

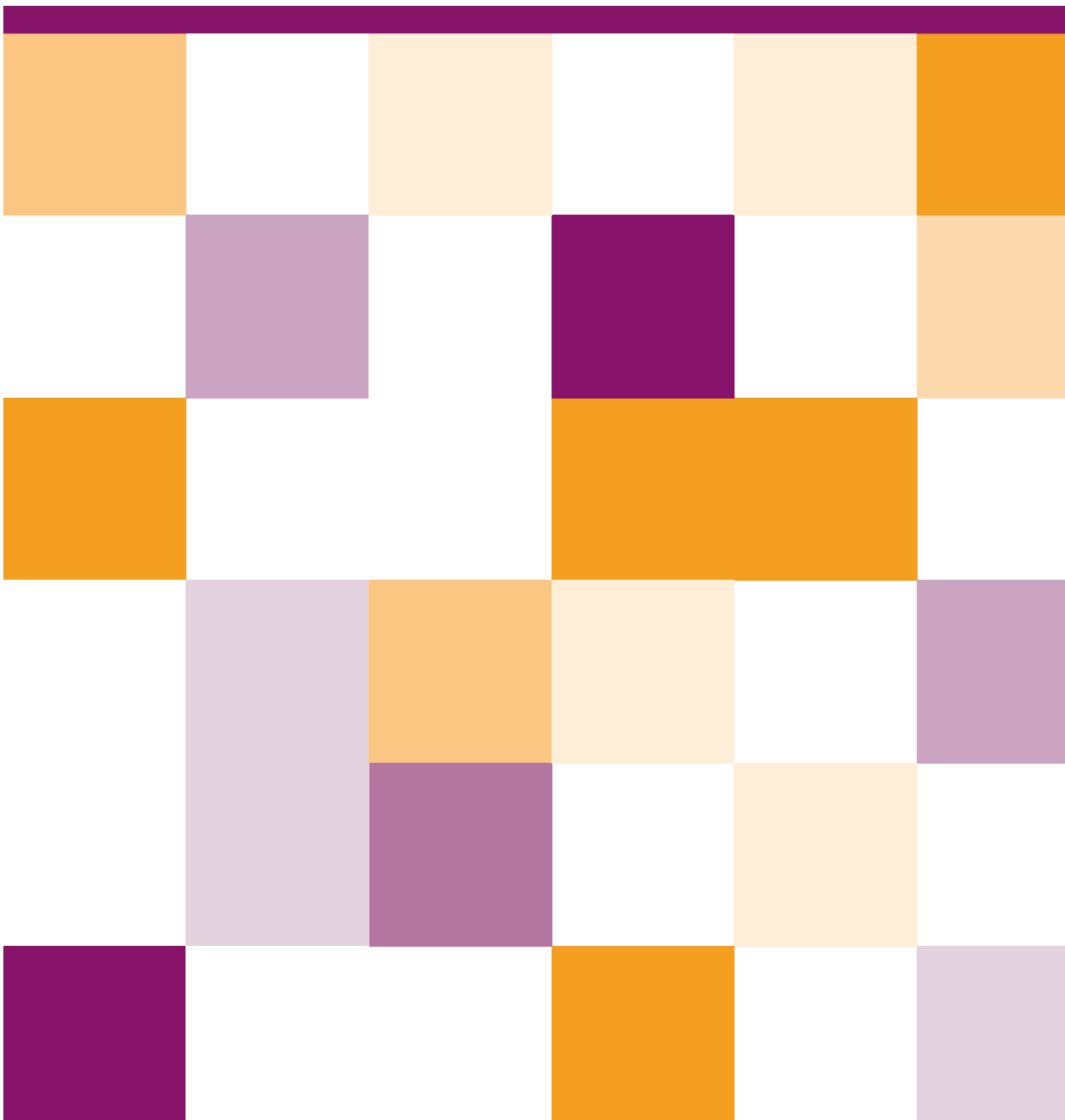


Making it easier for charities to sell and make other disposals of land

Consultation on extending the definition of “qualified surveyor” in section 36(4) of the Charities Act 1993

Office of the Third Sector

March 2010



Topic and scope of this consultation:	This consultation seeks views on extending the definition of “qualified surveyor” in section 36(4) of the Charities Act 1993 and poses several specific questions.
Geographical scope:	England and Wales only
Impact assessment:	To be informed by consultation. A partial impact assessment is available at http://www.cabinetoffice.gov.uk/third_sector/law_and_regulation.aspx
To:	We would particularly like to hear from property professionals, such as surveyors and estate agents, and charities that own land or interests in land, such as leases. But anyone can respond and all views will be considered in full.
From:	Office of the Third Sector (OTS) in the Cabinet Office.
Duration:	The consultation will start on 8 March 2010 and end on 7 June 2010 .
Enquiries:	Any enquiries about the content or scope of the consultation, requests for hard copies, etc should be made through: General enquiries number: 020 7276 6400 e-mail: surveyors.consultation@cabinetoffice.x.gsi.gov.uk
How to respond:	We are happy to receive replies by post or by e-mail (a template for responses is set out in Annex B). Please send responses to: Surveyors consultation Third Sector Support Team Office of the Third Sector 2nd Floor, Admiralty Arch The Mall London, SW1A 2WH e-mail: surveyors.consultation@cabinetoffice.x.gsi.gov.uk .
After the consultation:	Responses will be analysed and the OTS will then report with substantive proposals.
Code of Practice on Consultation:	This consultation complies with the Code of Practice on Consultation, the criteria for which are at annex A.

1. Background

1. Currently, trustees of charities in England and Wales who want to dispose of charity land must normally get a written report from a professional adviser who is a “qualified surveyor” within the meaning of section 36(4) of the Charities Act 1993 (the section 36 definition). The Charity Commission publication “Sales, leases, transfers or mortgages: What trustees need to know about disposing of charity land”¹ (CC28) provides guidance on the legal requirements that have to be complied with when disposing of charity land.

2. The 2005 Better Regulation Task Force Report “Better Regulation for Civil Society”² suggested that the section 36 definition is too narrow and recommended extending it

What do we mean by “dispose” and “disposal”?

4. In this consultation the terms “dispose” and “disposal” mean:

- selling, conveying or transferring ownership of charity owned land or buildings that are in England or Wales; or
- leasing such land or buildings for a period of longer than seven years;
- granting or releasing a right over the land; or
- making some other disposal of an interest in land

5. Exceptions are:

- letting arrangements or leases for terms of seven years or less, for which the requirements in section 36(5) the Charities Act 1993 are proportionately lighter;
- disposals of charity owned land that is outside England and Wales;
- disposals of land that is owned by exempt charities³;
- disposals by one charity to another where the objects are similar and the disposal is authorised by the disposing charity’s trusts;
- the granting of a mortgage or using the land for some other form of security.

¹ www.charitycommission.gov.uk/publications/cc28.asp

² <http://archive.cabinetoffice.gov.uk/brc/upload/assets/www.brc.gov.uk/betregforcivil.pdf>

³ For the purposes of the Charities Act 1993, an exempt charity is any institution established for charitable purposes which is included in Schedule 2 to that Act (as amended from time to time); this includes further education corporations, foundation and voluntary aided schools, most universities and some museums and galleries. Charity Commission publication “Exempt Charities” (CC23) available at <http://www.charitycommission.gov.uk/publications/cc23.asp>, provides more information.

The section 36 definition

6. At present the section 36 definition is:

A person is a qualified surveyor if -

- they are a fellow or professional associate of the Royal Institution of Chartered Surveyors or of the Incorporated Society of Valuers and Auctioneers⁴ or satisfies such other requirements as may be prescribed by regulations made by the Minister; and
- they are reasonably believed by the charity trustees to have ability in, and experience of, the valuation of land of the particular kind, and in the particular area, in question”.

Why are we proposing to change the section 36 definition?

8. The section 36 definition does not allow trustees to take into consideration the experience and qualifications of the professional adviser in a way that is proportionate to the nature and type of disposal. For example, when selling their home most people rely on estate agents to value, market and negotiate the sale of their property, rather than seeking out someone who meets the current section 36 definition.

9. The Charities Act 1993 enables the section 36 definition to be amended by regulations made by statutory instrument.

What are the benefits of the change?

10. The change will have the effect of widening the meaning of qualified surveyor and allow trustees to access a broader pool of professional expertise when seeking the required advice. We believe that allowing charity trustees to obtain reports from suitably experienced Fellows of the NAEA will in many cases:

- increase trustees’ choice about who they can consult; and
- consequently make it quicker, easier and often less expensive to get the information they need to enable them to make decisions about disposals and follow the statutory procedures.

Fellows of the NAEA

11. We suggest that Fellows of the National Association of Estate Agents (NAEA) with relevant experience and qualifications should be permitted to advise on disposals of residential and commercial properties owned by charities; they are currently prevented from doing so because the section 36 definition, as currently worded, is too narrow.

12. Fellows of the NAEA must:

- hold the National Federation of Property Professionals (NFOPP) Diploma in Residential Estate Agency (a level 5 qualification on the National Qualifications Framework, equivalent to a Higher National Diploma or a pass at foundation degree

⁴ The Incorporated Society of Valuers and Auctioneers merged with the Royal Institution of Chartered Surveyors in 2000

level) or a comparable, nationally recognised, qualification approved by the Association for membership; and

- have at least 5 years experience in estate agency and be able to provide details of that experience.

Ensuring necessary safeguards

13. NAEA requires that members must meet specific standards relating to professional and ethical practice. Members are required to protect and promote their client's interests, while at all times acting in a fair and proper manner. NAEA can take disciplinary action in cases of malpractice.

14. Any change to the section 36 definition will not affect the requirement for charity trustees to satisfy themselves of their surveyor's suitability to advise them. Trustees must satisfy themselves that the surveyor:

- has considerable experience of the property market in the town or district where the property is situated;
- is familiar with the factors that affect the value of the type of property (eg agricultural, freehold or leasehold residential, light industrial, etc) within the market; and
- knows which methods of marketing and disposal are most likely to succeed in the market of that type of property.

15. The surveyor will continue to have to prepare a report for the charity trustees that complies with the Charities (Qualified Surveyors' Reports) Regulations 1992 (Statutory Instrument 1992/2980) and the trustees must follow the surveyor's advice on how to market the disposal (or not, if that is the advice). The relevant extract from those Regulations is set out in Annex C.

16. Trustees will still have to comply with all the other requirements set out in section 36 of the Charities Act 1993, including:

- advertising the disposal following advice from their surveyor; and
- satisfying themselves that, having considered the surveyor's report, the terms that have been achieved are the best that can reasonably be obtained for the charity.

2. What we are consulting on and what are the issues

17. This consultation considers two options:

- a) Extending the section 36 definition to include Fellows of the NAEA.
- b) Leaving the current definition unchanged.

18. We suggest that Fellows of the NAEA with relevant experience should be enabled to provide advice and reports to charity trustees about disposals of charity land. However there may be a case for arguing that the definition should not be extended. This leads to the following questions that we welcome your views on:

Question 1

Do you agree that the section 36 definition should be extended to include Fellows of the NAEA?

Question 2

Do you agree that, if implemented, the extension will reduce the cost of obtaining reports for charities? If you agree and can provide an estimate, how much do you think the average saving will be? In what circumstances are savings likely to be made?

Question 3

Do you agree that, if implemented, the change will increase charity trustees' choice and make it easier for them to find a "qualified surveyor"?

3. Next steps

19. We have allowed a full three month consultation period ending on 7 June 2010. Once the consultation period has ended we will consider the responses received and use them to inform the decision whether to extend the definition of "qualified surveyor" to include Fellows of the NAEA.

20. We aim to publish a summary of the responses to the consultation on our websites within three months of the closing date of the consultation. This will include a timetable for commencement if it is decided to extend the definition.

4. Responding to this consultation

21. Please respond to this consultation by **7 June 2010**.

22. We are happy to receive responses by post or email. You may, if you wish, use the response form provided at Annex B.

23. Responses should be sent to:

Surveyors consultation
Third Sector Support Team
Office of the Third Sector
2nd Floor, Admiralty Arch
The Mall
London SW1A 2WH

Email: surveyors.consultation@cabinet-office.x.gsi.gov.uk

24. Please provide appropriate evidence in support of your response to this consultation. If you are a representative group it will be helpful if you can include a summary of the people and organisations that you represent.

Further information on this consultation

25. If you would like to discuss any aspect of the consultation please contact: David Hale, Office of the Third Sector, tel. 020 7276 6027, or email david.hale@cabinet-office.x.gsi.gov.uk.

26. Hard copies of the consultation paper are available on request.

27. Requests should be made to the same address as in paragraph 23. You may also call the OTS general enquiries number 020 7276 6400 to request a copy.

Information sharing

28. All information contained within the responses (including personal information) may be published or disclosed in accordance with the access to information regimes, primarily set out in the Freedom of Information Act 2000, Data Protection Act 1998 and the Environmental Information Regulations 2004.

29. If you want information given in response to the consultation to be kept confidential it will only be possible to do so if it is consistent with our legal obligations. There is a Statutory Code of Practice under the Freedom of Information Act 2000 that public authorities must comply with. This sets out how confidential information must be dealt with. We cannot give assurances that all information will be kept confidential but we will take into account any representations made by you.

30. If you object to any of the information (including your personal details) which you are giving in response to the consultation being published, please say so. It will be helpful for any such objections to be supported with an explanation of why you regard the information to be confidential so that a decision can be made about whether there are grounds for not publishing it.

Annex A

The Code of Practice on Consultation

The seven criteria of the Government's Code of Practice on Consultation⁵ are:

When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

The Cabinet Office's Consultation Co-coordinator is Hazel Lee and is contactable through the Cabinet Office switchboard (020 7276 1234).

⁵ the full version is available at <http://www.berr.gov.uk/files/file47158.pdf>

Annex B

Making it easier for charities to sell and make other disposals of land: Response Form

How to respond:

We are happy to receive responses by post or by e-mail. You may, if you wish, use this form to respond. We are grateful for any general and specific comments, and you need not respond to the specific questions set out below.

Once completed, please send your response to:

Surveyors consultation
Third Sector Support Team
Office of the Third Sector
2nd Floor, Admiralty Arch
The Mall
London, SW1A 2WH

Email: surveyors.consultation@cabinet-office.x.gsi.gov.uk

Please respond by 7 June 2010.

Name

Organisation (if you are responding on behalf of an organisation)

Postal Address / E-mail address

Specific Questions (please do not feel obliged to respond to these)

Q1. Do you agree that the section 36 definition should be extended to include Fellows of the NAEA?

Q2. Do you agree that, if implemented, the extension will reduce the cost of obtaining reports for charities? If you are in a position to estimate this, how much do you think the average saving will be? In what circumstances are savings likely to be made?

Q3 Do you agree that, if implemented, the change will increase charity trustees' choice and make it easier for them to find a "qualified surveyor"?

General Comments:

Annex C

Extract from Statutory Instrument 1992/2980

The Charities (Qualified Surveyors' Reports) Regulations 1992

SCHEDULE

INFORMATION TO BE CONTAINED IN, AND MATTERS TO BE DEALT WITH BY, QUALIFIED SURVEYORS' REPORTS

- 1.(1) A description of the relevant land and its location, to include-
 - (a) the measurements of the relevant land;
 - (b) its current use;
 - (c) the number of buildings (if any) included in the relevant land;
 - (d) the measurements of any such buildings; and
 - (e) the number of rooms in any such buildings and the measurements of those rooms.
- (2) Where any information required by sub-paragraph (1) above may be clearly given by means of a plan, it may be so given and any such plan need not be drawn to scale.
2. Whether the relevant land, or any part of it, is leased by or from the charity trustees and, if it is, details of-
 - (a) the length of the lease and the period of it which is outstanding;
 - (b) the rent payable under the lease;
 - (c) any service charge which is so payable;
 - (d) the provisions in the lease for any review of the rent payable under it or any service charge so payable;
 - (e) the liability under the lease for repairs and dilapidations; and
 - (f) any other provision in the lease which, in the opinion of the surveyor, affects the value of the relevant land.
3. Whether the relevant land is subject to the burden of, or enjoys the benefit of, any easement or restrictive covenant or is subject to any annual or other periodic sum charged on or issuing out of the land except rent reserved by a lease or tenancy.
4. Whether any buildings included in the relevant land are in good repair and, if not, the surveyor's advice-
 - (a) as to whether or not it would be in the best interests of the charity for repairs to be carried out prior to the proposed disposition;
 - (b) as to what those repairs, if any, should be; and

- (c) as to the estimated cost of any repairs he advises.

5. Where, in the opinion of the surveyor, it would be in the best interests of the charity to alter any buildings included in the relevant land prior to disposition (because, for example, adaptations to the buildings for their current use are not such as to command the best market price on the proposed disposition), that opinion and an estimate of the outlay required for any alterations which he suggests.

6. Advice as to the manner of disposing of the relevant land so that the terms on which it is disposed of are the best that can reasonably be obtained for the charity, including-

- (a) where appropriate, a recommendation that the land should be divided for the purposes of the disposition;
- (b) unless the surveyor's advice is that it would not be in the best interests of the charity to advertise the proposed disposition, the period for which and the manner in which the proposed disposition should be advertised;
- (c) where the surveyor's advice is that it would not be in the best interests of the charity to advertise the proposed disposition, his reasons for that advice (for example, that the proposed disposition is the renewal of a lease to someone who enjoys statutory protection or that he believes someone with a special interest in acquiring the relevant land will pay considerably more than the market price for it); and
- (d) any view the surveyor may have on the desirability or otherwise of delaying the proposed disposition and, if he believes such delay is desirable, what the period of that delay should be.

7.(1) Where the surveyor feels able to give such advice and where such advice is relevant, advice as to the chargeability or otherwise of value added tax on the proposed disposition and the effect of such advice on the valuations given under paragraph 8 below.

(2) Where either the surveyor does not feel able to give such advice or such advice is not in his opinion relevant, a statement to that effect.

8. The surveyor's opinion as to-

- (a) the current value of the relevant land having regard to its current state of repair and current circumstances (such as the presence of a tenant who enjoys statutory protection) or, where the proposed disposition is a lease, the rent which could be obtained under it having regard to such matters.
- (b) what the value of the relevant land or what the rent under the proposed disposition would be-
 - (i) where he has given advice under paragraph 4 above, if that advice is followed; or
 - (ii) where he has expressed an opinion under paragraph 5 above, if that opinion is acted upon; or
 - (iii) if both that advice is followed and that opinion is acted upon;

- (c) where he has made a recommendation under paragraph 6(a) above, the increase in the value of the relevant land or rent in respect of it if the recommendation were followed;
- (d) where his advice is that it would not be in the best interests of the charity to advertise the proposed disposition because he believes a higher price can be obtained by not doing so, the amount by which that price exceeds the price that could be obtained if the proposed disposition were advertised; and
- (e) where he has advised a delay in the proposed disposition under paragraph 6(d) above, the amount by which he believes the price which could be obtained consequent on such a delay exceeds the price that could be obtained without it.

9. Where the surveyor is of the opinion that the proposed disposition is not in the best interests of the charity because it is not a disposition that makes the best use of the relevant land, that opinion and the reasons for it, together with his advice as to the type of disposition which would constitute the best use of the land (including such advice as may be relevant as to the prospects of buying out any sitting tenant or of succeeding in an application for change of use of the land under the laws relating to town and country planning etc).