



# Church Property Measure 2018

2018 No. 8

## PART 4

### MISCELLANEOUS AND GENERAL

VALID FROM 01/03/2019

#### *Diocesan stipends fund*

#### **37 Sequestrations**

- (1) The sequestrators of a vacant benefice must, at the close of the sequestration, pay to the DBF the balance in their hands, as certified by the bishop or a person authorised by him or her; and the DBF must allocate the amount received to the income account of the diocesan stipends fund.
- (2) This section does not apply where a period of suspension of presentation follows, whether immediately or after an interval, a period during which the benefice has been vacant.

#### **38 Investments in diocesan stipends funds**

In section 4 of the Diocesan Stipends Funds Measure 1953 (application of money credited to capital account), after subsection (1) insert—

“(1A) The proceeds of, or the capital moneys arising from, a sale, exchange or other dealing with investments or deposits made by the diocesan board of finance under subsection (1) less the costs, charges and expenses directly attributable to the transaction in question shall be allocated to the capital account of the diocesan stipends fund.

(1B) All dividends or other payments in the nature of income received by the diocesan board of finance in respect of the investment or deposit of any

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moneys standing to the credit of the capital account of the fund shall be allocated to the income account of the fund.”

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*Diocesan Board of Finance*

**39 Memorandum and articles of association**

- (1) The Memorandum and Articles of Association of a DBF are to be regarded as including the furtherance of the work of the Church of England by the DBF's exercise of functions under this Measure and whatever ancillary powers are necessary for that purpose.
- (2) In the case of a DBF which is not a registered company, the reference to the Memorandum and Articles of Association is to be read as a reference to its constitution.

**40 Church Commissioners: information and advice**

- (1) The Church Commissioners may seek information from a DBF on a matter concerning its functions under this Measure; and the DBF must provide the information sought.
- (2) The Commissioners may give advice to a DBF on a matter concerning its functions under this Measure; and the DBF must have regard to the advice.

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*Property rights and obligations*

**41 Covenants**

- (1) This section applies where, in pursuance of an Act or Measure—
  - (a) the incumbent of a benefice acquires land in such a manner that it vests in the incumbent in right of the benefice,
  - (b) an archbishop or bishop acquires land on behalf of the incumbent of a benefice during a vacancy in the benefice,
  - (c) a DBF or Parsonages Board acquires land which is to vest in the incumbent of a benefice in right of the benefice, or
  - (d) land vested in the incumbent of a benefice in right of the benefice is sold or otherwise disposed of by the incumbent or by an archbishop or bishop on behalf of the incumbent during a vacancy in the benefice.
- (2) In a case within subsection (1)(a), (b) or (c), the person acquiring the land may enter into a covenant to restrict the user of, or to require an act to be done in relation to, the land being acquired or other land vested in the incumbent in right of the benefice.

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- (3) In a case within subsection (1)(d), the person disposing of the land may enter into a covenant to restrict the user of, or to require an act to be done in relation to, other land vested in the incumbent in right of the benefice.
- (4) A covenant entered into under this section is, unless the transfer provides otherwise, enforceable against the incumbent for the time being of the benefice in whom the land affected by the covenant is vested.
- (5) Where an incumbent enters into a covenant under this section, the incumbent is not liable for a breach which occurs after he or she has ceased to be the incumbent.
- (6) Where a person other than an incumbent enters into a covenant under this section, that person is not liable for a breach which occurs after the land has vested in the incumbent.

## **42 Easements**

- (1) The incumbent of a benefice or, during a vacancy, the bishop of the diocese to which the benefice belongs—
  - (a) may take an easement for an estate or interest for the benefit of land which is part of the property of the benefice;
  - (b) may grant an easement over land which is part of the property of the benefice.
- (2) A power under subsection (1) may not be exercised without—
  - (a) the consent of the Parsonages Board, and
  - (b) where the power is exercisable by the incumbent of the benefice, the consent of the bishop of the diocese to which the benefice belongs.
- (3) A power under subsection (1) may be exercised—
  - (a) in consideration of the payment of a capital sum or a periodic sum, or
  - (b) without monetary consideration.
- (4) A capital sum payable in respect of the grant of an easement under this section must be paid to the Parsonages Board and applied by it for the purposes for which the proceeds of a sale of the land over which the easement is granted would be applicable.

## **43 Dedicating land for highway**

- (1) The incumbent of a benefice may, either with or without consideration, dedicate for the purposes of a highway land belonging to the benefice which—
  - (a) is part of the garden or orchard or of the appurtenances of or enjoyed with the parsonage house, or
  - (b) adjoins the parsonage house.
- (2) The power under this section may not be exercised without—
  - (a) the consent of the Parsonages Board, and
  - (b) the consent of the bishop of the diocese to which the benefice belongs.
- (3) A sum paid as consideration under this section must be paid to the Parsonages Board and must be applied for the purposes for which the proceeds of a sale of the land would be applicable.

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#### **44 Chancel repair liability of PCCs**

Each PCC continues to have the liability which it had immediately before the commencement of this section by virtue of section 39 of the Endowments and Glebe Measure 1976 (chancel repair liability).

#### **45 Land granted under Gifts for Churches Acts etc.**

- (1) Where the person in whom land granted under the Gifts for Churches Act 1803 or 1811 or the Consecration of Churchyards Act 1867 is vested is satisfied that the land or a part of it is no longer required for the purpose for which it was granted, the person—
  - (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 the land or part to, or transfer it 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) 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) The power under subsection (1) may not be exercised without the consent of the bishop of the diocese in which the land is situated; and the bishop may not give the consent unless satisfied that the land or part is no longer required for the purpose for which it was granted.
- (3) In the case of land granted by gift under an Act referred to in subsection (1) which has been held for less than 20 years, the power under subsection (1) may not be exercised unless—
  - (a) an offer has been made to reconvey the land to the grantor without consideration and the grantor has not accepted the offer within six weeks after it was made, or
  - (b) the bishop has made a statutory declaration that the grantor cannot be found.
- (4) The proceeds of a sale or exchange under this section must be paid to the Parsonages Board and applied by it for such purposes as it agrees with the bishop after consulting the person by whom the land was sold or exchanged; but the purposes for which they agree the proceeds are to be applied must be—
  - (a) purposes 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) In the case of land granted under the Consecration of Churchyards Act 1867, the power under this section to sell or exchange the land may be exercised even if a right of burial has been reserved over the land under section 9 of that Act.
- (6) This section does not authorise a sale or other disposal of consecrated land.
- (7) This section does not affect the jurisdiction of the consistory courts.
- (8) Where a benefice is vacant, a power under this section which would otherwise have been exercisable by the incumbent is exercisable by the bishop of the diocese to which the benefice belongs.

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- (9) A reference to the Consecration of Churchyards Act 1867 includes a reference to sections 89 to 91 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018.

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### *Formalities*

#### **46 Signification of consent**

- (1) The consent of the Church Commissioners or of the Parsonages Board or DBF of a diocese under this Measure must be signified in writing signed by a duly authorised person on behalf of the body in question.
- (2) The consent of a bishop under this Measure must be signified in writing under the bishop's hand.
- (3) The consent of each of the following under this Measure must be signified in writing—
  - (a) the incumbent of a benefice;
  - (b) the registered patron of a benefice;
  - (c) a PCC;
  - (d) the managing trustees of land vested in a DBF under section 3 of the Incumbents and Churchwardens (Trusts) Measure 1964.
- (4) The signification of consent in accordance with subsections (1) to (3) is conclusive evidence of that consent.
- (5) A document giving effect to a transaction under this Measure which requires the consent of the Church Commissioners or avoids the need for it by virtue of an exception in a provision of this Measure must state—
  - (a) that the consent has been obtained, or
  - (b) that it is not required by virtue of a specified provision of this Measure.
- (6) Where a document includes a statement under subsection (5)(b), the application of the seal of the Parsonages Board or the signature of a duly authorised person on its behalf is conclusive evidence that the consent of the Church Commissioners is not required.
- (7) Where a document giving effect to a transaction under this Measure does not comply with subsection (1) or include a statement under subsection (5)(b), the transaction is valid in favour of a person who in good faith acquires an interest in the property for money or money's worth (whether under the transaction or subsequently), regardless of whether any consent required from the Church Commissioners was given.

#### **47 Execution of documents**

- (1) Where a document giving effect to a disposition of land by a DBF or management subsidiary states that the requirements of this Measure relating to the disposition have been met, the application of the seal of the DBF or subsidiary, or the signature by

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a duly authorised person on its behalf, is conclusive evidence that the requirements have been met.

- (2) Where a document giving effect to a disposition of land by a DBF or management subsidiary does not include a statement to that effect, the transaction is valid in favour of a person who in good faith acquires an interest in the land for money or money's worth (whether under the transaction or subsequently), regardless of whether the consent of the Church Commissioners was required.
- (3) The application of the seal of the Parsonages Board, or the signature of a duly authorised person on its behalf, to a document giving effect to a transaction under this Measure is conclusive evidence that the requirements of this Measure relating to the transaction have been met.

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### *Interpretation*

#### **48 References to land**

- (1) This section applies for the purposes of this Measure.
- (2) The “parsonage house”, in relation to a benefice, means a house which—
  - (a) is vested in the incumbent or would be if the benefice were full, and
  - (b) is the incumbent's official residence.
- (3) An “excluded part” of a parsonage house is, in a case where the house is divided into two or more parts, each of the parts which is not certified as the parsonage house under section 11(2).
- (4) A reference to the parsonage house or to any other house includes—
  - (a) a reference to a part of the house,
  - (b) a reference to the whole or part of an outbuilding, garden or orchard at the house, and
  - (c) a reference to an appurtenance of or enjoyed with the house.
- (5) “Parsonage land”, in relation to a benefice, means—
  - (a) the parsonage house of the benefice;
  - (b) an excluded part of the parsonage house;
  - (c) a building or other land which the incumbent has acquired or agreed to acquire as, or for the site of, the parsonage house;
  - (d) a building or other land which is vested in the incumbent or would be if the benefice were full and should, in the opinion of the DBF, be retained for use as, or as the site of, the parsonage house;
  - (e) a house which, under a pastoral scheme or order, ceases to be the parsonage house but is not transferred;
  - (f) a house which, otherwise than under a pastoral scheme or order, ceases to be the parsonage house and for the sale of which the Church Commissioners' consent has been given or is not required (see section 3).
- (6) “Diocesan glebe land”, in relation to a diocese, means—

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- (a) glebe land held by the DBF or a management subsidiary which vested in the DBF on 1 April 1978 under section 15 of the Endowments and Glebe Measure 1976, or
  - (b) land held by the DBF or a management subsidiary as part of the diocesan glebe land of the diocese by virtue of this Measure or a provision repealed by it or under a pastoral scheme.
- (7) “Church land” means—
- (a) the site of a church together with the churchyard and other land annexed or belonging to the church, and
  - (b) a burial ground which is vested in the incumbent, or would be if the benefice were full, but not annexed or belonging to a church.
- (8) “Land” includes messuages, tenements and hereditaments, houses and buildings of any tenure; and in Part 2, and in relation to parsonage land, diocesan glebe land or church land, “land”—
- (a) also includes mines and minerals and any easement, right, privilege or benefit in, over or derived from land, but
  - (b) does not include an advowson.
- (9) A reference to a “church” includes a reference to a building used or intended to be used partly for the purpose of public worship according to the rites and ceremonies of the Church of England and partly as a church hall, whether the whole building is consecrated or only the part used or intended to be used for the purpose of public worship of that kind.
- (10) “Mines and minerals” includes any stratum or seam of minerals or substances in or under land; and a reference to minerals includes a reference to sand or gravel.
- (11) A reference to granting land includes a reference to granting a leasehold interest in it; and a reference to buying or otherwise acquiring land includes a reference to taking a leasehold interest in it.
- (12) “Lease” includes an underlease and a tenancy; and a reference to a lease includes a reference to an agreement for lease.
- (13) In relation to an area or place which is situated partly in one diocese and partly in another, a reference to the bishop of the diocese is to be read as a reference to the bishop of each of the dioceses.

#### **49 Other interpretation etc.**

- (1) This section applies for the purposes of this Measure.
- (2) “DBF”, in relation to a diocese, means the board—
  - (a) constituted as the diocesan board of finance for that diocese under the Diocesan Boards of Finance Measure 1925, or
  - (b) recognised in the case of that diocese under section 9 of the Diocesan Stipends Funds Measure 1953.
- (3) “Management subsidiary” has the meaning given in section 17.
- (4) “PCC” means parochial church council.



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- (5) A reference to the Parsonages Board for a diocese is, if the DBF has been designated as the Parsonages Board under the scheme under section 1(1) of the Repair of Benefice Buildings Measure 1972, a reference to it.
- (6) “Connected person”, in relation to a dealing with land in a diocese, means—
- (a) the incumbent of the benefice in the area of which the land is situated,
  - (b) the bishop of the diocese,
  - (c) the registered patron of the benefice,
  - (d) an officer, agent or employee of the registered patron,
  - (e) a member, officer, agent or employee either of the PCC of a parish within the benefice or of the DBF concerned,
  - (f) the spouse or civil partner of a person within paragraphs (a) to (e), or
  - (g) a child, parent, grandchild, grandparent, brother or sister of a person within paragraphs (a) to (e).
- (7) “Qualified surveyor” means a person who is a member of the Royal Institution of Chartered Surveyors.
- (8) A person may not instruct a qualified surveyor for the purposes of this Measure unless that person reasonably believes that the surveyor has ability in and experience of the valuation of land or other property of the kind concerned and in the area concerned.
- (9) “Benefice” means the office of a rector or vicar of a parish or parishes with cure of souls but does not include the office of vicar in a team ministry.
- (10) “Registered patron” has the same meaning as in the Patronage (Benefices) Measure 1986.
- (11) “Pastoral scheme” and “pastoral order” each have the same meaning as in the Mission and Pastoral Measure 2011 (see section 106(1) of that Act).
- (12) A reference to giving notice to, or to notifying, a person includes a reference to doing so by electronic means.

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*Ancillary provision*

**50 Consequential amendments**

- (1) Schedule 1 (which contains consequential amendments) has effect.
- (2) The amendments made by Part 2 of that Schedule (subordinate legislation) do not affect the power to make further provision amending or revoking the provision made by any of the amendments.

**51 Transitional and saving provision**

Schedule 2 (which contains transitional and saving provision) has effect.



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## **52 Repeals and revocations**

The provisions specified in Schedule 3 are repealed or revoked to the extent so specified.

### *Final provision*

## **53 Commencement**

- (1) This section and sections 54 and 55 come into force on the day on which this Measure is passed.
- (2) The preceding provisions of this Measure come into force on such day as the Archbishops of Canterbury and York may by order jointly appoint; and different days may be appointed for different purposes.
- (3) The Archbishops of Canterbury and York may by order jointly make transitional, transitory or saving provision in connection with the commencement of a provision of this Measure.
- (4) The power to make an order under subsection (2) or (3) is exercisable by statutory instrument; and the Statutory Instruments Act 1946 applies as if the order had been made by a Minister of the Crown and as if this Measure were an Act of Parliament.

## **54 Extent**

- (1) This Measure extends to—
  - (a) the whole of the province of Canterbury, but with extent to the Channel Islands subject to subsection (2), and
  - (b) the whole of the province of York except the Isle of Man.
- (2) The provisions of this Measure may be applied to the Channel Islands, or either of them, in accordance with the Channel Islands (Church Legislation) Measures 1931 and 1957; and a reference in this section to the Channel Islands or either of them has the same meaning as a reference in those Measures to the Islands or either of them.

## **55 Short title**

This Measure may be cited as the Church Property Measure 2018.

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