

Power to let model trust property MT 16(e)**Basic Information**

Contact Name and Details	The Rev'd Gareth J Powell powellg@methodistchurch.co.uk Governance Support Cluster
Status of Paper	Final
Action Required	To note
Draft Resolution	N/A
Alternative Options to Consider, if Any	None

Summary of Content

Subject and Aims	To amend Model Trust 16(e)
Main Points	To provide clarity for Managing Trustees
Background Context and Relevant Documents (with function)	The Committee on Law and Polity has been alerted to the fact that the current wording of MT 16(e) is not sufficiently clear as to be beyond doubt of interpretation.
Consultations	TMCP

Summary of Impact

Standing Orders	Model Trust 16(e)
Faith and Order	N/A
Financial	N/A
Personnel	N/A
Legal	This amendment conforms to current practice.
Wider Connexional	This amendment will assist Managing Trustees.
External (e.g. ecumenical)	N/A
Risk	None

COMMITTEE ON METHODIST LAW AND POLITY

The power to let model trust property

Report

1. The power for managing trustees to let model trust property is conferred by paragraph 16(e) of the Model Trusts, the current wording of which is set out in the schedule to this report. At the request of the Trustees for Methodist Church Purposes the committee has considered the terms of that paragraph, and its relationship with paragraph 20(1), also set out in the schedule, and as a result brings four proposals to the Conference.
2. The first is that the power is expressed as being one to let “any part” of the land comprised in the property. (In the Model Trusts and Standing Orders “land” includes buildings.) The question has been raised whether that enables the whole of the land to be let, and although the committee inclines to the view that it does it proposes an amendment to remove any possible doubt on that score.
3. Secondly, there is the adjective “rack” in the expression “rack rent”, generally understood to mean a full market rent. That interpretation poses several difficulties. The word is used in relation only to a letting “for any term”, and not to a (legally indistinguishable) letting “on a lease”. It is unnecessary, in that there is a general obligation in law on charity trustees to obtain full consideration. Most immediately, it has in some minds cast doubt on the availability of paragraph 20(1) where there is a letting of model trust property for a term at a rent. That paragraph enables the Methodist Council (which now stands in the place of the board of the former Property Division) to authorise dispositions at less than full consideration where that would advance any purpose of the Church. The committee is of the view that in such a case the word “rack” does not, on the true construction of the Model Trusts, exclude the operation of paragraph 20(1), which is specifically, and legitimately, directed to providing an exception to the obligation to obtain full consideration, but again it is clearly desirable to put the matter beyond argument, and the committee therefore proposes the deletion of “rack”.
4. Thirdly, the words “for any term” are not very apt to include periodic tenancies, which should obviously be permitted, and in practice always are. The committee therefore proposes their deletion also.
5. Fourthly, in paragraph 20(1), and elsewhere in the Model Trusts, the word “dispose” and its cognates, which are not technical terms, clearly seem intended to have a wide meaning, and not one confined to outright disposal by way of transfer. The committee proposes an addition to the interpretation provisions in paragraph 1 to clarify the position in that sense.

Schedule

16General powers of managing trustees. Subject to any statutory restriction and to the provisions of this Schedule, the managing trustees may —

(e) let or re-let for any term at a rack rent, or on a lease for a premium, rent, royalty, share of profits or other consideration or any combination thereof, any part of the land comprised in the property or any timber, mineral or other rights therein;

20Special powers on disposal of property. (1) If the board of the Property Division shall consider that any purpose of the Church would thereby be advanced, it shall be lawful for such board to authorise the trustees of any model trust property, by a written authority under the hand of its General Secretary or of any other person authorised by such board in that behalf to dispose of such property or any part thereof, in any manner whatsoever to any person upon trust for such purpose of the Church without the payment or provision of any consideration or for the payment or provision of less consideration than might otherwise be reasonably obtainable in respect of such property or such part thereof, and it shall be lawful for such trustees to enter into any transaction pursuant to such authority.

Amendments

1. In paragraph 1 of the Model Trusts, after the definition of 'Connexional Trustees', insert: 'disposal' or 'disposition', in relation to any model trust property, means disposal of the property or any estate or interest in it by any means, including conveyance, assignment, transfer, demise and letting, and 'dispose' has a corresponding meaning.

2. Amend paragraph 16(e) of the Model Trusts as follows: **16** (e) let or re-let ~~for any term~~ at a rack rent, or on a lease for a premium, rent, royalty, share of profits or other consideration, or any combination thereof, **the whole or** any part of the land comprised in the property or any timber, mineral or other rights therein;

Resolutions

1. The Conference adopts the report.

2. (Special Resolution) The Conference amends the Model Trusts as set out above.