



THE INSTITUTE  
OF LEGACY  
MANAGEMENT

FootAnstey

# Statutory obligations on the sale of land within an estate

Sections 117-121 of the Charities Act 2011  
(as amended by the Charities Act 2022)



# Charity trustees

## General duties

This factsheet sets out when and how sections 117-129 CA 2011 apply to land which is left to charities in a Will and as such when a report is required in line with section 119 (a 'Section 119 Report'). Even when Personal Representatives (the 'PRs') are not required to obtain a Section 119 Report, it is important to note that they nonetheless still have clear duties to obtain best value for land when selling.

**Other than in terms of the cost incurred, it can never be wrong to obtain a Section 119 Report. In case of doubt, the safe option is always to obtain one!**

### The basics

At all times, a charity's trustees must act in the best interests of the charity.

They must:

1. Act within their powers;
2. Act in good faith and only in the best interests of the charity;
3. Make sure they are sufficiently informed;
4. Take into account all of the relevant factors;
5. Ignore any irrelevant factors;
6. Manage conflicts of interest; and
7. Make decisions that are within the range of decisions that reasonable trustees could make.

When it comes to selling, leasing, transferring or otherwise disposing of an interest in land held by or on trust for a charity, the law sets out clear requirements to ensure that these important transactions are properly managed in the charity's best interests and that the trustees obtain the best price reasonably achievable in all the circumstances.

### Section 117-129

Section 117 to 129 Charities Act 2011 ('CA 2011') deals with specific restrictions on sale or other disposals of land where:

that land is:

- in England and Wales;
- held by or on trust for a *single* charity (see more below); and

that charity is:

- registered (that is, it has a charity number);
- non-exempt (not exempt due to being regulated by a body other than the Charity Commission); and
- that charity is also registered in England and Wales.

Section 117 CA 2011 was amended by the Charities Act 2022 ('CA 2022') which will be implemented in June 2023.

Note: Section 117 CA 2011 also itself replaced section 36 Charities Act 1993. References to section 36 are, therefore, sometimes seen on the title to land held for charities where this was registered prior to 2011.

## Section 117

If land is included in an estate of which your charity is a beneficiary, you should consider if sections 117 - 129 CA 2011 will apply.

Section 117 CA 2011 imposes a blanket restriction on the sale (and leasing and other disposals) of land in England and Wales which is *held by or held on trust for a charity* without an order of the court or the Charity Commission. In practice, the consent of the court or Charity Commission is rarely required as section 117 CA 2011 also includes statutory exceptions.

For legacy officers the key point is that section 117 CA 2011 allows charity trustees to dispose of land without an order of the court or Charity Commission so long as the following requirements are complied with:

- the disposal is not to a connected person (see more below)
- before committing to a disposal (that is before executing and dating any agreement to dispose of land or an interest in land) the trustees comply with the procedure set out in section 119 CA 2011.

Note: Section 120 CA 2011 applies if the disposal is by a lease for 7 years or less, but this would be rare in the legacy context.

There can be lots of questions which arise in relation to these statutory obligations: ***So let's break it down!***

Please also see our flow chart at the end of this guide which summarises the relevant considerations.

### What does the CA 2011 mean by a disposal of land?

A disposal of land could be sale of land or buildings but could also include giving up other valuable rights relating to land.

The term disposition is widely defined and includes the release of easements or restrictive covenants (if in doubt, it is best to check!)

The table below summarises action which would or would not amount to disposals of land.

Disposals	Not disposals
Transfer/conveyance/sale of freehold or equitable interest in land	Licence to use/occupy or a tenancy at will
Grant, assignment, surrender of lease	Rent Review

Variation of lease which increases the extent of demise/the term (where a charity is landlord)	Variation of lease which does not increase the extent of the demise/the term.
Grant, assignment, variation, surrender of easement or profit	Deed of rectification or agreement as to boundary (if no formal transfer)
Release of restrictive covenant	Exercise of a break in a lease

### Does it matter where the land is?

**Yes!** As set out in the summary above, sections 117-129 CA 2011 *only* apply to land which is situated in England and Wales. You do not, therefore, need a Section 119 Report where the land is in Scotland, Northern Ireland or elsewhere in the world! You might, however, still choose to obtain a similar report in relation to land situated elsewhere in order to check you are selling for best value!

### When does section 117 apply in a Legacy Context?

It can sometimes be tricky to decide if section 117 CA 2011 applies in the legacy context or not. The key to this question is whether the land is held *by* or *on trust for a charity*. Whilst it is easy to identify if land is held by a charity, it can be harder to decide if it is held *on trust* for a charity. In a legacy context this often comes down to asking the question “*has there been an appropriation?*”

When the PRs of an estate dispose of land, Capital Gains Tax ('CGT') may be payable on any increase in value of the land between the date of death and value at the date of sale. Appropriation is the act by which PRs may 'declare', without transferring the legal title, that they hold the land for the beneficiaries of the estate rather than for the estate itself (that is they hold the land *on trust*): Doing so, ensures that CGT is calculated at the rate applicable to the relevant beneficiaries. Since charities benefit from an exemption from CGT, where the PRs decide to appropriate, a CGT charge may be avoided altogether.

If land is appropriated, it is then *held on trust for a charity*. By contrast, where land is not appropriated, it continues to be held for the estate and the charity has an interest in the proceeds of sale but not in the land itself. This is the case even if a charity is the PR. Notwithstanding this, many charities still require a Section 119 Report in this scenario as a matter of internal good practice.

Section 117 CA 2011 will apply *only* where land has been appropriated *or* if it is otherwise already held by or on trust for a charity. An example of when land might already be held on trust for a charity in the legacy context is where a charity is a remainderman of a life interest trust: that is where property left to a person for their life (a life-tenant) and then to a charity (the remainderman) and the life tenant passes away.

Whether a charity's interest is in the land or the proceeds of sale, will depend on the wording of the Will, this can be open to interpretation. The Charity Commission will not, however, criticise a charity for wrongly obtaining a report and complying with section 117 CA 2011.

### What about where there is more than one charity?

If the land is appropriated by the PRs to a single charity, the charity trustees must comply with section 117 CA 2011 by obtaining a Section 119 Report. On appropriation, the trusteeship of the land for section 117 CA 2011 purposes automatically transfers from the PR to the charity's trustees. The charity's trustees have the power of sale, but the legal title stays with the PRs so the charity's trustees can direct what happens with the land and when.

If land is appropriated to two or more charities or to a mixture of charities and non-charities (lay beneficiaries) section 117 CA 2011 will *not* apply. Section 117 as amended by CA 2022 will only apply to land held by or on trust for a *single* charity.

Prior to the implementation of CA 2022, land could also be caught by section 117 CA 2011 if it was appropriated to multiple charities but this is no longer the case.

**The table below sets out when section 117 applies in the legacy context:**

	<b>When s117 applies</b>	<b>When s117 doesn't apply</b>
<b>Assent</b>	<p><b>On assent to single charity</b></p> <p>Land is assented to a single non-exempt charity pre-disposal</p>	<p><b>Simple sale without assent</b></p> <p>The land is disposed of by the PR without assent or appropriation</p>
<b>Appropriation</b>	<p><b>On appropriation to a single charity</b></p> <p>Land is appropriated to a single non-exempt charity</p>	<p><b>Appropriation or assent to multiple parties</b></p> <p>Land is assented or appropriated to more than one charity (or a mixture of charities and non-charities)</p>
<b>Assent or appropriation of part</b>	<p><b>On assent or appropriation and disposal of a share in land only</b></p> <p>A part or share (only) of land is assented or appropriated to a single non-exempt charity and that share itself is disposed of separately to the whole.</p>	<p><b>Appropriation or assent of part but the whole sold</b></p> <p>Land is assented or appropriated to multiple parties, but the property is disposed of as a whole.</p>
<b>Determination of life interest trust of property</b>	<p><b>On determination of a life interest trust</b></p> <p>The land is being disposed of following the death of a life tenant where the remainderman is a charity, so the land is then held by the charity.</p>	<p><b>On sale during life-tenant's life or where remainderman is not a single charity</b></p> <p>The land is subject to a life interest trust and is being disposed of during the life-tenant's lifetime.</p> <p>The land is being disposed of following the death of a life tenant where the remainderman is <u>other</u> than a single non-exempt charity.</p>

<b>Death of co-owner</b>	<b>On death of a co-owner (single charitable co-owner)</b>  If land is held by a co-owner and a single charity (or on trust for a single charity) and the co-owner dies.	<b>On death of a co-owner</b>  The land is disposed of on the death of a life tenant and the remainderman are a mix of charities and non-charity beneficiaries.
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### Are there any exceptions to when section 117 CA 2011 applies?

There are a number of exceptions under section 117 CA 2011 which allow disposal without obtaining a Section 119 Report. The exceptions set out in section 117(3) CA 2011 do not often apply in the legacy context and your solicitor should flag if they do. They include:

- Where your charity is permitted to dispose under a scheme or statutory provision
- A disposition by a charity to another charity in furtherance of with the objects of the first charity
- Grant of a lease to a beneficiary of charity other than for market rent
- Grant of a lease of less than a year by a charity to its employee (introduced by the CA 2022)
- Sales by receivers, liquidators or mortgagees (\*see below)

Note: following the implementation of the CA 2022 the former exception under the Universities and Colleges Act 1925 has been repealed and no longer applies. The exceptions relating to receivers, liquidators and mortgagees it not due to be implemented until October 2023.

Note: It is also important to note that whilst following implementation receivers, liquidators or mortgagees are not subject to section 117 CA 2011, they are subject to equivalent duties to ensure that they dispose of property at best value. Consequently, if an asset within an estate is being disposed of by any of these parties, evidence should be sought as to whether best value has been achieved.

Assuming it is not to a connected person, a disposal of land held by or on trust for a charity may proceed if either it falls into one of the limited exceptions set out in section 117(3) CA 2011 or section 119 CA 2011 is complied with.

### Is the sale to a connected person?

If section 117 CA 2011 applies and the proposed disposal is to a connected person, before committing to that disposal, consent MUST be obtained from the court or (more normally) the Charity Commission.

A definition of a connected person is set in section 118 CA 2011 (as well as sections 350, 351 and 352). The definition is wide and includes:

- trustees, officers and employees of a charity;
- the donor of any land to the charity;
- and /or any company controlled by any of those parties (which can include a company used as a trading subsidiary of a charity).

The definition also includes, in some cases, the children, grandchildren and spouses of the above parties.

The table below shows those parties who are connected persons for the purposes of section 117 CA 2011

**Connected person**

Relationship	Trustee	Officer/employee	Donor of land	Institution controlled by	Body corporate in which have a substantial interest
Themselves					
Child or their spouse					
Grandchild or their spouse					
Parent or their spouse					
Grandparent or their spouse					
Sibling or their spouse					
Spouse					
Business Partner					
Institution controlled by					

## So what about Section 119 Reports?

In most cases in the legacy context, compliance with section 119 CA 2011 is the key. Section 119 CA 2011 states that the charity trustees must, before entering into an agreement for the sale, lease or other disposition of land:

1. Obtain and consider:
  - (a) a *written report* (commonly known as a Section 119 Report) including the sum to expect for the property, how that value can be enhanced and how it should be marketed.
  - (b) from a designated advisor who can be:
    - a member of the Royal Institute of Chartered Surveyors
    - a member of the National Association of Estate Agent
    - a member of the Central Association of Agricultural Valuers; or
    - an employee, officer or trustee of your charity *if* they have appropriate expertise
2. Agree, having considered the report, that they are satisfied with the terms of disposition (that is, the basis on which the property is to be sold). The trustees should also ensure that the terms on which the disposition is taking place is the best that can reasonably be obtained.

Note: If the disposal is a lease for 7 years or less, a simpler procedure applies as set out in section 120 CA 2011. This would be unusual in the legacy context.

Note: The requirement for a Section 119 Report to be produced by a qualified surveyor was removed on implementation of the CA 2022.

## Land registration requirements

Changes are also due to be impended from October 2023. From that time, section 122 CA 2011 as amended by the CA 2022 will require only that any contract for sale or transfer must include a statement given by the *person disposing* confirming:

1. applicability – that is, whether or not the charity is exempt and whether sections 117 to 121 CA 2011 apply; and
2. that the applicable requirements have been complied with.

The exact wording of the statements and certificate will be prescribed by Land Registration Rules. The Land Registry Practice Guides gives further guidance, but your solicitor should assist with this. Your solicitor should advise as to the exact wording required.

Until October 2023, the position remains unchanged and, as such:

- Statements must be included in all contracts;
- Where there is an appropriation to one charity, the trustees of that charity must give the necessary certificate.

## Sale by auction

It is possible for a sale to take place by auction and for section 117 CA 2011 to be complied with. As long as those authorised by your charity, having considered the Section 119 Report, are satisfied that a sale by auction is appropriate, you can select this method of sale. It is usually appropriate for the surveyor to confirm the reserve price and guide price in line with the advice in the Section 119 Report.

A difficulty can arise on auction sale as the purchaser will not be known until the day and, if this person is a connected person, it can create a problem. The Charity Commission advises that when a sale is taking place by auction and section 117 needs to be complied with, the sale particulars should state that, if the purchaser turns out to be a connected person, the sale will be conditional upon the sanction of the Charity Commission being obtained.

### Failure to comply with sections 117-129 Charities Act 2011

Failure to comply with sections 117-129 CA 2011 prior to exchange of contracts on a disposal will mean that the contract is not enforceable and can only be completed with the approval of the court or Charity Commission. However, whilst buyers will therefore be concerned to ensure that the correct statement is given confirming compliance with section 117-119 CA 2011, they are not required (or entitled) to look behind that statement or to request information on the trustees' powers of disposal (section 122(3) CA 2011).

### Summary flowchart



Note: Certificates will still be required until October 2023 (exact date to be announced)

Updated 24 May 2023. The Charities Bill received Royal Assent on 25 February 2022. The majority of changes to Part 7 of the 2011 Act impacting Charity Property will be implemented in June 2023 although the exact date remains to be announced! Importantly, changes in relation to statements and certificates will not be implemented until October 2023.

