to a s.280A(8)(a) resolution to amend the purposes for which the land is held or a scheme to give a power to trustees to sell designated land because they cannot rely on the statutory power in s.6 TLAT, it will need to provide charitable purposes for the proceeds of that sale. This includes if all or any of the proceeds are intended to be held as investment permanent endowment to provide income to support the new purposes, rather than as designated land to be used for the charity’s purposes.

Where the disposal is controversial and consideration is given to making a Scheme, we might consider it is appropriate to add provisions to the Scheme to state that the trustees cannot rely on the power to sell the land until all avenues of appeal have been exhausted or timed out. This is intended to avoid a situation where trustees rely on the power to sell the land before an appeal is lodged at the Tribunal. If this appeal is then successful, the fact that the sale has already taken place could cause difficulties for the charity and the Commission.

To address this, our policy is:

* in cases where we are giving a power to sell designated land, and:
* we are aware that the case is controversial to the extent that we required public notice to be given, and
* we received representations as a result of the public notice,

The person making the Scheme should consider adding provisions to say that the power to sell can only be exercised once:

* all relevant appeal periods have lapsed without challenge, or
* all legal proceedings following an appeal to the Tribunal have been finally disposed of.

Whether or not we decide to include this wording in the Scheme, the caseworker must record that this has been considered and must set out the reasons for making the decision on the case file.

## B6 Trustees can’t comply with the requirements of s117-121

Trustees must comply with the requirements of s117-121 appropriate to their disposal no matter how small the transaction (unless the disposal is exempt or excepted from these requirements – see section [E2.1](#_E2.1_When_do)). Where this requires an adviser’s report, this will always be needed.

The trustees might claim:

* they can’t find a suitably qualified adviser in the area for the type of property (see [B6.1.)](#_B6.1_No_suitably)
* the cost of an adviser’s report is disproportionate to the value of the disposal (see [B6.2)](#_B6.2_Cost_of)
* an undervalue disposal to a local authority or other non-charity committing to use the property for purposes compatible with those of the charity doesn’t need an adviser’s report. Such a disposal is not covered by s117(3)(c) (‘charity to charity transactions’) (see [B8.1](#_B8.1_Disposal_to) and [D1.6](#_D1.6_Can_a))
* they don’t want to or need to get an adviser’s report, maybe because they think they know the value of the land. (see [B6.3](#_B6.3_Trustees_think))

In each of these cases it is unlikely we will make an Order for the disposal without an adviser’s report.

There may also be situations in which a charity has received an offer without obtaining the required report first. If we are contacted by a charity in this situation, we should advise that it is still possible for them to meet the requirements (there may be circumstances in which an offer is received when the charity had not been considering disposing of the land in question, in which case it would not have been possible for the trustees to comply with Part 7 before the offer was received).They should go ahead and obtain the required report, but the report should also address whether the offer represents the market value of the land, and whether any further marketing would be desirable. It is therefore unlikely we would, or would need, to make an Order.

### B6.1 No suitably qualified adviser available

The trustees might claim they cannot find a suitably qualified adviser in the area or for the type of land. However, this reason will be less likely to succeed now that the number and types of property professionals who qualify to be an adviser has been expanded by the Charities Act 2022. If trustees contact us about this, we should direct them to CC28 which has links to the following which may be qualified advisers (for disposals other than short leases – see [B10](#_B10_Short_leases)):

* a fellow or professional associate of the [Royal Institution of Chartered Surveyors](https://www.ricsfirms.com/?link=useful-links&_ga=2.192613610.1763790079.1632478096-1930154144.1632478096) or
* a fellow of [the Central Association for Agricultural Valuers (CAAV)](https://www.caav.org.uk/) or
* a fellow of the [NAEA Propertymark (National Association of Estate Agents).](https://www.propertymark.co.uk/find-an-expert.html)

### B6.2 Cost of obtaining a report is disproportionate to the value of the disposal

Trustees may claim that where they are disposing of land for a wayleave or access to the land for servicing equipment, for example, the value would be so small it is not worth getting an adviser’s report.

We should point out the flexibility the trustees have to choose the most appropriate designated adviser for their situation. If it is a simple transaction, it is unlikely to require a detailed report (NOTE: for the requirements relating to short leases see [B10](#_B10_Short_leases)).

However, although the disposal may appear small or insignificant, it is the value to the acquiring party that may be an important element in determining the price. (For example, it could be a ‘ransom strip’ – a small piece of land which becomes very valuable because without it a developer is unable to develop his own adjoining property.) Further, an easement granted for nominal consideration might significantly reduce the value of the charity’s land.

If we are to make an Order in such cases, it is just as important that the trustees get an adviser’s report to be sure of the sum to expect.

If we can be reasonably certain that the value of the transaction is genuinely low and as a way of protecting the charitable funds, we may make the Order. An example is where the trustees have granted similar wayleaves in the recent past for which they have obtained advice from their adviser.

Caseworkers will need to consider transactions on a case-by-case basis but, where such a situation does not exist, we will insist on the trustees obtaining an adviser’s report.

### B6.3 Trustees think they don’t need or don’t want to get a report

We will not make an Order when trustees just don’t want to get an adviser’s report – this would seem to run against the trustees’ duty to secure the property for the charity and act in the best interests of the charity. Trustees would have to make a very compelling case if they think they don’t need an adviser’s report.

If the trustees already have an adviser’s report from a previous attempt to sell the land, we might consider accepting the information in that if it is reasonably recent – in these circumstances we suggest the report should be no more than six months old. It is also possible for the original adviser to review their report and provide a confirmatory report with an updated valuation. This may be outside the six-month period. We may be able to accept a confirmatory report updated in this way but much will depend on the facts. Take legal advice if you are unsure about accepting a report in these circumstances.

## B7 What happens if the trustees have not complied with the s.117-119 requirements?

### B7.1 Saving provisions - s.122

If the trustees have not complied with the requirements to dispose of their charity land before entering the contract for disposal, then the disposal will not be valid or enforceable unless:

* we make an Order before the transaction is completed

or, if the transaction is already complete:

* if the contract and the instrument effecting the disposition contain the required statements under s.122(2), (see [B14](#_B14_Statements)) they are conclusively presumed to be true in favour of a purchaser for value (under the disposition or afterwards) (s.122(4) and (4A));
* if the contract does NOT contain the required statements under s.122(2), (see [B14](#_B14_Statements)) the contract is enforceable in favour of a person who has entered into the contract in good faith (s.122(5)) as if:
  + the disposition had been sanctioned by an Order,
  + there was power under the charity’s trusts to enter into it and
  + the requirements of s.117-119 have been complied with.
* if the instrument effecting the disposition does NOT contain the required statements under s.122(2), (see [B14)](#_B14_Statements) the disposition is valid in favour of a purchaser for value (under the disposition or afterwards) who has entered into the contract in good faith (s.122(5A)) even if:
  + the disposition had not been sanctioned by an Order, or
  + there is no power under the trusts to enter into the disposition or
  + the requirements of s.117-119 have not been complied with.
* we ratify the transaction with an Order under s117(1).

If the purchaser has NOT acquired the land ‘in good faith’ and the contract and instrument of disposal do NOT contain the required statements under s.122(2), the contract is not valid and is not enforceable by the purchaser.

Depending upon the circumstances and level of risk, it may be necessary to escalate the case in accordance with the Commission’s escalation guidance / criteria. If it appears that the trustees of the disposing charity have deliberately ignored some of the requirements of s117, **caseworkers should consider whether to refer any such cases for compliance risk assessment following the usual referral process and, in particular, should always do so where the deliberate failure may have led to a significant loss for the charity**.

### B7.2 Purchasing in “good faith” and the saving provisions

If the purchaser knows or ought to have known that the transaction was not carried out in a valid way, and so did not purchase in good faith, then they cannot rely on the saving provisions in s.122(5) and (5A) (see above). The transaction may not be valid or enforceable by the purchaser (although we cannot determine this) and caseworkers should take legal advice.

If the trustees have not complied with the legal requirements but the purchaser acquired the land for money or money’s worth in good faith, the transaction will be enforceable by the purchaser pursuant to s.122(4)/(4A) or (5)/(5A) (see above).

If the trustees have not complied with the legal requirements and the person acquiring the land knows or ought to have known this to be the case, the transaction will only be saved by s.122 if the contract and instrument of disposal include the required statements. This is because the purchaser cannot be said to have acquired the interest in the land in good faith, which is required for the purposes of s.122(5) and (5A).

Where the transaction is not “saved” by any of the provisions in s.122, it may be void and the title to the property may remain vested in the charity or its trustees (but we cannot determine this). Case officers should seek legal advice before advising trustees on the required steps to take in this situation to ensure they are aware of all the other options open to the charity in the circumstances.

The options are:

* the Commission ratifies the transaction by an Order under s117(1) – it will be a matter for the charity’s and the purchaser’s legal advisers to decide on what, if any, further documentation is required
* the Commission makes a s.105 Order authorising the execution of confirmatory disposal documentation
* require the trustees to take any necessary steps to re-vest the title to the property in the charity or its trustees.

Although we can make a s.117 Order to ratify a transaction where the statutory requirements have not been complied with, it is unlikely that we would do so in circumstances where the saving provisions in s.122 apply or where trustees have deliberately ignored some or all of the requirements of s117 – the trustees will need to consult their legal adviser. **Caseworkers must take legal advice if we are asked to ratify a disposal.**

### B7.3 – Saving provisions and connected party disposals

If a property is sold to a connected person for money or money’s worth (see [B4](#_B4_Disposal_to) above) and the trustees do not obtain an Order from the Commission or court as required, the “saving provisions” will only make the transaction enforceable by the purchaser if the statements are included. This is because:

• if the s.122(2) **statements** **are included** in the contract/instrument, the **transaction will be saved** as the saving provisions in s.122(4) and (4A) mean that the statements will be presumed to be true for the purposes of enforcing the contract - there is no “good faith” requirement; and

• if the s.122(2) **statements** **are NOT included** in the contract/instrument, the **transaction will not be saved** by s.122(5) and (5A) and **it will not be enforceable by the purchaser** unless the connected party purchaser can be shown to have acted in good faith (which it is expected will be very difficult).

The reason why certain transactions with a connected party will be saved even though we did not make an order is because:

* If the statements are included in the contract, s.122(4) presumes them to be true for the purposes of enforcing the contract, with no good faith requirement for the purchaser.
* If the statements are included in the instrument effecting the land disposal, s.122(4A) presumes them to be true in favour of a purchaser for value (whether they are the initial purchaser or a subsequent purchaser), with no good faith requirement for the purchaser.
* If the statements are NOT included in the contract or in the instrument effecting the disposition:
* s.122(5) only “saves” the transaction, insofar as it is enforceable by a person who has entered into the contract in good faith.
* s.122(5A) only “saves” the transaction where a purchaser for value (whether they are the initial purchaser or a subsequent purchaser) has acquired the interest in good faith.

Therefore, if the purchaser is a connected person and no s.117 Order has been obtained from the Commission, we would not expect the purchaser to be able to rely on s.122(5) or (5A) as they are unlikely to have acted in good faith as a purchaser. If the trustees have disposed of an interest in land for value to a connected person without an Order, and have included the statements in the contract and instrument of disposal, the transaction is enforceable by the connected person by virtue of the saving provisions.

## B8 Disposals for less than the best price that can reasonably be obtained

There are some circumstances where a disposal for less than the best price will be outside of the requirements of s117 – for example,

* a disposal by way of a lease for less than best rent to a beneficiary to fulfil the purposes of the charity
* a disposal to another charity in furtherance of the transferring charity’s purposes for nominal or no value and which is not a social investment– see section [E2.3](#_E2.3_Disposals_to).

**If you are unsure if this exemption applies, seek legal advice.**

However, where a disposal for less than best price/rent does not fall into one of these exemptions, we may need to make an Order. We would need good evidence that the disposal really is in the best interests of the charity. An example of such a situation might be as follows.

A charity wants to use a building it owns but can’t afford to carry out the work to upgrade it. The charity wants to sell the property to a local builder, at less than market rate, who will do the work and then lease the building back to the charity on favourable terms. We should consider whether:

* + this transaction is really in the best interests of the charity
  + the builder is getting a better deal than it looks at first sight and
  + the charity may be losing out.

The charity would have use of the building, but the builder is getting a good deal buying the property undervalue. The charity will no longer own the valuable asset and will be paying rent for a property they used to own and at any time the builder could sell the property and the charity would no longer have use of it. On the other hand, the charity could have clauses written into the agreement of sale that guaranteed their use of the property for a set time in the future. We would have to be satisfied that the trustees had made a reasonable decision, in accordance with the principles set out in [CC27](https://www.gov.uk/government/publications/its-your-decision-charity-trustees-and-decision-making) that the proposed transaction was expedient in the best interests of the charity. As part of their considerations, we would expect the trustees to have:

* taken and considered all necessary advice; and
* considered other options such as selling the property at full market value and purchasing a different suitable property from which to carry out its work, or taking out a loan for the work to be done instead.

They would need to be able to explain why they consider their chosen option is in the charity’s best interests.

In this type of case we would not become involved in the technical sufficiency of the documentation. If we consider there may be problems, we may suggest the trustees return to consult their legal advisers about the transaction as a whole (not just the disposal).

See also OG23 for a full explanation of s117 and VAT mitigation schemes.

See also [section D2](#_D2_Disposals_by) – Disposal by building preservation trusts.

### B8.1 Disposal to a Local Authority for no value or at an undervalue where the land ceases to be held on charitable trusts following disposal

We are approached from time to time by trustees of land, usually recreation grounds, village halls or other public amenity type properties, where the trustees are seeking a s.117 consent to authorise a disposal for nil value to a local authority, not to hold it on charitable trusts. The reasons for these applications are usually:

* the trustees wish to retire but no one will agree to take on the trusteeship of the charity; or
* the trustees are unable to fund the upkeep of the property or land and have no source of income; and
* the local authority has declined to take on the trusteeship of the charity but have agreed to take it on as part of their corporate property.

In these situations, the local authority will usually agree to commit to use the property long term for a purpose that is the same as or very similar to the objects of the charity. However, it will no longer be subject to the Commission’s regulation (as it is no longer held on charitable trust) and the local authority may be able to decide to sell it, as the land will be held as part of its corporate property.

Therefore, before we consider making an Order, we should, as appropriate:

* Require the trustees to demonstrate that they have taken appropriate (and genuine) steps to seek new trustees and/or funding sources (as the case may be), including, for example, engaging with Action with Communities in Rural England, and they have not been successful.
* Where appropriate for the type of land, require the Local Authority to agree to enter into a Deed of Dedication with the Fields in Trust (an agreement between Fields in Trust and the landowner that they will retain the land for use as a green space / recreation ground) following the transfer. Where a Deed of Dedication could be made, but the Local Authority declines to do so, we will need to understand why this is the case.
* Require the trustees to consider whether they would be able to fund the upkeep of the land, or find a suitable trustee, if the purposes for which the land is held, or any specific restrictions on how it is used, were amended.

Where the trustees have demonstrated that there is no other option, we may make an Order and waive the need for an adviser’s report. Although the local authority is not a charity or beneficiary, the fact that it will continue to use the land for purposes for which the charity would have used it means we could give our authority to the disposal and enable the charity to close.

However, before we make an Order, we would expect the trustees to take advice about and consider what safeguards they could put in place to ensure the future use of the land being transferred for the purposes agreed in the contract of sale. These include:

* The trustees should consider whether it is legally possible and/or appropriate to place a **restrictive covenant** on the Land Registry title to the land being transferred to require the land to be used for a purpose that is the same as or very similar to the objects of the charity. A restrictive covenant is an agreement between parties which affects the use and enjoyment of the land once it has passed ownership. Including a restrictive covenant can create a safeguard to prevent the land from being sold off by the local authority in the future to the detriment of the local community (e.g. to a housing developer). As a restrictive covenant can be enforced by parties who benefit from the restrictive covenant but are not party to the transfer or successors in title, as well as by the original parties to the restrictive covenant, it may be a suitable safeguard, particularly where the charity is to wind up following the transfer.
* The trustees should consider whether it is appropriate to include contractual safeguards on the future use of the land. However, these may be of limited value as, in many cases where we are approached for an Order in these circumstances, the charity will close fairly quickly following the completion of the transfer so there will be no-one to enforce the safeguards in the contract. The trustees of a charity that will close could also consider whether it is legally possible or appropriate to expressly provide a right in the contract between the charity and the Local Authority to enable those who are within the charity’s beneficiary class to enforce a term of the contract relating to the use of the land. A number of safeguards would need to be included to enable such a clause to work, such as checking that there is no clause in the contract which expressly excludes third party rights.

In situations where the charity will not close once the land has been transferred to the Local Authority, the contract could provide for an additional payment (called ‘overage’ or ‘clawback’) to be paid to the charity should the Local Authority cease to use the property for the intended purpose within a specified period of time, or if they sold the land.

**Legal advice should always be taken where an Order is being considered to authorise a disposal to a Local Authority at undervalue or for nil value otherwise than on charitable trusts.**

## B9 No power or prohibition in the governing document

If there is no power of disposal in the governing document, unincorporated charities will often be able to use the statutory power in s.6 TLAT 1996 or some other statutory power. Companies, CIOs and most unincorporated charities (see below) will be able to amend their governing documents to add a suitable power if they do not have one – see sections [B4.6](#_B4.6_Do_the), [B5](#_B5_Disposal_of) and [E3](#_E3_Do_trustees).

### B9.1 Prohibitive clause in the governing document

There may be a clause in the governing document that expressly prohibits the disposal of the charity’s property. It is likely that a prohibition on the sale of land is an indication that the land in question is permanent endowment/designated land.

Where there is a prohibition on sale in a scheme governing document, the charity will need to remove it before they can use the s.6 TLAT power to sell the land. The trustees may be able to use a power of amendment in the Scheme (if there is one), or the statutory power in section 280A(8) of the 2011 Act, to remove the prohibition (obtaining Commission authority as required). Otherwise, the charity will need a Scheme to remove it.

If a charity is unincorporated and the prohibition is in a governing document that is NOT a scheme, there is legal uncertainly as to whether the trustees can rely on the statutory power of sale in s.6 TLAT. Therefore, trustees should amend their governing document to remove the prohibition, using either an express power of amendment in their governing document or the statutory power in s.280A (obtaining Commission authority as required).

If this situation arises seek legal advice.

### B9.2 Power of disposal only with consent of the court

Some governing documents specify that the charity’s property may not be disposed of without the consent of the court. In these circumstances our Order may authorise the disposal even though the governing document specifies the consent of the court is needed (s105(7) of the 2011 Act) – see section [E2.4](#_E2.4_Governing_document)

### B9.3 Power of disposal only with the consent of the Commission

Some older governing documents have provisions requiring the Commission’s consent to any disposal of land. Similarly, some educational charities with Schemes or Orders made under the Education Acts of 1944 or 1973 may have provisions requiring approval to a disposal from the Secretary of State for Education. Following s36(1) of the Charities Act 1992, the requirement for our consent, or that of the Secretary of State, no longer applies. It also has the effect of nullifying a provision in the governing document that requires Commission consent to any disposal of land.

The Commission’s authority will still be needed**if the disposal is to a connected person or if the charity cannot comply with the requirements of Part 7 of the Charities Act 2011 outlined above.**

## B10 Short leases

**A “short lease” is a lease for 7 years or less where no fine or premium is required to be paid.**

When granting a short lease the trustees must comply with all of the requirements for dispositions of land, but the requirement to obtain a report from a designated adviser is different.

For a short lease, the trustees do not need to obtain a report from a designated adviser. Instead, the trustees need to obtain and consider advice from a person who they reasonably believe has the ability and practical experience to give them competent advice on the proposed lease. This person who provides this advice can be a trustee, officer or employee of the charity if the trustees consider that they have the right ability and practical experience and are not otherwise conflicted.

Although there is no requirement for this person to have a professional qualification, we recommend in CC28 that they are a member of a relevant professional body (see [CC28](https://www.gov.uk/government/publications/sales-leases-transfers-or-mortgages-what-trustees-need-to-know-about-disposing-of-charity-land-cc28)).

Also, the advice provided in relation to a short lease does not need to comply with the Charities (Designated Advisers' Reports and Transitional Provision) Regulations 2023.

NOTE: If a charity is seeking to grant or assign a lease that includes an option to renew or extend for a further period of time, and the sum of two periods exceeds 7 years, this section does not apply and the trustees must comply with the general land disposals requirements.

## B11 Land vested in the Official Custodian for Charities (OC)

When land has been vested in the OC, trustees have power to carry out in the OC’s name and on behalf of the OC all the functions they could properly do in their own name and on their own behalf as if the land were vested in them (s.91(3) of the 2011 Act). It is important to note that the OC does have to be a party to any transfer deed.

However, the situation is altered if the land has been vested in the OC under s76(3)(c) as part of an inquiry. In this case the trustees may not dispose of the land without an Order from us – see section [E3.3](#_E3.3_Land_vested).

See [section F](#_F:_Model_text) for a form of conveyance/transfer and a form of lease where land is vested in the OC.

## B12 Rentcharges

Rentcharges are uncommon and it is not often we will have dealings with them. For information about rent charges, see [section E1.4](#_E1.4_Rentcharge).

We may need to be involved when trustees wish to release a rentcharge for less than ten times its annual amount. In such circumstance’s trustees will have to:

* get our authority under s117(1) or comply with the procedure in s119

and

* include the necessary statements in the disposal documents

We will not generally give our authority where the release price is substantially less than ten times the annual payment unless the trustees show that it is in the interests of the charity for the rentcharge to be released.

## B13 The effect of the Localism Act and Assets of Community Value provisions

The Localism Act contains provisions for Assets of Community Value. This is intended to allow community groups to compete in the market on a more equal footing with other purchasers to buy local amenities of value to their community, such as community centres, village shops or open spaces, in order to preserve and maintain them for community use.

A property held by a charity could be listed as an asset of community value, such as by a local group opposed to a charity’s plans to dispose of it. This does not prevent a charity from disposing of the asset (providing it has a valid power of disposal) and it must still comply with the requirements of part 7 of the 2011 Act. However, the charity will only be able to dispose of the asset after a specified window has expired, which gives time for a local community group to decide whether to bid to purchase the property.

Relevant provisions in the Localism Act are:

* Local authorities will maintain a list of land and buildings in their area that local community groups have successfully nominated as ones that will enhance the community’s social wellbeing or social interests.
* When listed assets come up for sale communities will have the opportunity to create a pause in the process allowing them to compete in the open market to buy the asset.
* The vendor must first notify the local authority that they plan to dispose of the asset and there will then be six weeks for local community groups to express an interest in bidding.
* If a community group expresses such an interest, a six-month moratorium is imposed giving the community group time to prepare a bid and funding.
* At the end of this time the vendor may sell the asset under normal market conditions on the open market at the market price (community groups are not given preference).
* Vendors, including charities, must comply with the Localism Act requirements if their property is on the local authority’s list or the disposal will be void – however…
* Charities will probably find that in most cases where they wish to dispose of such property, they will be able to comply with the requirements without a six-month delay.
* For more guidance on this and the conditions that apply to charity disposals, see Government guidance - [Community Right to Bid: non-statutory advice note for local authorities](https://www.gov.uk/government/publications/community-right-to-bid-non-statutory-advice-note-for-local-authorities)

## B14 Statements

When trustees dispose of their charity’s land, they must include statements in the disposal documents. There is extensive information to explain this in the [Land Registry Practice Guide LRPG 014 ‘Charities’](https://www.gov.uk/government/publications/charities-advice-for-applications-to-be-sent-to-land-registry/practice-guide-14-charities)

# C1 Proceeds of sale

|  |  |  |
| --- | --- | --- |
| **The following is a brief outline of what normally happens to the proceeds of any disposal of charity land** | | |
| a) | land is simply held for the general purposes of the charity | proceeds applied for the general purposes of the charity |
| b) | land is held on trust to be invested to generate income (investment permanent endowment) | capital proceeds of any disposal will also be held on trust as investment permanent endowment, unless the trustees release the restriction on expenditure by passing a resolution using either s.281 or s.282 of the 2011 Act – see OG545-01. |
| c) | land held on trust for use for a specific purpose and the trusts in the governing document make provision for the application of the proceeds of the disposal | proceeds applied in accordance with the prescribed trusts (e.g. village hall model trust deed) |
| d) | land held on trust for use for a specific charitable purpose – trusts make provision for application of proceeds, but provision is not workable | The charitable purposes in the governing document which attach to the proceeds will have to be amended by the trustees using a power of amendment in their governing document or by using section 280A(8)(a) or, exceptionally, by the Commission making a cy pres scheme |
| e) | land held on trust to be used for a specified charitable purpose (designated land) and the trusts make no provision for the application of the proceeds: | |
|  | i) where there is to be an equivalent replacement of the land | Proceeds can be used to fund replacement land which will be held on the same trusts as the land sold. The replacement property will also be designated land.  If there are surplus proceeds:   * + 1. if the trusts in the governing document are wide enough to provide for how the surplus proceeds may be applied, apply the surplus proceeds as permitted under the existing trusts.     2. If the trusts in the governing document are NOT wide enough to provide for how the surplus proceeds may be applied, the purposes on which the surplus proceeds are held will have to be amended by the trustees using a constitutional power of amendment or by using section 280A(8)(a) or, exceptionally, by the Commission making a cy pres scheme |
|  | ii) where there is no replacement of the land | * the trustees will need to alter the charity’s purposes if there is no power to do this in the governing document. The trustees can use the statutory power in section 280A(8)(a) or, exceptionally, the Commission can make a cy pres scheme. (NOTE: The purposes will usually need to be amended prior to sale as, if the sale will defeat the purposes for which the land is held it is unlikely that the statutory power of sale can be used and so the trustees will not have the power to sell the land anyway.) * where only a small part of designated land is sold so that the remainder of the land can continue to be used for the purposes:      * + if the trusts in the governing document are wide enough to provide for how the proceeds may be applied, apply the proceeds as permitted under the existing trusts.   + If the trusts in the governing document are NOT wide enough to provide for how the proceeds may be applied, the purposes on which the proceeds are held will have to be amended by the trustees using a power of amendment in their governing document, by using section 280A(8)(a) or, exceptionally, by the Commission making a cy pres scheme. |

# D Transactions with connected persons

## D1 Who is a connected person?

Trustees should also consider any conflicts of interest that may arise with any connected person transactions and manage them accordingly.

### D1.1 Is a local authority a connected person because they are a donor?

Some cases have dealt with the situations where a local authority has leased property to a charity for a 'peppercorn' rent on the condition that part of the property is leased back to the local authority. The local authority is effectively a 'donor' in such a case and under s118(2)(b) it is a 'connected person'. The leaseback would require an Order.

A similar situation could occur where there no initial rent charged – even one at a 'peppercorn' rate – and the property is a straight donation. If this is leased back to the donor this is a more obvious example of a connected person case.

### D1.2 Is a recently retired trustee still a connected person?

A disposal would require an Order under s.117 if a prospective purchaser was a trustee or connected to a trustee at the time of the exchange of contracts, as the Order should have been obtained at this point to enable the statutory statements to be included in the contract, even if the trustee subsequently retired.

Under s118 of the 2011 Act, the spouse or civil partner of a person specified in s118(2)(a) to (d) is a connected person. If, before the agreement for the disposal is entered into, someone who is a trustee takes part in pre-contract negotiations for a disposal to their spouse or civil partner but retires before the agreement is entered into, the remaining trustees should seek an Order under s.105 as there may be unauthorised trustee benefit and conflicts of interest to be managed. This would be more likely where the purchaser spouse or civil partner of a retired trustee and the retired trustee have a “shared purse”.

NOTE: If the charity is a charitable company, the trustees should take legal advice as to whether the proposed disposal is permitted under s.170(2)(a) Companies Act 2006, which imposes a duty on retired directors to avoid conflicts of interests in relation to “*the exploitation of any property, information or opportunity of which he became aware at a time when he was a director*". **If you think this may apply, seek legal advice.**

Trustees should also identify and manage any conflicts of interest, as well as dealing with any unauthorised trustee benefit and self-dealing that may arise.

### D1.3 Is a widow or widower a connected person?

Under s118 of the 2011 Act, the spouse or civil partner of a person specified in s118(2)(a) to (d) is a connected person. However, when a married trustee dies, they are no longer a trustee so the question of whether a widow or widower is a connected person does not arise provided that the deceased trustee was not a trustee when the trustees made the decision to sell to the proposed vendor.

A disposal would require an Order under s.117 if a prospective purchaser was connected to a trustee at the time of the exchange of contracts, as the Order should have been obtained at this point to enable the statutory statements to be included in the contract, even if the trustee subsequently died.

If, before the agreement for the disposal is entered into, someone who is a trustee takes part in pre-contract negotiations for a disposal to their spouse or civil partner but dies before the agreement is entered into, the remaining trustees should seek an Order under s.105 as there may be conflicts of interest that need to be managed and, potentially, unauthorised trustee benefit.

### D1.4 Is a subsidiary trading company a connected person?

A trading company that is wholly-owned by the charity is a connected person, whether or not the charity is incorporated and whether or not any of the directors of the trading company are also charity trustees. This is the most common type of arrangement.

* Where a charity is unincorporated, the trustees of the charity collectively have a substantial interest in the shares of the trading company.
* Where the charity is a company and its directors are therefore the charity trustees, a substantial interest in the shares of the trading company is attributed to those trustees by the effect of subsection 2(h) of [s.118 of the 2011 Act](https://www.legislation.gov.uk/ukpga/2011/25/section/118).

Therefore, an Order under s.117 must be obtained to allow the disposal if it is to be made to a connected trading company of a charity. In addition, there are often conflicts of interest that will need to be managed.

Where the subsidiary company is not wholly owned, it will in most cases still be a connected person and an Order will be required. However, there may be occasions when a non-wholly owned subsidiary is not a connected person and **legal advice should be sought** if you think this might be the case. If a non-wholly owned subsidiary is not a connected person, there may still be conflicts of interest that will need to be managed.

If an Order is required and has not been obtained see section [B7](#_B7_What_happens).

### D1.5 Disposal to the director of a company and necessary approval by members of the company

Section 190 of the Companies Act 2006 requires certain transactions (i.e. the transfer of a substantial non-cash asset – see next paragraph) with a director or a person connected with a director to be approved by a resolution of the members of the company. Under s201(2)(b) of the 2011 Act this approval is ineffective without our prior consent. S.190 of the Companies Act 2006 does not give express authority for a disposal of land from a charitable company to a director for the purposes of s.117(3)(a) of the 2011 Act.

A “non-cash asset” is essentially any form of property (or any interest in such property), other than cash or foreign currency – s.1163 of the Companies Act 2006

A “non-cash asset” is “substantial” if its value either: (a) exceeds 10% of the company’s asset value and is more than £5,000; or (b) exceeds £100,000 – section 191 of the Companies Act 2006.

For further guidance, please see OG99-01.

Consequently, where we are asked for prior consent to the members considering whether to authorise such a disposal, we will often need to make an Order under s.117(1) as well as giving prior written consent under s.201.

### D1.6 Can a local authority lease property to itself?

It is uncertain whether a body corporate acting in different capacities can hold land both as landlord and as tenant in some circumstances. Local authorities and social landlords often find themselves on both sides following a transfer of engagements or large-scale transfers of property. The position with a body corporate acting as trustee is arguably distinct because the authority is acting in two separate legal capacities – charity trustee and the corporate capacity as local authority. This is an area that also involves the application of local government legislation, an area where the Commission does not have expertise.

Our policy is to apply the rule in Rye v Rye [1962] A.C. 496 unless it can be demonstrated that it does not apply. This case established that it is not technically possible for an individual to grant a lease to himself. This is because an individual cannot be both covenanter and covenantee under an agreement. In that specific case, however, the leasehold and freehold interests were both held for the private benefit of the same individual; neither of the interests was held on trust. The principles of that case are therefore not identical to those that arise with a trust. It is up to the local authority to take their own legal advice about how the transactions can be lawfully completed. Separate legal advice for the authority as trustee and in its corporate capacity (from separate legal sources) may be necessary as part of a proper decision-making process – but again this is a matter for the parties involved. It is appropriate for us to underline the self-dealing issue that does exist and our expectation that the local authority as trustee should satisfy itself and us that they have a lawful means to proceed with the proposed disposal.

There are two possible ways for the local authority to deal with this situation.

* The local authority appoints a nominee to hold the lease – the nominee would then sub-lease to the local authority to avoid the local authority from self-dealing. The circumstances to take into consideration would include:
  + the length of the lease
  + whether there is likely to be a dispute or possible contentious issue that makes it likely that someone would seek to challenge the validity of the lease on Rye grounds
  + when a potential conflict of duty will clearly be difficult to manage
* Their legal view may be that it is not an absolute requirement to have a nominee in each case where a local authority acts as trustee holding the freehold and the leasehold in two different capacities.

There may be plenty of precedents for the local authority concerning transactions like this, perhaps on a smaller scale and so you may well find that the issue is not a matter that is especially troubling for the council. The trustee may be able to demonstrate adequately that the transaction will be fair and reasonable and that the trustee, when making the decision, was not influenced by seeking to gain an advantage from his position as trustee. If circumstances like this arise then it may be possible for a lease to be granted despite the common identity of the parties. We must then approach the matter in the same way as any other proposal to lease charity property to a connected person but **take legal advice if the Local Authority is indicating that it can act in both capacities directly.**

The Local Authority will also need either to manage any conflicts of interest in such a situation, or it will need the Commission’s authority (s.105 order) to authorise the conflict. One way a Local Authority may be able to manage some types of conflict of interest is by delegating the decision making to a committee of the executive so that the decision can be taken by a quorum of non-conflicted committee members. **You should take legal advice in these situations.**

**Further trustee guidance on Local Authorities as trustee is currently under review and will be published in due course.**

## D2 Disposals by building preservation trusts

See also OG23 for more information on this topic.

For financial reasons it is often necessary for a building preservation trust to have an end user, ready to purchase the relevant property, before the charity commits itself to the original purchase. Occasionally this may be one and the same person.

The charity’s role will be to preserve the property’s special features through substantial restoration work. To afford this work, it may need to ensure there is an onward sale in place to recover the charity’s costs. For instance, the charity may restore the exterior of a building of interest and then sell it on to private ownership (such as a developer) to adapt the interior for use, but with restrictions to keep the restored features intact.

Entry into the collateral sale contract – whether with the original vendor to the charity or not – will be subject to the controls in s.117. (A collateral sale contract is a contract that is not part of the contract under which the charity purchased the property but stands side by side with that contract.) As it is unlikely the charity will be able to comply with the requirements of s.119 at the time of the original purchase, an Order will be required to authorise the trustees to enter into the collateral sale contract.

In these cases, great care must be exercised to ensure that:

* the purchaser does not profit from this arrangement at the expense of the charity
* an appropriate covenant or other agreement by the purchaser to ensure continuing future public access to the property is included in the agreement for sale – trustees should be aware of their own responsibilities to monitor the use of the property once sold

Once the trustees have identified a property they would like to restore, they should approach the owner to negotiate a price for its sale to the trust. After reaching agreement in principle, including the payment of the adviser’s fees by the current owner, the trustees should engage an adviser to:

* examine the present condition of the property and the charity’s proposal for its restoration
* advise the trustees on a guide price for the purchase of the property
* advise the trustees on the likely market value after the restoration has been completed

If the owner does not accept the prices suggested by the adviser, the proposed restoration cannot proceed but, as the owner has agreed to pay the adviser’s fees, the trust has not lost any of its funds in the process.

If there is agreement on price, the trustees should:

* enter into a formal contract with the owner to buy the property for the sum advised by the adviser and, following the completion of the restoration work, to sell the property back to the original owner. Entry into such a contract will, as indicated above, require our authority under s117(1)
* carry out the proposed work

The price at which the property is to be re-sold back to the original vendor would require very careful consideration. The trustees would need to appreciate that an agreement to sell at the market value at the time the restoration was completed would expose them to the risk that the difference between the purchase and sale prices might be much lower than the cost to the charity of the restoration. The contract would need to contain suitable arbitration provisions in the event of an inability to agree a figure for the market value at the date of the completion of the restoration. The contract would need to specify a maximum time limit for the completion of the re-sale. The trustees would need to be satisfied about the financial standing of the purchaser.

The Order which we make to give authority to entry into the contract should be made to lapse if the contract is not entered into within three months of the date of the Order. If the proposal was revived subsequently, a fresh professional evaluation of the terms would be necessary before a further Order could be made.

## D3 Disposals to another charity for less than best price or less than best rent

Where a charity is disposing of its charity land to another charity, for less than full value, it may not have to comply with the requirements of s.119 or s120 – see section [E2.5](#_E2.5_Authority_granted) The following are examples of when this may apply.

### D3.1 Trust transferring land to a CIO on incorporation

An unincorporated charity (‘the old charity’) wishes to incorporate by changing its legal structure from a trust to a CIO. The old charity owns land as an investment; it is not permanent endowment. It will wind-up when all its assets have been transferred to the CIO. The CIO has been established with similar objects to the old charity.

The trustees of the old charity and the CIO are the same persons. The CIO does not have a**separate voting membership to the trustee body**.

The trustees of the old charity want to transfer the land to the CIO. This is purely intended to further the purposes of the old charity. Therefore, under s.117(3)(c) of the 2011 Act, the old (disposing) charity does not have to comply with the requirements of s.119. The trustees therefore do not need to:

* get an adviser’s report;
* advertise the disposal; or
* obtain the best terms.

However, it is intended that the CIO will grant an indemnity to the trustees of the old charity. Its constitution does not contain a power to grant such an indemnity. Therefore, the trustees need to apply to the Commission for an Order under s.105 of the 2011 Act to authorise both the trustee benefit represented by the indemnity and the conflicts of interest resulting from the proposed transfer.

### D3.2 Land transferred to charity with wider objects

A charity (“the old charity”) works for the relief of those in need in ‘Parish A’ and owns land as an investment. It wishes to wind-up and transfer this land to a CIO. The purpose of the CIO is to relieve those in need in both Parishes A and B.

As in example 3.1, the disposal would be excluded from the Part 7 requirements under s.117(3)(c) and the trustees would not need to obtain advice.

The land would need to be held by the CIO on special trusts limited to the purposes of the old charity – the relief in need of the inhabitants of Parish A only. The same would apply to the proceeds of sale if the land was sold.

### D3.3 Land disposed of to charity with a different purpose

An arts charity in London owns an empty building which it formerly used as an office. It wishes to dispose of it to a national housing charity. In this case, although they are both charities, they have objects that are not similar.

The disposal would not further the purposes of the arts charity. Therefore, the trustees could not use s.117(3)(c) to exclude the transaction from the Part 7 advice requirements. They must obtain advice from an advisor and consider any advice on marketing that is given by them. They can then decide whether to follow that advice. If they decide not to, and we had reason to question the transaction, we could request their reasons and ask for a copy of the adviser’s report.

If the trustees receive a higher offer for the disposal before the exchange of contracts, they should accept it on the principle that they should achieve the best terms reasonably obtainable for their charity.

If our authority was required for the disposal, such as because there were connected persons, it would be given by Order under s.105 and s.117 of the 2011 Act.

# Legal/Policy/Accountancy Framework

## E1 Definitions

### E1.1 What do we mean by charity land?

In this guidance land means any land owned by, or held in trust for, a charity, including any buildings or structures on the land. In this context ‘land’ also covers any estate, interest in, easements or restrictive covenants relating to the land. These could include, for example, a right of way or access to equipment on the land. It could also be a right, such as fishing rights in a lake or river on the land or rights to minerals under the land.

The restrictions on dispositions of land apply only to land (or an interest in land) held beneficially by a charity solely for its own benefit (if it is a corporate charity) or in trust solely for that charity (if it is an unincorporated charity) – s.117(1A). The statutory regime in the 2011 Act does not, therefore, apply when the land being disposed of is held on trust for two or more beneficiaries, some or all of whom are charities. This is most likely to happen in legacy cases, where property has been bequeathed to two or more charities and the land is held in trust for them.

Examples:

* An executor is administering an estate in accordance with the will of the deceased. The residue of the estate has been left to a charity and consists of land. The executor intends to dispose of the land and pay the proceeds of sale to the charity. The executor does not have to comply with Part 7 because the executor has not appropriated the land to the charity and so it is not held by or in trust for a charity.
* Trustees hold property on trust for beneficiaries, some of which are charities. The property includes land, which the charities concerned therefore have an interest in. The trustees decide to dispose of the land. The trustees of the trust do not need to comply with the Part 7 requirements because the land is not held solely for the benefit of a charity - s.117(1A). Similarly, the trustees of the individual charities do not have to comply with Part 7 because they have no control over the disposal.

Part 7 is focussed on the best terms for the charity, but where land is held on trust for multiple beneficiaries the disposal decision by the trustees should be about what is in the best interests of all the beneficiaries, not about what is in the best interests of one of those beneficiaries.

* In her will, a testator has bequeathed all her property to a named charity. This includes land. When the land is transferred to the charity, it decides to immediately dispose of it. The land is now held by or in trust for a charity and Part 7 applies.

The table below sets out when the restrictions in Part 7 apply. **Caseworkers should seek legal advice if they are uncertain as to whether land is held “by or in trust for a charity” and if Part 7 applies.**

|  |
| --- |
| **When the restrictions on disposal apply** |
| The restrictions apply where the charity controls the disposal:  (a) a charity owns land both legally and beneficially;  (b) a trustee holds land on bare trust for a single charity;  (c) land is left to a charity in a will and the executor has appropriated the land to a charity; or  (d) a charity owns land as one of several tenants in common and it is disposing of its beneficial interest in the land (that is, its percentage share of the land). |
| The restrictions do not apply where the charity does not (alone, at least) control the disposal:  (a) a charity is one of several beneficial joint tenants of land and the entirety of the land is being disposed of by the trustee of the land;  (b) a charity is one of several tenants in common of the land and the entirety of the land is being disposed of by the trustee of the land;  (c) land is left to, and appropriated or assented to, multiple beneficiaries in the execution of a will, one or more of which is a charity; or  (d) a trustee holds land on trust for multiple beneficiaries, one or more of which is a charity. |

### E1.2 What do we mean by disposal of land?

The 2011 Act uses the term ‘disposition of land’. In this guidance we talk about the disposal of charity land and in this context a disposal is by way of:

* lease
* freehold sale

But disposal will also include, for example granting:

* rights (such as fishing rights)
* easements
* rights of way
* a type of wayleave which is an easement (this will often be where the wayleave is the subject of a voluntary grant under a deed) to allow access to facilities on that land
* A surrender or assignment of a lease would also constitute a disposal of an interest in land.

However, the following are not disposals:

* entry into (rather than completion of) a contract or agreement for sale, for example, is not a disposal. It is at the point of the transfer or completion of the transaction that the disposal takes place. However, if the contract commits the charity to a future disposal (e.g. an ‘option’ or a ‘pre-emption’ agreement), the charity may need to seek our authority under s105 of the 2011 Act before entering into the contract, unless it has fully complied with s117-121 requirements at the point of entering into the contract. See also [E1.7](#_E1.7_Option_or) below.
* granting or creating a wayleave (other than the wayleave easement referred to above) to allow access to facilities on that land, which is:

(a) a mere contractual licence not associated with a property right (see below [E1.6](#_E1.6_Granting_a)), or

(b) a non-proprietary right of occupation (i.e., does not confer an interest in the land) even where the occupation is exclusive (this can be in the context of statutory wayleaves).

If trustees are unsure about what type of wayleave they are entering into, they should seek independent legal advice to decide the type of wayleave it is and then reach a decision, if it is a disposal, about whether it is in the best interests of the charity to proceed. If it is a disposal, they will need to comply with s.117.

### E1.3 Connected person

The full definition of who is a connected person in the context of disposal of charity land is set out in [s118 of the 2011 Act](https://www.legislation.gov.uk/ukpga/2011/25/section/118).

Briefly it means someone who:

* at the time of the disposal or
* at the time of the contract for the disposal

is:

* a charity trustee or trustee for the charity
* a donor of any land to the charity
* a close relative of either of the above
* an officer, agent or employee of the charity - but employees are excluded where the disposal is the grant of a short residential tenancy of a dwelling to be used as their home (see below and section [B4.2](#_B4.2_Do_the) for further explanation)
* the spouse or civil partner of any of the above
* a person carrying on business in partnership with any of the above
* an institution controlled by any of the above
* a body corporate in which any of the above has a substantial interest

 The meanings of some of the terms used in this list:

* child, spouse or civil partner
* controlled institution
* substantial interest in body corporate

 are set out in [ss350 to 352 of the 2011 Act](https://www.legislation.gov.uk/ukpga/2011/25/part/18/crossheading/interpretation).

Where a disposal is to a connected person, any conflicts of interest will also need to be properly considered and managed.

The exclusion of charity employees from the connected persons definition applies only where the disposition in question is the grant of a tenancy:

* for a fixed term of one year or less or which is a periodic tenancy and the period is one year or less; and
* which confers the right to occupy a dwelling as a home.

For example, a charity (as employer) provides accommodation by way of an assured shorthold tenancy to an employee below market rate to facilitate their work. Section [B4.2](#_B4.2_Do_the) explains this further.

For situations not falling within this exception, where charities that find themselves routinely providing staff accommodation (or making other disposals to employees of the charity), they can seek general authorisation from us within appropriate limits, such as:

1. authorisation in respect of particular properties;
2. authorisation in respect of particular transactions (for example, leases of up to a certain length); and/or
3. a requirement for a decision to be made by non-conflicted trustees that the disposal is in the interests of the charity.

### E1.4 Rentcharge

A rentcharge is an annual fee payable in respect of land to a person who is not the owner of the land and who has no legal interest in it. The amount of the rentcharge is usually fixed and bears no relation to the value of the land. Rentcharges can prove difficult to collect, especially when the land that was originally subject to the rentcharge has been split up and is now owned by a number of different people. Where fixed, its real value declines with inflation and therefore it is not a suitable investment for a charity.

The Rentcharges Act 1977 provides that, subject to certain minor exceptions, every rentcharge shall be extinguished 60 years after the passing of the Act (ie 21 July 2037) or 60 years from the date on which the rentcharge first became payable if later. No compensation is payable when this happens.

For these reasons, the trustees of a charity which owns a rentcharge of £10 or more should be encouraged, whenever the opportunity arises, to negotiate with the landowner for its release under s.127 of the Charities Act.

Under s.127(1) where a rentcharge is released by a charity entitled to it for a payment of not less than ten times the annual amount of the rentcharge:

* the release is a disposal which is not within the scope of s.117
* the obligations in s.122 regarding statements do not apply

Under s.127(2), where trustees release a rentcharge for a payment not exceeding £1000, they are entitled to recover the costs they incur in proving title to the rentcharge (to show they have the right to release it). These costs, which are not limited to any amount, are recoverable from the person in whose favour the rentcharge is being released (ie the owner of the land subject to the rentcharge). This provision is intended to prevent the payment received by the trustees for the release from being consumed by the costs of proving title and to deter landowners from putting trustees to disproportionate trouble to prove title. The amount of £1000 may be varied by order of the Secretary of State under s128.

### E1.5 Advowson

This is the right of a person or institution to put forward an individual for a vacant living of the Church of England.

The sale of an advowson is not subject to the constraints of s.117 of the 2011 Act.

### E1.6 Granting a licence or a lease

A licence:

* + gives the licensee a contractual right to use the part of premises to which the licence refers for an agreed purpose
  + does not confer an interest in the land and is therefore subject to contract law – it has no effect on the nature of the charity’s legal interest in the property
  + is likely to be granted where the lessee is to carry out a particular activity and the charity needs to retain access to the part of its premises to be occupied

Examples of a licence might include where a bar business is set up in a village hall. The licence would give the licensee access to the hall to carry out the bar business but would still allow the hall to be used for the usual other activities that take place. (In this example the licensee would also need to comply with the alcohol licensing laws, which is a different situation from the licence the trustees are granting for the use of part of the hall.)

A lease:

* + gives exclusive possession of a defined area of land
  + is for a fixed period (the term of the lease)
  + creates an interest in the land
  + is more likely to be granted where the charity’s land, property or premises is to be occupied on a more permanent basis and the lessee will have independent access and his/her own separate areas

Rent will usually be paid but this is not an essential element in recognising a lease. Exclusive possession for a term under an enforceable agreement, for example a deed, will be sufficient. It is probable that the letting of a residential unit to a tenant will be a lease rather than a licence.

 However, it is not necessarily what term is used, licence or lease, but rather the effect of the arrangement.

* An agreement that confers exclusive possession of the premises is probably a lease.
* An agreement that merely confers a privilege to occupy the land of another for some particular purpose is a licence.

This can be a difficult legal area and if there is any doubt as to whether the trustees are granting a lease or a licence, seek legal advice.

No specific power is required by a charity to grant a licence even over designated land, and s.117 procedures do not apply.

However, the charity cannot grant a licence which is incompatible with the trusts to which the land is subject. For example, if the designated land is a playing field designated for the use of a recreation ground charity, it would probably not be possible for the trustees to grant a licence to use the land as a car park (except perhaps for an occasional or ‘one-off’ event). In addition, the licence should be granted on the best ‘market terms’ unless it is intended to further the objects of the charity.

To grant a licence to a connected person may still need authority from us by way of an Order even though s.117 does not apply because of the potential conflict of interest in the transaction.

### E1.7 Option or pre-emption – is either a disposal?

**Option**

An option is an agreement which gives someone (‘the option owner’) the legal right, for a price, to demand the disposition of a charity’s land to him or her if he or she chooses, on terms which are set out in the option agreement. For the purposes of s.117 this is an agreement for the sale of the land. Unless the charity is exempt, the trustees should normally comply with s.119 or s.120 before granting an option. If this is not done, or if the option owner is a connected person, then the option agreement cannot be completed without an Order under s.117(1).

An option may be included when charities purchase land. Agreements by charities to purchase land may include an undertaking or conditional undertaking to make a subsequent disposition of the land or part of it. This could include not only an undertaking to transfer the property but, for example:

* an undertaking to grant an easement of way over the land acquired
* for the accommodation of land retained by the vendor
* to lease back the acquired land or some of it.

We consider that included in this category is the option element of an equity sharing agreement which is simply one aspect of the terms under which the charity and the employee agree to purchase the land as joint owners.

We consider the language in s.119 is inappropriate to embrace an agreement that is essentially for the purchase of land, but which incidentally contemplates a disposition or possible disposition of the land which is to be purchased. Accordingly, such an option does not require compliance with s.117 in order to be valid. However, a disposition made under the option will need to comply with s.117. It will often not be possible to comply with section 119 or 120 at this stage and consequently an Order will be required under s.117.

In **Moore v Clench** (1875) 1 Ch Div 447, the court was of the view that if the trustees of a charity entered into an agreement to dispose of land, which agreement did not require our authority, and which agreement was valid without such authority, then any legal requirement that the actual disposition contemplated by the agreement should be authorised by us either:

* did not apply

or, if it did apply,

* it would be an abuse of power on our part to withhold the authority.

We adopt the second of the possibilities suggested in **Moore v Clench**, as this permits the withholding of authority in exceptional circumstances. This means that where s.117 is not relevant to the grant of the option, we would not need to be satisfied that the actual disposition is in the interests of the charity as at the date of the disposition.

We would only refuse to make an Order if the grant of the option in the first place was manifestly unfair and an abuse of the trustees’ powers or there are other exceptional circumstances justifying us not making an Order. (See [Decisions of the Commission – Shree Vishwakarma Association of the UK](https://www.gov.uk/government/publications/shree-vishwakarma-association-of-the-uk).)

**Pre-emption agreement**

A pre-emption agreement differs from an option in that the right of the purchaser to demand a transfer on the terms of the agreement only arises if and when the charity decides to sell. The granting of a pre-emption agreement is not, in itself, an agreement to effect a disposal of land so ss119/120 do not apply. The right of pre-emption is effectively converted into an option if and when the vendor charity decides that it actually wants to sell the property.

A charity which has given a right of pre-emption over its land is not in any position realistically to follow the process in s119 or s120 at this time, because it then becomes legally committed to sell in accordance with the terms previously agreed with the holder of the right of pre-emption, if that person wished to exercise their rights. The disposal which is made to the owner of the right of pre-emption must therefore be sanctioned by Order under s.117(1) unless an exemption applies. The trustees must follow a sound decision making process.

This gives us the ability to consider whether the terms of the right of pre-emption are reasonable, and whether the decision to sell at all is reasonable in the context of having to sell on the pre-emption terms. The unexpired duration of the pre-emption period will be an obvious consideration here. In the last resort, if we think it to be in the interests of the charity to frustrate the contractual rights which it granted to the holder of the right of pre-emption, we can then do so by a refusal to make the Order.

### E1.8 Transfer of the title to charity land to new trustee(s)

This is not a disposal in the context of this guidance; the charity land stays with the charity. This is different from the disposal that will result in the land no longer belonging to the charity.

### E1.9 Adverse possession

Adverse possession is where someone (a dispossessor) takes possession of land/property usually unilaterally – ‘squatting’

**Adverse possession of unregistered land**

For unregistered land the squatter must remain in adverse possession for 12 years at which point the squatter will be able to acquire a possessory title which may take precedence over the charity’s title.

In such cases we may consider whether or not the trustees might be liable for any loss to the charity and whether or not the trustees were negligent in allowing entry and subsequent dispossession by squatters

**Adverse possession of registered land**

* Following implementation of the Land Registration Act 2002, where someone has been in adverse possession of registered land for 10 years, they have the right to seek registration of themselves as owners of the land. The Land Registry has to give notice to the true owner of such an application
  + The landowner then has a period of 65 business days to object to the adverse possession, and:
    - if they do so the application fails
    - if they do not then the squatter becomes the registered proprietor according to the land registry
  + If the owner objects but is unable to evict the squatter in the two years following the first application, the squatter can apply again after this period and be successful despite the opposition of the owner
* This cannot happen where each of the beneficiaries has an interest in the land, but this is unlikely to be the case as it is usually the trustees who have the interest in the land
* Where such claims are made and trustees receive notice of an application, they will need to consider, in consultation with their own legal advisers, what steps they should take to resist the application – this is not an issue we will become involved in, particularly as we are precluded from determining the title to land (s.70(1) of the 2011 Act). Whilst we can provide copies of Schemes or Orders we have made, if requested, these do not necessarily prove the charity’s title to the land.

### E1.10 ‘Self certification’

We’ve used this term in the guidance to stand for the situation where trustees can dispose of their charity’s land without the need to come to us for an Order by complying with the requirements of either s119 or s120. For more information on this see [Practice guide 14: charities - GOV.UK (www.gov.uk)](https://www.gov.uk/government/publications/charities-advice-for-applications-to-be-sent-to-land-registry/practice-guide-14-charities).

## E2 When trustees need our authority and when they can dispose of land without it

### E2.1 When do trustees need our authority to dispose of charity land and what are the exceptions?

The first principle is that all disposals of charity land need our authority as set out in s.117(1) of the Charities Act.

However, the subsections following this then set out the situations **where this does not apply**:

* under s.117(2):
  + if the disposal is not to a connected person, or a trustee for or nominee of a connected person, (it stands then that any disposal to a connected person does need our authority) and
  + the trustees have complied with the requirements set out in s.119 or s.120 before they have entered into an agreement to the disposal
* under s.117(3) any disposition that:
  + has general or special authority expressly given by any statutory provision contained in or having effect under an Act or any Scheme legally established – see section [E2.5](#_E2.5_Authority_granted).
  + where the land is held by or in trust for a charity, is made to another charity in furtherance of the transferring charity’s purposes that is not (i) a disposition made with a view to achieving the best price that can reasonably be obtained, or (ii) a disposition that is a social investment for the purposes of Part 14A (social investments) of the 2011 Act – see section [E2.3.](#_E2.3_Disposals_to)
  + is a lease granted by or on behalf of a charity and in accordance with its trusts to any beneficiary under those trusts where the lease is granted for less than best rent and is intended to enable the premises to be occupied for the purposes or any particular purpose of the charity – see section [E2.3](#_E2.3_Disposals_to)
  + is a disposition by a liquidator, provisional liquidator, receiver, mortgagee or an administrator.
* under s117(4) any disposal of:
  + land held by or in trust for an exempt charity
  + land by way of a mortgage or other security
  + an advowson

Where a disposal is not excluded from the requirements as set out above, there are requirements with which trustees must comply when disposing of their charity’s land without our authority under s.117(2) of the 2011 Act – see section [E2.2.](#_E2.2_Requirements_trustees)

### E2.2 Requirements trustees must comply with when disposing of their charity’s land without our authority

* When trustees can dispose of their charity’s land without our authority, they must have a power of sale and comply with the requirements set out in s.119 or s.120 of the Charities Act. These are all set out in [Practice guide 14: charities - GOV.UK (www.gov.uk)](https://www.gov.uk/government/publications/charities-advice-for-applications-to-be-sent-to-land-registry/practice-guide-14-charities)
* In addition, the contract and disposal documents must contain certain statements :
  + That the land is held by or in trust for a charity
  + if the charity is an exempt charity
  + if the disposal falls into one of the circumstances in s117(3) of the 2011 Act – see section [E2.1](#_E2.1_When_do)

NOTE: Trustees do not have to comply with matters personally and have flexibility formally to delegate matters to a sub-committee or employees, such as the following matters:

* obtaining and considering a report from a designated adviser – s.119(1)(a) or an adviser competent to give advice on the disposal – s.120(2);
* that the designated adviser (or adviser under s.120(2)) has the appropriate ability and experience to value the land – s.119(3)(b); and
* deciding that they are satisfied that the terms of the disposal are the best that can reasonably be obtained – s.119(1)(c).

### E2.3 Disposals to other charities

Trustees do not need our authority and do not need to comply with the requirements of s.119 or s.120 if the disposal is being made from one charity to another in furtherance of the transferring charity’s purposes and is otherwise than for the best price that can reasonably be obtained, and is not a social investment. This means:

* The charity does not have to comply with Part 7 if the disposal is for no value or a nominal sum, and the only purpose of the disposal is to further the purposes of the transferor charity; and
* The charity does need to comply with Part 7 requirements when the disposal is a social investment.

A social investment is defined in s.292A of CA2011 and means when a charity carries out an act with a view to both:

* Directly furthering the charity's purposes; **and**
* Achieving a financial return.

This means that where the price obtained is a ‘motivating factor’ for the disposal (even if only a partial or very minimal one in terms of the financial value in the case of a social investment) the charity has to comply with Part 7 which is designed to protect against disposal at undervalue.

In order to determine what is a reasonable financial return and what level of social investment they are making, trustees will need to know the value of the land and so will need to obtain a designated adviser’s report. If a charity is making a social investment under the statutory definition, the “best terms” are unlikely to mean the “best price”. This is because, for social investments, the financial return is balanced against making an investment to directly further the charity’s purposes.

For examples of how this may work see section [D3](#_D3_Disposals_to).

Similarly, trustees do not have to comply with s.119 or s.120 in respect of a lease to a beneficiary of the charity for less than best rent where this enable the premises to be occupied for the purposes of the charity. The most obvious example of this is the case of a housing association letting property to its tenants for less than the full market value.

Except in these circumstances, (or where the circumstances set out in [E2.1](#_E2.1_When_do) apply) the trustees must either comply with Part 7 and obtain advice from a designated adviser or obtain our authority for the disposal.

### E2.4 Governing document specifies Court or Commission consent before disposal

Although not common, the governing document of a charity may require the court’s or our consent to be given to disposal of land. However, where a transaction falls within one of the section 117 categories which specify that the court or Commission's authority is not required (see [E2.1](#_E2.1_When_do)), section 117 disapplies any requirement in a charity's governing document for the court or commission's consent to a land disposal.

If a transaction does not fall within one of the section 117 exempted categories, for example it is a disposal to a connected person, then the Commission's authority is required. If the governing document of a charity specifies that the court's consent is required, s.105(7) of the Charities Act 2011 allows the commission rather than the court to provide that consent.

### E2.5 Authority granted by statute or legally established Scheme

Any disposal for which general or special authority is expressly given in:

* an Act of Parliament (which includes a Church of England Measure)
* a Statutory Instrument
* other statutory provision having effect under an Act of Parliament
* a legally established Scheme

is excluded from the provisions of s.117 and so do not need to comply with the s.117 requirements. But where the authority is subject to the making of an Order of the court, such disposals are not excluded and so do have to comply with the s117 requirements.

For example, the following are excluded from s.117 and so do not need to comply with those requirements:

* many charitable housing associations are registered societies (formerly industrial and provident societies) under the Co-operative and Community Benefit Societies Act 2014 which are exempt charities – these also do not need to comply with the requirements of s.117
* disposals by the Churches Conservation Trust are exempted from s.117 under s.57 of the Mission and Pastoral Measure 2011
* a Scheme which we make that specifically provides the power as well as the authority for a particular transaction would be excluded from s.117
* land disposed in certain circumstances in the compulsory purchase regime will be exempt from s.117 – see section [E2.6](#_E2.6_Compulsory_purchase)

### E2.5.1 Universities and Colleges previously covered by the Universities and Colleges Estates Act 1925 (UCEA 1925)

* Until 19 May 2025 any disposition for which the authorisation or consent of the Secretary of State is required under the UCEA 1925 will also sit outside the statutory regime pursuant to s.117(3)(a) which means they do not have to follow the Part 7 rules.
* After this date, the relevant provisions in the UCEA 1925 will be repealed and so only those universities and colleges to which the UCEA 1925 applied and which have amended their statutes to provide suitable authority in their governing document will be able to rely on this exemption and so remain outside this statutory regime. If they have not amended their statutes, they will have to start following the requirements in Part 7.
* For a governing document power of disposal to be relied on so that they do not have to comply with Part 7, it must be expressly given for a particular disposal or class of disposal - a general power of sale will not be sufficient to be relied upon for the purposes of s.117(3)(a). Caseworkers should check the wording of any power in a university or college’s statutes carefully and, if it is different from the agreed wording set out below, take legal advice as to whether the governing document provisions provide a suitable power.
* The Commission has agreed the wording below with the PCO and DCMS which would, if included in a relevant university or college’s statutes, be a power on which such universities or colleges could rely for the purposes of s.117(3)(a). NOTE: This authority is limited and so whilst it will enable relevant universities and colleges to make a number of disposals without following Part 7 or obtaining Commission consent, there remain disposals which are not within this specific power.

Agreed wording:

1. Subject to sections 2 and 3 below, the College has, *in relation to any land belonging to the College, all the powers of an absolute owner.*

2. *The power in section 1 above relating to land belonging to the College shall extend and be applicable only to land vested in the College, or in any body constituted for holding land belonging to the College which:*

*(1) is held wholly as the property or for the general purposes of the College; or*

*(2) is held upon any trusts, or for any special endowment or other purposes of the College only;*

*(3) is not held on functional permanent endowment trusts for the purposes of the College; and*

*(4) is not otherwise subject to any other restriction, condition or limitation imposed by, or arising under, any enactment (other than Part 7 of the Charities Act 2011), any rule of law or equity, or the statutes regulating the College.*

*3. The College must obtain the prior written consent of the Charity Commission for any disposition of land belonging to the College pursuant to section 1 above if:*

1. *The disposition is made to a person who is a connected person as defined in section 118 Charities Act 2011; and/or*
2. *The disposition is for consideration that is less than the best price that can reasonably be obtained and the disposition is not made to another charity otherwise than as a disposition made with a view to achieving the best price that can reasonably be obtained.*

### E2.6 Compulsory purchase

A range of utilities and statutory authorities use compulsory purchase legislation to obtain land essential for them to carry out their functions. The acquiring authority can make an order under the Acquisition of Land (Authorisation Procedures) Act 1946. The making of such an order brings into play the procedure for acquiring land and the right to compensation set out in the Compulsory Purchase Act 1965 (the 1965 Act).

Charity land is not exempt from compulsory purchase powers. In most cases trustees will be able to sell their charity land under a compulsory purchase order either complying with the requirements of s.119 or without the need to comply with these requirements at all. **If we are consulted in such a case, caseworkers will need to take legal advice.**

Section 3 of the 1965 Act provides that, where a compulsory purchase order has been made, the land may be disposed of by agreement between the charity and the purchasing authority, if agreement is not reached and the disposal proceeds strictly in accordance with the provisions of schedule 1 to the 1965 Act, then it is taken outside of the scope of s.117. But s.42(7) of the Law of Property Act 1925 indicates that this procedure should only be used in special circumstances. If the transaction can reasonably be completed using other powers, then this should happen. Section 117 then applies in the usual way. If the acquiring authority also happens to be a connected person (although this is unlikely) then the procedures for disposal to a connected person apply.

This means that, typically, in the absence of such agreement, the acquiring authority gives a ‘notice to treat’ under s.5 of the 1965 Act. If the landowner does not agree to negotiate with the acquiring authority, or if no agreement can be reached as to the amount of compensation, the question of compensation is referred to the Land Tribunal. The acquiring authority is also able, having issued the notice to treat, to enter and take possession of the land under s.11 of the Act (and interest is payable on the amount of compensation from that date).

When the landowner refuses to accept the compensation agreed or awarded by the Lands Tribunal or refuses to convey the land, section 9 of the 1965 Act enables the acquiring authority to pay the compensation into Court and execute a deed poll vesting the landowner’s interest in the land in itself. If the trustees did simply refuse to convey the land then s.117 would not apply as the issuing of a deed poll would mean that the land had not been ‘disposed of’. (However, in such a situation the trustees would almost certainly be personally liable for the costs incurred as a result of the compensation being paid into Court.)

Any disposal which is made by the trustees after the service of the notice to treat and where agreement is reached, thus avoiding the payment of the compensation money into court, is within s.117.

### E2.6.1 Charities with a power of sale

A compulsory purchase order does not constitute ‘general or special authority’ for a disposition of charity land for the purposes of s.117(3) since such an order does not expressly authorise any disposition.

Trustees who hold land:

* which is subject to a compulsory purchase order

and

* in respect of which they have an existing power of sale

will need to comply with the requirements of s.117 of the Charities Act if:

* the sale is by way of an agreement

and

* the procedure in schedule 1 of the Compulsory Purchase Act 1965 is not followed

or

* if the disposal is effected by agreement after the service of the notice to treat and the compensation money is not paid into court.

However, if the procedure in schedule 1 is followed, or the strict statutory procedure following the service of the notice to treat is followed, s.119 does not apply.

### E2.6.2 Charities without a power of sale

Trustees who hold land which is subject to a compulsory purchase order can either proceed as if the disposal was an ordinary disposal, or they can:

* rely on the power of sale conferred by schedule 1 of the 1965 Act, this statutory power constitutes ‘general authority’ under s.117(3) of the 2011 Act so that s.119 would not apply to the transaction if the procedure in schedule 1 is followed; or
* allow the strict statutory process following service of the statutory notice to take effect, when again section 119 would not apply.

The disadvantage of these options is that the compensation/purchase money is paid into court and the charity risks being liable for the costs of obtaining payment out of court, if the court considers that it has been unreasonable for it to insist on compliance with the strict procedure.

## E3 Do trustees have the power to dispose of their charity’s land?

### E3.1 Identifying a power of disposal

Trustees need to consider if they have power to dispose of their charity’s land, taking account of the provisions in their charity’s governing document and their statutory powers.

Sections 117 to 121 in part 7 of the 2011 Act do not confer powers of disposal on the trustees, they merely provide a set of constraints (where they apply) to ensure the trustees use the powers of disposal which they have in the best interests of the charity.

For more information on powers of disposal see [B4.6](#_B4.6_Do_the).

### E3.2 Powers that may be available to trustees

[Section B4.6](#_B4.6_Do_the) above explains the powers available to most charities but there are other powers that may be available to some charities.

The main power available to unincorporated charities is section 6 of the Trusts of Land and Appointment of Trustees Act 1996 (TLAT 1996) – this gives trustees the power to dispose of land as if they were absolute owners as long as they are exercised:

* in the best interests of the charity and conducive to the achievement of its purposes in compliance with the requirements of ss117 to 121 of the 2011 Act
* to the standard of care required by section 1 of the Trustee Act 2000, where that applies – see OG86 B2

**See** [**section B4.6**](#_B4.6_Do_the) **for guidance on disposal of designated land.**

**Exceptions when the statutory power may not be used are where:**

* a restriction is imposed by an Act of Parliament or Scheme
* the charity’s governing document makes the disposal subject to the consent of a third party and consent is refused
* the land is not held on trust, for example it is the corporate property of a company or CIO.

Where a disposal is not compatible with the trusts of the charity, or the effect would be to alter the purposes of the charity, then the trusts would need to be amended before the disposal can proceed. The trustees may be able to use a power of amendment in their governing document to do this, otherwise the trustees would need to pass a resolution to amend the charity’s purposes using the statutory power in s280A(8)(a) of the 2011 Act for which the Commission’s consent is required. If there are cases where this is not possible, the trustees would need to apply to the Commission for a cy pres scheme

Other statutes that may provide power include, for example:

* the United Reformed Church Act 1981 – this modifies the trusts of certain charities in a way which removes any incompatibility between the disposal of land and giving effect to the purposes of the charity
* s.14 of the School Sites Act 1841 has a similar effect and relieves the need for compliance with ss117 to 121 of the Charities Act – many schools established under s2 of the School Sites Act 1841 use this power to dispose of property before the school moves to new premises (see section 2.8 of OG27 A2 Reverter of Sites Act 1987)
* in some circumstances the power of sale conferred by Schedule 1 of the Compulsory Purchase Act 1965 – see section [E2.6](#_E2.6_Compulsory_purchase)

We can provide the power to dispose of land by way of an Order or Scheme

Powers of disposal other than the standard statutory power will normally only be relevant if they are wider than the statutory power.

### E3.3 Land vested in the Official Custodian for Charities (OC)

In most circumstances, when land has been vested in the OC, trustees have power to carry out in the OC’s name all the functions they could properly do on their own behalf as if the land were vested in them (s91(3) the Charities Act), this includes:

* entering into contracts for the disposal of land
* executing documents giving effect to disposals

However, under s.91(4), trustees can’t exercise powers over land that has been vested in the OC under s.76(3)(c) (as part of a s46 statutory inquiry) without an Order from the court or us.

### E3.4 The criteria with which trustees must comply

As well as the power they need to have, before entering into an agreement to dispose of charity land, trustee must:

* comply with the requirements of s.119 or s.120 where that section applies (see introduction)
  + this, in certain circumstances includes obtaining our authority – if they fail to do this the disposal will be invalid and can only proceed subject to us making an Order under s.117
* be able to demonstrate that the sale is in the best interests of the charity and conducive to the achievement of its purposes.

### E3.5 Corporate property

* The disposal of the corporate property of incorporated charities is subject to the requirement in s.117-119. The powers available to charitable companies when disposing of their own corporate property are found in their Articles of Association. The powers available to CIOs when disposing of their corporate property are found in their Constitution. These powers will usually be in the form of an explicit power, but otherwise may be inferred from a ‘sweeping up’ power which permits the exercise of any other powers which further the objects of the charity.
* Where an incorporated charity is disposing of land it holds on separate trusts, in its capacity as trustee, the corporate trustee must either rely on the statutory powers available to trustees in TLAT 1996 or on any powers in the governing document for the land it holds on trust. The corporate trustee will have to comply with the constraints of s.117 where they apply and the requirements of s.119 or s.120 if able to dispose of the property they hold on trust without our authority. See section [B4.6](#_B4.6_Do_the) for more information.

Disposals by a statutory corporation as charity trustee to itself in a different capacity may present conveyancing and conflict of interest issues. These can arise where a corporation – typically a local authority – is disposing of land as a charity trustee to itself in its corporate capacity. See OG56 B3 and [section D1.6](#_D1.6_Can_a). above for more information.

A corporate charity will need to comply with the requirements of s.121 when disposing of designated land of which it is the corporate trustee. Corporate charities are expected to hold designated land and land held as investment permanent endowment as trustee on trust, and not as part of their corporate property. However, there may be rare occasions when a corporate charity considers that it holds such property as part of its corporate property **if this arises you MUST seek legal advice.** (NOTE: this unlikely to arise other than on rare occasions in relation to statutory corporations which may hold property in an unusual way as a result of their governing statute(s).)

As with other charities, an incorporated charity will need to include statements in the contract and disposal instrument on the disposal of charity land, whether it is selling its corporate property or, in its capacity as trustee, if it is selling land it holds on trust (for example designated land or investment permanent endowment).

### E3.6 Sales by executors and administrators

Sales by executors and administrators in the course of administering the estate will not fall within the provisions of s.117 since they are not holding the land in trust for the charity.

If, having completed the administration of the estate, the executors on the instructions of the trustees of the beneficiary charity dispose of land that has been left to the charity, such a disposal will then have become held on trust for the charity. In such a case the disposal will be subject to s.117.

In practice, land is often appropriated to the beneficiary charity at an early stage in the administration of an estate for tax reasons. This does mean that s.117 will apply to a subsequent sale of such land. For more details of the s.117 requirements in this situation, see sections [B2](#_B2_When_can) and [E1.1](#_E1.1_What_do) above and the information note produced by the Institute of Legacy Managers and agreed by us.

If the executors do not need to sell the land in the course of administering the estate and have not previously appropriated it to the beneficiary charity, their duty thereafter will be to convey the land to the trustees of the charity or at their direction. If the trustees direct the executors to dispose of the land, then s.117 will apply to the disposal.

### E3.7 Proceeds of sale

How the proceeds of sale can be used by the charity depends on how the land is held and how the disposal is made. The chart at section [C1](#_C1_Proceeds_of) sets out what normally happens to the proceeds of any disposal of charity land.

## E4 The ‘saving provisions’ of s.122

If the trustees have not obtained an Order from us when they should have done, or have not met one or more of the requirements of either s.119 or s.120, there may be doubts about the validity of the transaction. In such cases the receiving party may be able to rely on the various ‘saving provisions’ in s.122(4) and (4A) and 122(5) and (5A).

See [B7](#_B7_What_happens) for more information on Saving Provisions.

## F: Model text

NOTE: This model text is for guidance only, the technical sufficiency of transfer documents is a matter for the trustees and their legal advisers. We can send this model wording to trustees if we add this proviso.

### F1 Model form of lease where land is vested in the Official Custodian

1. Parties

The Official Custodian for Charities (no further description or address is required)

The charity trustees (this should include all the trustees who should be named and described as individuals)

The lessee

2. Recitals

That the land is vested in the Official Custodian for Charities in trust for the charity

That it is intended that the lease shall be executed by two (or whatever the number may be) of the charity trustees under an authority given in pursuance of s.333 of the Charities Act 2011

Statements must also be included to comply with the provisions of s.122 of the Charities Act 2011; further information is available in the Land Registry’s Practice Guide 14 - Charities

3. Demise

The charity trustees in the name and on behalf of the Official Custodian for Charities hereby demise, etc.

4. Trustees’ Statements

The trustees of the charity must include the required statements in the contract and instrument of disposal – see the Land Registry’s Practice Guide mentioned above

5. Lessee’s Covenants

Lessee to covenant with the charity trustees, and as a separate covenant, with the Official Custodian for Charities

6. Lessor’s Covenants

By the charity trustees only, and not by the Official Custodian

7. Declaration of Value

It is hereby certified by the parties hereto other than the Official Custodian for Charities that etc.

8. Testimonium

This deed is executed by (here the names of the charity trustees who are to execute should be named) in pursuance of s.333 of the Charities Act 2011 and in the name and on the behalf of the Official Custodian for Charities and also of the charity trustees.

9. Signatories

SIGNED AND DELIVERED

By the said .............

In the presence of:………………..

SIGNED AND DELIVERED

By the said ..........

In the presence of:……………

### F2 Model form of conveyance/transfer where land is vested in the Official Custodian

1. Parties

The Official Custodian for Charities (no further description of address is required)

The charity trustees (this should include all the trustees who should be named and described as individuals)

The Purchaser

 2. Recitals

That the land is vested in the Official Custodian for Charities in trust for the charity.

That it is intended that the transfer shall be executed by two [or whatever the number may be] of the charity trustees under an authority given in pursuance of s.333 of the Charities Act 2011

Statements must also be included to comply with the provisions of s.122 of the Charities Act 2011; further information is available in the Land Registry’s Practice Guide 14 – Charities.

3. [Date]

In consideration of .............pounds (£........) the receipt of which is hereby acknowledged we (set out the names of all the charity trustees) whose address for service is........... the charity trustees of the charity known as (set out the full name of the charity) in the name and on the behalf of the Official Custodian for Charities hereby transfer and as charity trustees hereby transfer and confirm to (set out the name of the transferee here) of, etc. ....... the land comprised in the title above-mentioned.

4. Trustees Statements

The trustees of the charity must include the required statements in the contract and instrument of disposition – see the Land Registry’s Practice Guide mentioned above.

 5. Declaration of Value

It is hereby certified by the parties hereto other than the Official Custodian for Charities that etc. ............

6. Testimonium

This deed is executed by (here the names of the charity trustees who are to execute should be named) in pursuance of s.333 of the Charities Act 2011 and in the name and on behalf of the Official Custodian for charities and also of the charity trustees.

7. Signatories

SIGNED AND DELIVERED

By the said ..................

In the presence of:

SIGNED AND DELIVERED

By the said .................

In the presence of: