



# Church Property Measure 2018

2018 No. 8

## PART 3

### NEWLY ACQUIRED LAND

#### 28 Acquisition of land

- (1) A DBF may acquire by purchase, exchange, gift or bequest—
- (a) a church or part of a church;
  - (b) a building fit for use as or conversion into a church;
  - (c) land as a site for a new church or for enlarging the site of an existing church;
  - (d) a building to be used as a place of worship other than a church, or land as a site for a new building to be used as such or for a building to replace a building currently used as such or for enlarging the site of a building currently used as such;
  - (e) a building to be used as a church hall, or land as a site for a new church hall or for a building to replace an existing church hall or for enlarging the site of an existing church hall;
  - (f) a building to be used as both a church or other place of worship and a church hall, or land as a site for a building to be used as such or for enlarging the site of a building currently used as such;
  - (g) a building to replace a building currently used as both a place of worship other than a church and a church hall;
  - (h) land for the provision of a new churchyard or burial ground or for the enlargement of an existing churchyard or burial ground;
  - (i) a building to be used as a parsonage house, or land as a site for a new building to be used as such or for a building to replace a building currently so used or for enlarging the site of a building currently used as such;
  - (j) land for occupation as a garden with a parsonage house or with a building to be used as such or for the enlargement of land currently occupied as such;
  - (k) land for the provision of access to, or for improving the amenities of, a church or other place of worship, a church hall, a building used as both a church or

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other place of worship and a church hall, a churchyard or burial ground or a parsonage house;

- (l) land for the provision of vehicle parking space for use in connection with a church or other place of worship, a church hall, a building used as both a church or other place of worship and a church hall, or a churchyard or burial ground.
- (2) The power of purchase under subsection (1) may not be exercised without the consent of the Church Commissioners, unless the following two conditions are met.
- (3) The first condition is that no person who is a party to the proposed transaction is a connected person or a trustee for or nominee of a connected person.
- (4) The second condition is that the person in whom the building or other land is to be vested—
  - (a) has obtained a written report on the proposed transaction from a qualified surveyor instructed by and acting exclusively for that person, and
  - (b) having considered the report, is satisfied that the terms of the proposed transaction are the best that can be reasonably obtained for that person.
- (5) A DBF may accept a gift or bequest of money to be used for or put towards the purchase of land for a purpose specified in subsection (1).
- (6) A DBF may hold any property (whether real or personal) for a purpose specified in subsection (1).
- (7) Land held by a DBF may be appropriated for a purpose specified in subsection (1) but only if the DBF has executed a declaration specifying that use; and on the execution of a declaration to that effect, the land vests in the incumbent or relevant diocesan body in accordance with section 32.

## **29 Grant of land**

- (1) Each of the following may grant land to a DBF for a purpose specified in section 28, whether by gift or for valuable consideration (whether or not it is the best consideration that could reasonably be expected to be obtained)—
  - (a) a corporation, whether lay, ecclesiastical or collegiate and whether sole or aggregate;
  - (b) charity trustees for charitable purposes;
  - (c) if the land belongs to Her Majesty in right of the Crown, the Crown Estate Commissioners or whichever other government department has responsibility for managing the land;
  - (d) if the land belongs to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy;
  - (e) if the land belongs to the Duchy of Cornwall, the Duke of Cornwall or the person who is the possessor for the time being of the Duchy;
  - (f) if the land belongs to a government department or is held in trust for Her Majesty for the purposes of a government department, that department.
- (2) A grant under subsection (1)(a) which would be made by the incumbent of a benefice in the capacity as a corporation sole, if there were not a vacancy in the benefice, may be made during the vacancy by the bishop of the diocese to which the benefice belongs.

- (3) Where a grant under subsection (1)(a) is made by the incumbent of a benefice in the capacity as a corporation sole or by the bishop by virtue of subsection (2), the purchase money must be paid to the DBF; and the DBF must appropriate it for the benefit of the diocesan stipends fund.
- (4) It is hereby declared for the avoidance of doubt that the power of the incumbent of a benefice in the capacity as a corporation sole or by the bishop by virtue of subsection (2) to make a grant under subsection (1)(a) includes a power to grant any part of the land held with the parsonage; but a grant under this subsection may not be made without the consent of the Parsonages Board.
- (5) A grant by charity trustees under subsection (1)(b) is, unless the charity is an exempt charity within the meaning of the Charities Act 2011 (see section 22 of that Act), to be made only—
  - (a) with the sanction of an order of the Charity Commission, or
  - (b) in accordance with such of sections 117(2) and 119 to 121 of that Act (restrictions on dispositions of land) as are applicable.
- (6) Section 337 of that Act (orders by the Charity Commission) applies to an order under subsection (5)(a) as it applies to an order under that Act.
- (7) A grant under subsection (1)(c) or (f) may not be made without the consent of the Treasury.
- (8) In section 4 of the Ecclesiastical Offices (Terms of Service) Measure 2009 (provision of housing for office holders), after subsection (8) insert—
  - “(9) A person who is entitled to grant land under section 29 of the Church Property Measure 2018 (grants to diocesan board of finance) is entitled also to grant land to the Board for the purposes of its functions under this Measure.”

### **30 Land subject to rights of common**

- (1) Where land forms part of a common or part of the waste of a manor, the lord of the manor may grant the land to the DBF for a purpose specified in section 28(1).
- (2) A document which gives effect to a grant under this section by vesting the fee simple of the land in the DBF has effect as if every person with a right of common in or over the land were a party to the grant.
- (3) A grant under this section may not be made without the consent of the Secretary of State; and sections 39 and 40 of the Commons Act 2006 apply to an application for consent under this subsection as they apply to an application to the Secretary of State for consent under section 38(1) of that Act.
- (4) Where it appears to the Secretary of State that a right of common will be substantially affected by a grant under this section, he or she must, if giving consent under subsection (3), require that as a condition of that consent compensation is paid to the person entitled to that right.
- (5) In its application to a case coming within subsection (4), this Part has effect as if sections 99 to 107 of the Land Clauses Consolidation Act 1845 (compensation payments) were incorporated with it and as if the DBF were, for that purpose, the promoters of the undertaking within the meaning of that Act.

**31 Land subject to rent etc.**

- (1) Land which is a part of land that is subject to rent may be granted to a DBF for a purpose specified in section 28(1) free from the rent if it appears to the DBF and the grantor that the remainder of the land is of sufficient value to bear the rent.
- (2) Where a grant is made in accordance with subsection (1), the remainder of the land becomes liable to the rent to which the whole of the land had been liable immediately before the grant.
- (3) The DBF may do whatever is necessary to give effect to this section.
- (4) A reference to rent includes a reference to any other annual or recurring charge.

**32 Vesting of land acquired by DBF**

- (1) Land acquired in accordance with section 28 or 29 vests in the incumbent for the time being of the parish in which it is situated if it is—
  - (a) a church or part of a church;
  - (b) a building fit for use as or conversion into a church;
  - (c) land acquired as a site for a new church or a church to replace an existing church or for enlarging the site of an existing church;
  - (d) land acquired for the provision of a new churchyard or burial ground or for the extension of an existing churchyard or burial ground;
  - (e) land acquired for the provision of access to, or for improving the amenities of, a church, churchyard or burial ground;
  - (f) a building to be used as a parsonage house, or land acquired as a site for a building to be used as such or for enlarging the site of a building currently used as such;
  - (g) land acquired for occupation as a garden with a parsonage house or with a building to be used as such or for the extension of land currently occupied as such;
  - (h) land for the provision of access to, or for improving the amenities of, a parsonage house.
- (2) If the area in which land of a description given in subsection (1)(a) to (e) is situated becomes a new parish under a pastoral scheme, the land vests in the incumbent for the time being of the new parish, unless the scheme provides otherwise.
- (3) Land acquired in accordance with section 28 or 29 vests in the relevant diocesan body if the whole or part of the land is, with the consent of that body, designated in the transfer as vesting in it and if the land is—
  - (a) a building to be used as a place of worship other than a church, or land acquired as a site for a building to be used as such or for enlarging the site of a building currently used as such;
  - (b) a building to be used as a church hall, or land acquired as a site for a new church hall or for enlarging the site of an existing church hall;
  - (c) a building to be used as both a church or other place of worship and a church hall, or land acquired as a site for a building to be used as such or for enlarging the site of a building currently used as such;
  - (d) land acquired for the provision of access to, or for improving the amenities of, a place of worship other than a church, a church hall or a building used as both a place of worship other than a church and a church hall;

- (e) land acquired for the provision of vehicle parking space for use in connection with a church or other place of worship, a church hall, a building used as both a church or other place of worship and a church hall, or a churchyard or burial ground.
- (4) “Relevant diocesan body”, in relation to land, means—
- (a) the body for the time being authorised by the diocesan synod for the diocese in which the land is situated to act as trustees of the land, or
  - (b) if there is no body so authorised, the DBF.
- (5) The PCC for the parish in which land designated as mentioned in subsection (3) is situated must keep the relevant diocesan body indemnified in respect of the matters specified in section 6(4) of the Parochial Church Councils (Powers) Measure 1956 (liabilities, rates, taxes, insurance costs etc.).

### **33 Land no longer required for purpose for which acquired**

- (1) Where the owner of land acquired by the Church Commissioners or a DBF for a purpose specified in section 28(1) is satisfied that the land or a part of it is no longer required for that purpose, the owner—
- (a) may sell the land or part;
  - (b) may exchange the land or part for land which would be more suitable for that purpose and may pay or receive money for equality of exchange;
  - (c) may appropriate or transfer the land or part for an ecclesiastical purpose for the benefit of the parish in which it is situated or for an educational, charitable or public purpose relating to the parish;
  - (d) may transfer the land or part to the DBF for it to hold as part of the diocesan glebe land, if the DBF so agrees (and is not already the owner of the land);
  - (e) if the land was acquired by gift, may transfer the land or part back to the grantor, or the grantor’s successors in title, for no consideration.
- (2) “Owner”, in relation to land, means—
- (a) the person in whom the land is vested, or
  - (b) if there is a vacancy in the benefice after the land was vested in the incumbent for the time being of the benefice, the bishop of the diocese.
- (3) In the case of land of which a DBF is the owner (otherwise than in its capacity as “the relevant diocesan body” under section 32), it may execute a declaration that, from the date on which the declaration is made, the land is to be held as part of the diocesan glebe land.
- (4) The proceeds of a sale or exchange under this section must be paid to the DBF and applied by it for such purposes as it agrees with the bishop after consulting the owner (if neither the DBF nor the bishop is the owner); but the purposes for which they agree the proceeds are to be applied must be—
- (a) for the benefit of the benefice to which the parish in which the land is situated belongs, or
  - (b) charitable purposes relating to that parish.
- (5) The reference in subsection (1) to an acquisition is a reference to an acquisition either before or after the commencement of this section and either for valuable consideration or by gift; and the reference to an acquisition by the Church Commissioners includes a reference to an acquisition by the Church Building Commissioners.

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- (6) The reference in subsection (1) to the purposes specified in section 28(1) does not include a reference to—
  - (a) the purpose specified in paragraph (i) or (j) of that provision (acquisition of parsonage house etc.), or
  - (b) the purpose under paragraph (k) of that provision of providing access to or improving the amenities of a parsonage house.
- (7) This section does not authorise a sale or other disposal of consecrated land.
- (8) This section does not affect the jurisdiction of the consistory courts.
- (9) This section does not affect any power at common law to sell land to which the power of sale under this section applies.

### **34 Consent to dealings under section 33**

- (1) In the case of land vested in the Church Commissioners, a power under section 33 may not be exercised without—
  - (a) the consent of the incumbent of the benefice (if the benefice is full), and
  - (b) the consent of the bishop of the diocese to which the benefice belongs.
- (2) In any other case, a power under section 33 may not be exercised without the consent of the Church Commissioners unless the following two conditions are met.
- (3) The first condition is that no person who is a party to the proposed transaction is a connected person or a trustee for or nominee of a connected person.
- (4) The second condition is that the person entitled to exercise the power—
  - (a) has obtained a written report on the proposed transaction from a qualified surveyor instructed by and acting exclusively for that person, and
  - (b) having considered the report, is satisfied that the terms of the proposed transaction are the best that can be reasonably obtained for that person.
- (5) In the case of land which has vested in the incumbent of a benefice, a power under section 33 may not be exercised without the consent of the bishop of the diocese to which the benefice belongs.
- (6) In the case of land acquired by gift or for a nominal consideration, a power under section 33(1)(c) or (d) may not be exercised without the consent of the grantor or the grantor's successors in title unless—
  - (a) the purpose of appropriating or transferring the land is to widen the highway, or
  - (b) the DBF is satisfied that it is not reasonably practicable to apply for the consent.
- (7) A certificate to the effect that the DBF is satisfied as mentioned in subsection (6)(b), and to which the seal of the DBF has been applied, is sufficient evidence that the DBF is satisfied accordingly.
- (8) A person whose consent is required under subsection (1), (2) or (5) may not give that consent unless satisfied that the land or part in question is no longer required for the purpose for which the land was acquired.

### **35 Shared burial ground**

- (1) Where land is acquired by a DBF for the provision of a burial ground for two or more parishes, the DBF may direct in the transfer (or any other instrument under its seal) that each parish is entitled to use—
  - (a) any chapel built on the land for the performance of the burial service, and
  - (b) any lodge or other building built on the land and any access to or from the chapel, lodge or other building concerned.
- (2) The incumbent of each parish is entitled to use the chapel for the performance of the burial service, subject to such regulations as the bishop of the diocese may make.
- (3) A fee for the performance of the burial service in accordance with subsection (2) may be charged on the same basis as if—
  - (a) the service had been performed in the parish church, and
  - (b) the burial had taken place in a burial ground belonging solely to that parish.
- (4) If, after the consecration of the land acquired as mentioned in subsection (1), the DBF acquires additional land adjoining or near that land for the provision of a burial ground for any parish in the diocese—
  - (a) the chapel may be used for the performance of the burial service at a burial in the additional land, subject to such regulations as the bishop may make, and
  - (b) any lodge or other building or any access to or from the chapel, lodge or other building may similarly be used.
- (5) The freehold of the chapel vests in the bishop on its consecration; and the freehold of a lodge, other building or means of access built on the land concerned vests in the bishop on the completion of its construction.
- (6) But the vesting in the bishop of the chapel or of a lodge, other building or means of access does not impose any liability on the bishop to maintain it.
- (7) The DBF may apportion the burial ground (excluding the chapel and any lodge, other building or means of access) between the several parishes; and the DBF must do so if different parts of the land were acquired by it for the use of the several parishes.
- (8) Where land acquired by a DBF for the provision of a new or additional burial ground is not in the parish, or any of the parishes, for which it has been acquired—
  - (a) the DBF may declare in the transfer (or any other instrument under its seal) that, on its consecration, the land is to be treated for ecclesiastical purposes (including determination of the right of burial) as being part of the parish or parishes for which it was acquired, and
  - (b) on a declaration to that effect being made, the land is treated as such.

### **36 Supplementary**

- (1) This Part does not restrict or limit the powers of dealing under Part 1.
- (2) A deed or other document made under or for the purposes of this Part is not liable to stamp duty land tax.
- (3) This Part does not affect any power of the Charity Commission.

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- (4) This Part does not enable a DBF to deal with an endowment belonging to a charity within the meaning of section 10 of the Charities Act 2011 except with the consent of the Charity Commission.