# EXPLANATORY MEMORANDUM TO

# THE CHARITIES (DISPOSITIONS OF LAND: DESIGNATED ADVISERS AND REPORTS) REGULATIONS 2023

## 2023 No. 467

## 1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

## 2. Purpose of the instrument

2.1 This instrument gives charities more choice in who they can seek advice from in relation to land disposals, by broadening who can be a designated adviser for the purposes of section 119 of the Charities Act 2011. This instrument also simplifies the content of designated advisers' reports for use in charity land disposals by revoking the Charities (Qualified Surveyors' Reports) Regulations 1992, and replacing them with broader categories of advice which must be included within a designated adviser's report. These changes will both save administrative costs for charities.

## 3. Matters of special interest to Parliament

***Matters of special interest to the Joint Committee on Statutory Instruments***

3.1 Section 13 of the Interpretation Act 1978 is relied upon in order to make this instrument in advance of section 19 and 20 of the Charities Act 2022 coming into force, on the basis that is expedient to do so for the purpose of giving full effect to section 19 and 20 at the time those provisions come into force. This instrument will then come into force on the same day as section 19 and 20 of the Charities Act 2022 come into force.[1]

## 4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

## 5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

[1] In order to comply with the 21-day rule, the earliest date upon which section 19 and 20 of the Charities Act 2022 will be commenced is the 17th May 2023.

## 6. Legislative Context

6.1 This instrument will come into force on the same day as section 19 and 20 of the Charities Act 2022.

6.2 Section 19(a) of the Charities Act 2022 removes the requirement to advertise a proposed disposition of land in line with the advice within a report received under section 119 of the Charities Act 2011. Section 19(b) of the Charities Act 2022 amends section 119(4) of the Charities Act 2011, to remove reference to regulations being able to prescribe "such information" to be contained within reports prepared for the purposes of section 119 of the Charities Act 2011. Both of these changes made by the Charities Act 2022 anticipate the revocation of the Charities (Qualified Surveyors' Reports) Regulations 1992 by this instrument.

6.3 Section 20 of the Charities Act 2022 changes the terminology within section 119 of the Charities Act 2011 from 'qualified surveyor' to 'designated adviser'. This is in anticipation of this instrument which prescribes that fellows of the Central Association of Agricultural Valuers (CAAV) and members of NAEA Propertymark (formerly the National Association of Estate Agents/NAEA) at fellow grade may equally provide advice, as an alternative to fellows or professional associates of the Royal Institution of Chartered Surveyors (RICS).

## 7. Policy background

***What is being done and why?***

7.1 This instrument is being made as part of wider reform of technical issues in charity law. In 2017 the Law Commission conducted an extensive consultation and published a report, 'Technical Issues in Charity Law' (TICL).[2] Which followed a detailed review of a wide range of technical improvements to the law.

7.2 The aim of the Law Commission's review was to give charities greater flexibility and autonomy in how they run, to remove inefficient and unduly complex regulation, to ensure adequate protection of charity assets, and to maintain public trust and confidence in the charity sector through proper oversight and accountability.

7.3 The Charities Act 2022 implements the majority of the Law Commission's recommendations by primarily making amendments to the Charities Act 2011.

7.4 The TICL report highlighted two changes in relation to the disposal of charity land which required secondary legislation to implement. Those two changes are implemented by this instrument, alongside changes being made by the Charities Act 2022.

7.5 Before this instrument, charities were required to seek advice in the form of a written report from a RICS qualified surveyor when wishing to sell or otherwise dispose of land (including long leases of land). The requirement ensures that charity trustees obtain appropriate professional advice on the proposed land disposal to ensure that it will be on the best terms for the charity. This instrument broadens that category of appropriately qualified professional advisers to include members of NAEA Propertymark at fellow grade and fellows of the CAAV.

7.6 Expanding the pool of professional advisers who can advise on charity land transactions increases the flexibility of charity trustees to choose an adviser that is

[2] https://www.lawcom.gov.uk/project/charity-law-technical-issues-in-charity-law/

best placed to provide advice in relation to a transaction, recognising that different transactions should have tailored treatment. This change allows charity trustees to make decisions in the best interests of their charities when handling charitable assets, and will save administrative costs for charities (expected to be £2.08 million per year for the charity sector – see section 12).

7.7 Before this instrument, professional advisers also needed to meet the requirements set out in the Charities (Qualified Surveyors' Reports) Regulations 1992 (the 1992 Regulations) when writing their reports for charities disposing of land. These requirements have been criticised, during consultation (see section 10), for being overly prescriptive (for example, by requiring the measurements of individual rooms) and also for "surprising omissions" (for example, insufficient focus on how the value of the land could be enhanced).

7.8 This instrument replaces the requirements of the 1992 Regulations with a more flexible and less onerous set of requirements that allow designated advisers to have more discretion as to what information will best assist charity trustees in relation to the particular disposal. New requirements include a self-certification by the adviser who has produced a report that they have the appropriate expertise and experience to provide the advice on the particular disposal in question, and that they do not have any conflicts of interest with the charity which they are advising. Changes to report requirements will save costs for advisers and charity conveyancers (totalling £666,000 a year - see section 12), which may be passed onto charities during transactions, and will provide charities with more clarity when making decisions to dispose of land.

## 8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

## 9. Consolidation

9.1 Not applicable.

## 10. Consultation outcome

10.1 The Law Commission conducted an extensive consultation, as part of their wider review of charity law.

10.2 The Law Commission's consultation ran for 15 weeks and involved 135 different charities, legal practitioners and experts, and other interested bodies. This included institutions representing surveyors and experts on charity land, including RICS, NAEA and CAAV, as well as the Charities' Property Association. The Charity Commission for England and Wales, the Office of the Scottish Charity Regulator, and the Charity Commission for Northern Ireland were also consulted. The consultation paper was published in sector press and supported by two public consultation events and various meetings with interested parties.

10.3 The Law Commission analysed the consultees' comments to many questions regarding the financial and legal requirements facing charities when disposing of land. Consultees expressed a wide range of views, however, the majority of consultees wanted the statutory framework for charity land disposals to be reformed, with less than 15% wishing to keep the regime the same.

10.4 From the responses, the Law Commission made recommendations in the TICL report to change the statutory framework for charity land disposals, including the two changes brought by this instrument.

10.5 Additionally, prior to the making of this statutory instrument, comments were invited from the NAEA, CAAV and RICS to ensure that this instrument achieves the two changes explained in section 2, following the time gap between the Law Commission's consultation and implementation.

## 11. Guidance

11.1 The Charity Commission for England and Wales has prepared updated guidance to reflect the changes brought by this instrument. This guidance is titled 'Selling, leasing or otherwise disposing of charity land in England and Wales' and will be available on the date the instrument comes into force, on the Charity Commission's information page.[3] The Department for Culture, Media and Sport will provide a link to this guidance from its Charities Act 2022 implementation page.[4]

## 12. Impact

12.1 A full impact assessment has not been prepared for the instrument because a de minimis impact assessment was conducted before the Charities Act 2022 was introduced to Parliament.[5] An extract is provided at **Annex A**, which sets out the relevant sections in relation to this instrument.

12.2 The impact assessment estimated that the expansion of the category of designated advisers to include members of NAEA Propertymark and CAAV will save the charity sector around £2.08 million per year.

12.3 This expansion also means that some work goes to individuals who are not members of RICS, but who are solely members of NAEA Propertymark and/or CAAV. Therefore, RICS surveyors who are not members of NAEA Propertymark or CAAV are likely to lose some earnings.

12.4 However, the simplification of the requirements for the contents of advisers' reports means that RICS surveyors will need to spend less time preparing reports (with an estimated saving of £188,000 per year in total across RICS surveyors). Similarly, charity conveyancers are estimated to save £478,000 per year by this simplification. These cost savings may also be passed on to charities in their payments for this work, and charities will have increased confidence when carrying out complex land transactions due to the additional requirement for advisers to certify their appropriate expertise, experience and independence.

12.5 There is no, or no significant, impact on the public sector.

## 13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses, including charities, surveyors, estate agents, valuers, and conveyancers.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to update and publish Charity Commission guidance to

[3] https://www.gov.uk/guidance/charities-act-2022-guidance-for-charities
[4] https://www.gov.uk/guidance/charities-act-2022-implementation-plan
[5] https://bills.parliament.uk/publications/41681/documents/324

explain these changes (see section 11). The instrument removes prescriptive and onerous requirements and simplifies the current regime with regards to charity land transactions.

## 14. Monitoring & review

14.1 The approach to monitoring of this legislation is that these changes will be reviewed as part of the statutory review of the Charities Act 2022. This review will be conducted within 3-5 years of the Act's commencement.

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Rt Hon Stuart Andrew MP has made the following statement:

14.3 The changes brought by the instrument are not expected to have a significant annualised net impact on business. A review of these changes will be included in the statutory review of the Charities Act 2022.

## 15. Contact

15.1 Hannah Dale at the Department for Culture, Media and Sport (email: hannah.dale@dcms.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Carrie Cooke, Deputy Director of Civil Society Strategy and Analysis, at the Department for Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Stuart Andrew MP, Parliamentary Under Secretary of State at the Department for Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.