



New Parishes (Scotland) Act 1844

1844 CHAPTER 44 7 and 8 Vict

[1.] †Repeal of recited Act in part. Consent of major part of heritors in value to be sufficient.

.....^{F1} the consent of the heritors of a major part of the valuation of any parish shall be necessary and sufficient in all cases in which the consent of the heritors of three parts of four of the valuation of such parish was required by the said recited Act, except where otherwise herein-after expressly provided.

Textual Amendments

F1 Words repealed by [Statute Law Revision Act 1874 \(No. 2\)](#) (c. 96)

Modifications etc. (not altering text)

C1 Unreliable marginal note

2 Largeness of the population to be a reason for division of parish.

A parish may be deemed and held to be too large, and may, as such, be disjoined or divided under the provisions of the said recited Act as altered and amended by this Act, by reason of the largeness of the population of such parish, although the superficial measurement thereof may not be too large for one parish.

3 Non-consent of heritors not to be deemed valid objection to process for disjoining parishes.

It shall not be a valid objection to the competency of any process which shall be brought for disjoining or dividing a parish or parishes and erecting a new kirk or kirks, under the provisions of the said recited Act as altered and amended by this Act, that the consent of the heritors or a major part of the valuation of the parish to be disjoined or divided had not been given previous to such process having been brought into court; and it shall be lawful for the lords of council and session before whom any such process shall have been brought to appoint special intimation thereof to be made, in such form and manner as the said lords of council and session shall direct, to such of the heritors

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of the valuation of the parish as shall not have already either given their consent or judicially stated their dissent, and to sist proceedings in such process for a definite time, for the purpose of allowing such heritors to state judicially their consent or their dissent; and such of them as shall not within a time to be fixed by the said lords of council and session, and to be specified in such intimation as aforesaid, judicially state their dissent, shall, in computing the statutory proportion of consents, be reckoned as consenting heritors.

4 Where proof is given that a sufficient church accommodation exists in the new parish proposed to be erected, lords of council may allow process to proceed.

If, in any process for disjoining or dividing a parish, it shall be shown to the satisfaction of the lords of council and session that there is already built or erected and in good repair a church or place of worship suitable for the church of the new parish proposed to be erected, and capable of being lawfully appropriated to that purpose, whereby the expence of erecting a new or additional church will not be incurred by the heritors, and that the titulars or other having right to the teinds out of which is to be paid not less than three fourths of the additional stipend or stipends to be modified by reason of such disjunction or division have consented thereto, or have stated no objection thereto, after due intimation by direction of the lords of council and session to them given, it shall be lawful and competent for the said lords of council and session to allow such process to proceed, and to give judgment and decree therein, if, upon consideration of the whole case, it shall appear to them that there are good and sufficient reasons for so doing, although the heritors of a major part of the valuation of the parish to be disjoined or divided may not have consented.

5 Patronage in new parishes.

When any parish or parishes shall have been disjoined or divided, and a new parish erected, under the provisions of the said recited Act as altered and amended by this Act, . . . ^{F2} the patronage of such new parish and the right of presentation to the kirk thereof shall belong to the person, if there be only one such person, or to the persons . . . ^{F3}, if there are more than one and not more than three such persons, who shall bear the burden of the whole stipend provided for the minister of such new parish at the erection thereof . . . ^{F3}; and if the persons who bear the burden of such stipend shall exceed three in number, then the patronage of such new parish, and the right of presentation to the kirk thereof, shall be vested in and be exercised by three trustees, or, in case of difference of opinion, by the majority of three trustees, who . . . ^{F3} shall be elected by a majority of votes at a meeting of the heritors of such new parish, and of the persons who are liable in payment of stipend to the minister thereof, or who have contributed the sum of five pounds towards the fund out of which any part of the stipend is provided, or towards the expence of providing the church for such new parish . . . ^{F3}; Provided always, that no person shall be qualified to hold the office of trustee who is not a member of the Church of Scotland in full communion therewith.

Textual Amendments

F2 Words repealed by [Statute Law Revision Act 1891 \(c. 67\)](#)

F3 Words repealed by [Statute Law Revision Act 1892 \(c. 19\)](#)

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6 In certain cases a parish, though divided, may remain as one parish for purposes of poor.

And whereas in some large and populous parishes which it may be considered necessary or proper to divide into two or more parishes there are a number of poor persons, the greater portion of whom reside in or near the same locality, such locality being sometimes the least wealthy, whereby the particular territorial division of such large and populous parish which would be most expedient and advantageous in other respects would operate injuriously or unjustly if each of the new parishes into which it may be divided was left to provide from its own resources for that portion of the poor of the original parish resident within the territory of such new parish: it shall be lawful for the said lords of council and session, if they see cause so to do, in any judgment to be by them pronounced dividing or disjoining a parish, to declare and provide, that, notwithstanding such division or disjunction, the original parish and the several new or separate parishes thereby erected within the bounds thereof shall, in so far as regards the support and management of the poor, and all matters and questions connected therewith, remain and be regarded as one parish; and in every such case there shall be one kirk session, consisting of the members of the kirk sessions of all the parishes within the bounds of the original parish, in all matters and questions relating to the support and management of the poor; and the session clerk of the original parish shall, during his incumbency act as clerk of the said kirk session in all such matters and questions.

7 F4

Textual Amendments

F4 S. 7 repealed by [Statute Law Revision Act 1892 \(c. 19\)](#)

8 Where a church is built and endowed, a district may be attached thereto. Endowment of minister.

If any person or persons shall, at his, her, or their expence, have built or shall have acquired, or shall have undertaken to build or acquire, a church, and shall have endowed or shall have undertaken to endow the same, it shall be competent for the lords of council and session, acting in their capacity aforesaid of commissioners for the plantation of kirks and valuation of teinds, and they are hereby empowered and authorized, on the application of such person, or of such persons where they do not exceed five in number, or of two thirds or any ten of such persons where they do exceed five in number, and without any concurrence of heritors, to inquire into the circumstances, and to erect such church into a parish church in connexion with the Church of Scotland, and to mark out and designate a district to be attached thereto quoad sacra, and to disjoin such district quoad sacra from the parish or parishes to which the same, or any part thereof, may have belonged or been attached, and to erect such district into a parish quoad sacra in connexion with the Church of Scotland; and it shall and may be lawful for the minister and elders of such parish to have and enjoy the status and all the powers, rights, and privileges of a parish minister and elders of the Church of Scotland: Provided always, that nothing herein contained shall be construed so as to deprive any party who has a legal interest in the fabric of any place of worship of any right which by law belongs to such party to prevent such place of worship from being used or appropriated for a place of worship in

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connexion with the Church of Scotland: Provided also, that due intimation of every such application as aforesaid shall be made to all parties having interest that they may have an opportunity of appearing and being heard; which intimation may be made by notice in the Edinburgh Gazette, or by advertisement in one or more Edinburgh newspapers of general circulation, or in any other form or manner that may be directed by the lords of council and session in any act or acts of sederunt, or any order to be made by them for that purpose: And provided also, that the titles to the said church shall be taken and conceived so as that the said church shall be inalienably secured as the church of the said new parish in connexion with the Church of Scotland, and that due provision shall be made for the future maintenance of the fabric of the said church; and that the endowment for the minister of the said new parish shall be not less than a stipend of one hundred pounds per annum, or seven chalders of oatmeal, to be calculated at the highest fiars of the county, exclusive of the sum necessary for communion elements, with a suitable dwelling house or manse and offices and appurtenances, or a stipend of not less than one hundred and twenty pounds, or eight and a quarter chalders of oatmeal, to be calculated at the highest fiars of the county, per annum, where there shall be no such dwelling house or manse; and that such stipend of not less than one hundred pounds, or not less than one hundred and twenty pounds shall be permanently provided and secured in all time coming for the minister of the said parish; and that if there shall be a dwelling house or manse the title to such dwelling house or manse and offices and appurtenances shall be taken and conceived so that such dwelling house or manse and offices and appurtenances shall be inalienably secured as the dwelling house or manse and offices and appurtenances for the minister of the said parish; and that due provision shall be made for the future maintenance of the fabric of such dwelling house or manse and offices and appurtenances, all to the satisfaction of the said lords of council and session; and the right of presbyteries to present to vacant parishes jure devoluto, according to the law of Scotland, shall have place in regard to all parishes erected quoad sacra as aforesaid, in the same manner as in regard to other parishes.

Modifications etc. (not altering text)

C2 S. 8 extended by [United Parishes \(Scotland\) Act 1868 \(c. 30\), s. 2](#)

9 **Sittings.**

In every such church as aforesaid a portion of the sittings therein, to be determined by the sheriff of the county in which such church is situated, and not exceeding one tenth of the whole sittings, shall be set apart as free seats for all persons frequenting the same; and another portion of the sittings therein, not exceeding one fifth of the whole sittings, shall be let at rent not exceeding a rate to be fixed by the presbytery of the bounds; and the remaining portion of the sittings may be let in such manner as shall be agreed upon by the minister for the time being and the person or persons liable for the repair of the church and for the stipend of the minister, or, in case of not agreeing, then in such manner as shall be determined by the sheriff of the county as aforesaid: Provided always, that one pew shall be appropriated, rent-free for the accommodation of the family of the minister, and another pew for the officiating elders; and the pew or seat rents of any such church as aforesaid may be expended and applied for the purpose of defraying the necessary expences of a precentor, a beadle or kirk officer, and other expences necessarily incurred in dispensing the ordinances of religion therein, and not otherwise provided for, and for the purpose of upholding in due repair and improving the fabric of such church, or of the dwelling house and offices of the minister, or for

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the relief of any person or persons who may have undertaken or become liable to uphold the same, or who may be liable for the endowment or stipend provided and secured for the minister of such church; and it shall be lawful to make collections at the door of any such church for any of the purposes aforesaid: Provided also, that the sum received by any person liable to uphold the church or dwelling house, or liable for the endowment or stipend as aforesaid, shall not in any year exceed the sum paid or expended by such person in the same year by reason of such liability.

10 Sites for churches may be granted.

It shall and may be lawful for any heritor or for any heir of entail in Scotland, trustee, tutor, and curator of minors, and every person lawfully empowered to act for persons under any legal disability or incapacity, to give and grant heritably and irredeemably such land or heritage belonging to them or under their management as may be necessary for the site of such church, dwelling house, and offices as aforesaid, and also a portion or portions of land near the same for a churchyard or for a glebe, and not exceeding in the whole four acres; which portion or portions of land shall, at the sight of the sheriff of the county wherein the same is situated, or of some person appointed by the sheriff for that purpose, be marked out and set apart as the churchyard and as the glebe to belong to such new parish in all time coming, and having been so given, granted, marked out, and set apart, shall not be liable to or affected by any other rights, titles, trusts, interests, or incumbrances to, in, or upon the same whatsoever; and such heir of entail shall not thereby be subject to nor incur any forfeiture or irritancy under any deed of entail by virtue of which he or she may hold the said land or heritage; and such trustee, tutor, or curator, or other person as aforesaid, shall be indemnified for what he may do in the premises: Provided always, that the power hereby given to any heir of entail, trustee, tutor, and curator of minors, and every person lawfully empowered to act for persons under legal disability or incapacity, shall not in any case extend to or be understood to comprehend a power of giving and granting any lands or heritages within half a mile of the manor place in the natural possession of the proprietor, or of giving and granting any or any part of any gardens, orchards, or inclosures adjacent to the manor place which have usually been in the natural possession of the proprietor, or have not been usually let for a longer term than seven years, when the heir in possession was of lawful age, and not under any legal disability or incapacity: Provided also, that no such grant as aforesaid by any heir of entail in possession, or by any trustee, tutor, curator, or other person lawfully empowered to act as aforesaid for any such heir of entail, shall be effectual, unless the heir of entail nearest in succession, of lawful age, and not under any legal disability or incapacity, shall have consented to such grant, which consent may be given by letter or other writing under the hand of such heir of entail nearest in succession, and shall be proved to the satisfaction of the said sheriff of the county: Provided also, that no trustee, tutor, or curator of minors, or person lawfully empowered to act for persons under legal disability or incapacity, shall make any such grant as aforesaid without adequate consideration for the same either in price or feu duty, the adequacy of which consideration shall be proved to the satisfaction of the said sheriff of the county before the portion or portions of land shall be marked out or set apart as aforesaid.

11 Lands may be burdened for endowments.

It shall and may be lawful for any heir of entail in Scotland to burden the lands and estate of which he or she is in possession as heir of entail aforesaid, lying within any district to be marked out and designated as aforesaid, or to give security over the

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same for the annual payment out of the clear yearly rents and profits of the said lands and estate of any sum not exceeding three pounds per centum of such clear yearly rents and profits, after deducting all prior burdens and provisions, as the same shall be ascertained by an average of the five years immediately preceding such burden or security, and in no case exceeding the yearly sum of one hundred and twenty pounds, for the purpose of endowing or contributing to the endowment of such new parish as aforesaid; and also to burden such lands and estate, or give security over the same, for upholding in due repair the fabric of the church of such new parish, and the dwelling house and offices of the minister, or any of them; the sums to be expended in such repairs not exceeding in any one year one pound per centum on the amount of money originally expended in building or purchasing and completing such church, or upon the estimated value thereof when received and recognized as the church of such new parish, and one pound per centum on the amount of money originally expended in building or purchasing and completing such dwelling house and office, or upon the estimated value thereof; and such heir of entail shall not, by reason of such acting as aforesaid, be subject to nor incur any forfeiture or irritancy under any deed of entail by virtue of which he or she may hold such lands or estate, and such burdens and securities shall be as valid and effectual against such lands and estates as if the same had not been entailed: Provided always, that no such burden or security as aforesaid shall be effectual unless the heir of entail nearest in succession, of lawful age, and not under legal disability or incapacity, shall have consented thereto, which consent may be given judicially, or by letter or other writing under the hand of such heir of entail nearest in succession: Provided also, that if such heir of entail nearest in succession as aforesaid shall be an heir of the body of the heir of entail in possession who intends to create such burden or security, then such heir of entail in possession shall, three months at least before creating the same, give notice of such his intention, in writing, to the heir of entail next entitled to succeed to the said estate after the heirs of his own body, if within Great Britain or Ireland, and, if the heir next entitled to succeed is not within Great Britain or Ireland, to his nearest male relation by the father, of lawful age, or to his known factor or attorney; and before any such burden or security as aforesaid shall be created evidence shall be produced, to the satisfaction of the said lords of council and session, that such consent as aforesaid, and such notice as aforesaid, where required, have been given, and that the means of public worship for the inhabitants of such district are wanting, and cannot be adequately provided unless the power hereby given of burdening the entailed estate shall be exercised to the extent proposed.

12 For administering religious service in the Gaelic language.

And whereas in some populous parishes and districts in the low country of Scotland, particularly in large towns and in the neighbourhood of cities and royal burghs, there are a great number of persons, natives of the highlands and islands of Scotland, who do not understand the English language so as to be capable of receiving the full benefit of religious instruction in English, or of having the ordinances of religion administered to them with advantage in that tongue: And whereas it is expedient that some provisions should be made for enabling such persons to obtain religious instruction, and to have the ordinances of religion administered to them in the Gaelic language: in disjoining or dividing any large or populous parish or parishes in which there are a great number of such persons it shall and may be lawful to make provision for the spiritual wants of such persons, by appointing religious instruction to be communicated to them, and the ordinances of religion to be dispensed among them, in the Gaelic language.

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13 A separate parish may be formed for that purpose.

Where a separate church shall have been erected for any such Gaelic congregation, and a permanent endowment shall have been secured for the same, either from teinds or otherwise, to the satisfaction of the said lords of council and session, it shall and may be lawful to erect such church and the congregation thereof into a separate parish, although the members of such congregation may be scattered, and no territorial district may be assigned to such parish exclusively; and it shall and may be lawful for the minister or ministers and elders of such parish to have and enjoy the status and all the powers, rights, and privileges of a parish minister or parish ministers and elders of the Church of Scotland: Provided always, that nothing herein contained shall be construed as giving to the minister or ministers and elders of any such Gaelic congregation right to exercise pastoral superintendence and discipline over persons who are not either members of such Gaelic congregation, or of the families of such members, or resident within the territorial district, if any, which may be assigned to such parish exclusively.

14 For forming certain Highland Churches into Parishes.

And whereas an Act was passed in the fourth year of the reign of his late Majesty King George the Fourth, intituled “An Act for building additional places of worship in the highlands and islands of Scotland”; and another Act was passed in the fifth year of the reign of his said late Majesty King George the Fourth, intituled “An Act to amend an Act for building additional places of worship in the highlands and islands of ^{MIM2}Scotland”: And whereas, under the authority and provisions of the said two last-mentioned Acts, several additional places of worship have been built or provided, and certain districts have been defined or set apart for the benefit of which the said places of worship were built or provided, and ministers have been appointed to officiate at such places of worship and in such districts, and dwelling houses and appurtenances have been built or provided for the ministers so officiating; and provision has been made for the payment to such ministers of stipends not exceeding the sum of one hundred and twenty pounds per annum in any one case; and provision is made by the said last-mentioned Act for upholding in repair such places of worship and dwelling houses and appurtenances: upon application by the presbytery within which any such place of worship is situated, or by one or more heritors holding together one-fourth part of the valuation of the district defined and set apart as the district for the benefit of which such place of worship has been provided, or of her Majesty’s advocate for Scotland, it shall and may be lawful for the said lords of council and session, acting as aforesaid, to disjoin such district from the parish or parishes to which the same or any part thereof may have belonged or been attached, and to erect the same in to a parish quoad sacra; and in every such case the place of worship built or provided as aforesaid may be held and appointed to be the church of such parish, and the dwelling house and appurtenances provided for the minister may be held and appointed to be the dwelling house of the minister of such parish; and the provisions contained in the said two last-mentioned Acts may be held and taken to be sufficient provisions for upholding in repair such church and dwelling house and appurtenances, and a stipend of one hundred and twenty pounds, payable under the provisions of the said Acts, may be held to be sufficient stipend for the minister of the said parish; and it shall and may be lawful for the minister and elders of such parish to have and enjoy the status and all the powers, rights, and privileges of a parish minister and elders of the Church of Scotland.

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Marginal Citations
M1 1823 c. 79.
M2 1824 c. 90.

15 Charge of church, &c., thenceforth to lie on parties liable thereto by Law of Scotland.

If in any case in which a place of worship has been built, and a district has been defined and set apart, under the provisions of the said two last-recited Acts, application shall be made to the said court to erect such district alone, or such district with additions thereto, into a new parish quoad omnia, with the requisite consent of heritors, and that the said court shall give effect to such application, it shall and may be competent for the said court to declare and appoint the place of worship already erected in such district to be the church of such new parish, and to appoint and declare the dwelling house already erected for the minister to be the manse of such new parish; and the commissioners under the said last-recited Acts shall thereupon cease to hold such place of worship and such dwelling house for the purposes of the said last-recited Acts; and the provisions contained in the said last-recited Acts for upholding such place of worship and such dwelling house in repair shall cease and determine, and the burden of upholding the same shall fall on the parties who by the law of Scotland would be bound to uphold the church and manse of the parish if such church and manse had been appointed to be built for the newly erected parish; and in fixing the stipend to be paid to the minister of such newly-erected parish the said court shall compute as stipends the sum paid by authority of the said last-recited Acts to the minister in such district, which sum shall be continued to be paid to the minister of such newly-erected parish . . . ^{F5}

Textual Amendments
F5 Words repealed by [Statute Law Revision Act 1892 \(c. 19\)](#)

16 Provisions of 50 Geo. 3. c. 84. and 5 Geo. 4. c. 72. not to extend to parishes erected under the present Act.

The provisions of the Teinds Act 1810 and the provisions of the Teinds Act 1824 shall not be extended to any new parishes erected under the provisions of this Act, although the stipend or endowment modified or provided for the minister of any such new parish should be less than one hundred and fifty pounds sterling.

17 ^{F6}

Textual Amendments
F6 S. 17 repealed by [Statute Law Revision Act 1874 \(No. 2\) \(c. 96\)](#)

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Commencement Orders yet to be applied to the New Parishes (Scotland) Act 1844

Commencement Orders bringing legislation that affects this Act into force:

- [S.S.I. 2003/456 art. 2 commences \(2000 asp 5\)](#)