



Faculty Jurisdiction Measure 1964 (repealed)

1964 No. 5

Jurisdiction in Faculty Cases

- 1 Vesting of privately owned parts of churches in the persons in whom the churches are vested.**
- (1) In this section “building” means any building or structure forming part of and physically connected with a church and “incumbent” means the incumbent of the benefice comprising the parish in which the church is situated.
 - (2) A court may in proceedings taken by an incumbent or parochial church council grant a faculty vesting any building in the person or body in whom the church is vested where the incumbent or parochial church council satisfies the court that:—
 - (i) the person in whom the church is vested is not the owner entitled to possession of the building or that there is reasonable doubt as to the ownership or right to possession thereof; and
 - (ii) the incumbent or parochial church council or some other person has taken all reasonable steps since, or shortly before, the commencement of the proceedings to communicate with all persons who may reasonably be supposed to have any rights of ownership or possession, whether absolute or limited, over the building; and
 - (iii) notwithstanding such reasonable steps there has been no communication with such person or persons or that all persons with whom communication has been made and who, on reasonable grounds, claim rights of ownership or possession over the building consent to the grant of a faculty under this section; and
 - (iv) no works of repair, redecoration or reconstruction have been executed upon the building by or on behalf of any person claiming any title thereto adverse to the title of the person in whom the church is vested during the seven years immediately preceding the commencement of the proceedings.

Status: Point in time view as at 01/02/1991.

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- (3) In any proceedings for obtaining a faculty under this section the court may appoint a person being a solicitor to represent all persons other than those represented, known or unknown, who may have rights of ownership or possession over the building in question, and all proper costs of such solicitor in the proceedings shall be paid by the persons bringing the proceedings, unless otherwise ordered by the court.
- (4) Where a faculty under this section is granted the building specified therein shall, by virtue of such faculty and without any further or other assurance or conveyance, vest in the person in whom the church is vested as part of the church for all purposes and any rights of property of any other person therein shall thereupon determine.

2 Faculties for demolition of churches.

- (1) The court shall not grant a faculty for the demolition or partial demolition of a church except on the grounds specified in this section and shall not grant a faculty under subsection (2) of this section nor under paragraph (i) of subsection (3) of this section unless:—
 - (i) the person bringing proceedings for the faculty has, within the prescribed time, caused to be published in the “London Gazette” and in such other newspapers as the court may direct a notice stating the substance of the petition for the faculty; and
 - (ii) an officer of the court has given notice in writing to the Council and the advisory committee of the diocese in which the church is situated of the petition; and
 - (iii) the judge of the court has thereafter considered such advice as the advisory committee has tendered to the court; and
 - (iv) the judge has heard evidence in open court, after application for the purpose has been made to the court in the prescribed manner, from:—
 - (a) a member of the Council or some person duly authorised by the Council; and
 - (b) any other person, unless in the opinion of the judge his application or the evidence which he gives is frivolous or vexatious.
- (2) The court may grant a faculty for the demolition of the whole or part of a church if the court is satisfied that another church will be erected on the site or curtilage of the church in question or part thereof to take the place of that church.
- (3) A court may grant a faculty for the demolition of part of a church if it is satisfied that:—
 - (i) the part of the church left standing will be used for the public worship of the Church of England for a substantial period after such demolition; or
 - (ii) such demolition is necessary for the purpose of the repair, alteration or reconstruction of the part to be demolished or of the whole of the church.

Provided that a court shall not grant a faculty under paragraph (ii) of this sub-section unless an officer of the court has given notice in writing to the Council of the petition and the judge has considered any advice which the Council may tender to the court.
- (4) A court may grant a faculty for the demolition or partial demolition of any church if, in respect of that church the following order has been made by a court of competent jurisdiction or any of the following notices has been served by the appropriate local authority:—
 - (i) an order under [F1section 77 of the Building Act 1984] requiring execution of such work as may be necessary to obviate danger from the condition of that church;

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- (ii) a notice requiring the taking down, repair or securing of that church given under sub-section (2) of section sixty-two of the ^{M1}London Building Acts (Amendment) Act 1939 or under the provisions of any other local Act empowering the council of a county, city, borough or district to give such a notice on the grounds that a building or structure is dangerous;
 - (iii) a notice that the local authority propose to take immediate action to deal with the church as a dangerous building under [^{F2}section 78 of the Building Act 1984];
 - (iv) a notice requiring the execution of works of repair or restoration to the church under [^{F3}section 79 of the Building Act 1984].
- (5) Nothing in this section shall be construed as prejudicing or affecting the provisions of [^{F4}the Ancient Monuments and Archaeological Areas Act 1979] or the [^{F5M2}Town and Country Planning Act 1971]

Textual Amendments

- F1** Words substituted by [Building Act 1984 \(c. 55, SIF 15\), s. 133\(1\), Sch. 6 para. 12\(a\)](#)
- F2** Words substituted by [Building Act 1984 \(c. 55, SIF 15\), s. 133\(1\), Sch. 6 para. 12\(b\)](#)
- F3** Words substituted by [Building Act 1984 \(c. 55, SIF 15\), s. 133\(1\), Sch. 6 para. 12\(c\)](#)
- F4** Words substituted by [Ancient Monuments and Archaeological Areas Act 1979 \(c. 46, SIF 3\), s. 64\(2\), Sch. 4 para. 8](#)
- F5** Words substituted by virtue of [Interpretation Measure 1925 \(No. 1\), s. 1](#)

Marginal Citations

- M1** 1939 c. xcvi.
- M2** 1971 c. 78.

3 Faculties affecting monuments owned by persons withholding consent thereto.

- (1) This section shall apply to faculties for the moving, demolition, alteration or execution of other work to any monument erected, whether before or after the passing of this Measure, in or upon any church or other consecrated building or the curtilage thereof or upon consecrated ground other than consecrated burial grounds to which section eleven of the ^{M3}Open Spaces Act 1906 applies or has been applied.
- (2) Subject to the provisions of the succeeding sub-section a court may grant a faculty to which this section applies:—
 - (i) although the owner of the monument withholds his consent thereto or cannot be found after reasonable efforts to find him have been made; and
 - (ii) in respect of a monument erected under a faculty or affecting which any faculty has been granted, whatever the date of such faculty.
- (3) No faculty to which this section applies shall be granted if the owner of the monument in question withholds his consent thereto but satisfies the court that he is, within a reasonable time, willing and able to remove the monument (or so much thereof as may be proved to be his property) and to execute such works as the court may require to repair any damage to the fabric of any building or to any land caused by such removal. The court may, upon a petition for a faculty to which this section applies, grant a faculty authorising such removal and for all purposes connected therewith and may make such orders as may be just as to the execution and cost of all necessary works.

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- (4) For the purposes of this section “monument” includes a tomb, gravestone or other memorial and any kerb or setting forming part thereof, and “owner” means the person who erected the monument in question and, after his death, the heir or heirs at law of the person or persons in whose memory the monument was erected and “property” shall be construed accordingly.

Marginal Citations

M3 1906 c. 25.

4 Sale of books in parochial libraries under a faculty.

- (1) Notwithstanding anything to the contrary contained in section ten of the ^{M4}Parochial Libraries Act 1708 any book in a parochial library appropriated to the use of the minister of any parish or place within the operation of that Act may be sold under the authority of a faculty, and in the case of every sale so authorised the proceeds of sale shall be applied for such of the ecclesiastical purposes of the parish as in such faculty may be directed. Before granting such a faculty the judge shall require the advisory committee to advise him thereon and shall consider such advice as the committee may tender to the court.
- (2) Any question whether a library is within the said Act and is so appropriated shall be finally determined by the Charity Commissioners.

Marginal Citations

M4 1708 c. 14.

5 Payment of costs by party responsible for breach of law.

- (1) If in any proceeding for a faculty, whether opposed or not, it appears to the court that any person being a party to the proceeding was responsible wholly or in part for the introduction into or removal from a church, churchyard or other consecrated ground of any articles without the necessary faculty, or for the execution of any work in a church, churchyard or other consecrated ground without the necessary faculty, the court may order the whole or any part of the costs and expenses of the proceeding or consequent thereon, including the cost of any works ordered by the court (so far as such costs, cost of works, and expenses have been occasioned by such introduction, removal or unlawful execution as the case may be), to be paid by such person.
- (2) In any such proceeding the court may by way of special citation add as a further party to the proceeding any person alleged to be so responsible or partly responsible and not already a party and notwithstanding that such person resides out of the diocese.

6 Licensed chapels may be made subject to faculty jurisdiction.

- (1) Where the bishop has licensed a building for public worship and he considers that circumstances have arisen which make it desirable that such building should be subject to the faculty jurisdiction he may by order direct that such building shall be subject to the jurisdiction of the court of the diocese during such period as may be specified in the order.

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- (2) Any building in respect of which an order is made under this section shall, during the period specified in the order, be subject, together with its furnishings and contents, to the jurisdiction of the court specified in the order as though it were a consecrated church; but an order shall not render unlawful any act done before the making of the order nor shall require the issue of faculties confirming such acts.
- (3) The bishop shall send every order made under this section to the registrar of the diocese and the registrar shall register any order so made in the diocesan registry. There shall be payable to the diocesan registrar for registering such order, for permitting searches for and giving inspection and furnishing copies of any such order such fees as may from time to time be authorised by an order made under the [^{F6}Ecclesiastical Fees Measure 1986].
- (4) An order made under this section shall be revocable by the bishop at any time.

Textual Amendments

F6 Words substituted by [Ecclesiastical Fees Measure 1986 \(No. 2, SIF 21:1\), s. 11\(2\)](#)

7 Curtilages of churches.

- (1) For the avoidance of doubt it is hereby declared that where unconsecrated land forms, or is part of, the curtilage of a church within the jurisdiction of a court that court has the same jurisdiction over such land as over the church.
- (2) This section shall not render unlawful any act done or proceedings taken in good faith before the passing of this Measure nor shall require the issue of faculties confirming such acts.

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