



# Incumbents and Churchwardens (Trusts) Measure 1964

1964 No. 2

A Measure passed by the National Assembly of the Church of England to vest certain real and personal property held, acquired or administered upon charitable ecclesiastical trusts by incumbents and churchwardens jointly or severally and certain ecclesiastical corporations, in the diocesan authority and for purposes connected therewith. [27th February 1964]

## 1 Interpretation.

In this Measure—

<sup>F1</sup>  
...

“Diocesan authority” means the diocesan board of finance or any existing or future body appointed by the diocesan conference to act as trustees of diocesan trust property;

<sup>F2</sup>  
...

“Incumbent” includes any minister with a separate cure of souls but shall not include a curate in charge of a conventional district;

“Incumbent or churchwardens” means any incumbent and the churchwardens of the parish comprising the benefice of that incumbent or of any parish comprised in any united benefice of that incumbent and shall be deemed to refer to them or any of them jointly or severally;

“Land” includes land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments also a manor and a rent and other incorporeal hereditaments and an easement, right, privilege or benefit in, over or derived from land; but not an advowson <sup>F3</sup> . . ., and “hereditament”, “manor”, and “mines and minerals” shall bear the meanings assigned to them by paragraph (ix) of subsection (1) of section two hundred and five of the <sup>M1</sup>Law of Property Act 1925;

“Parish” means an ecclesiastical parish or district, whether old or new, the Minister of which has a separate cure of souls therein and includes each parish

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which remains a separate parish, in cases where a scheme of union provides for the union of benefices but not of parishes, but shall not include a parish whereof the parish church is a cathedral.

“Permanent trusts” means any trust of property which is a permanent endowment within the meaning of [F4section 353(3) of the Charities Act 2011].

#### Textual Amendments

- F1** Definition "Custodian trustee" in s. 1 omitted (1.7.2015) by virtue of [Ecclesiastical Property Measure 2015 \(No. 2\), ss. 2\(2\), 3\(2\)](#); S.I. 2015/1468, art. 2
- F2** Words in s. 1 omitted (1.3.2019) by virtue of [Church Property Measure 2018 \(No. 8\), s. 53\(2\), Sch. 1 para. 7, Sch. 3](#) (with [Sch. 2](#)); S.I. 2019/97, art. 2
- F3** Words in s. 1 repealed (1.1.1997) by [1996 c. 47, s. 25\(2\), Sch. 4](#) (with [ss. 24\(2\), 25\(4\)](#)); S.I. 1996/2974, [art. 2](#)
- F4** Words in s. 1 substituted (14.3.2012) by [Charities Act 2011 \(c. 25\), s. 355, Sch. 7 para. 13](#) (with [s. 20\(2\), Sch. 8](#))

#### Marginal Citations

- M1** [1925 c. 20.](#)

## 2 Property to which Measure applies.

- (1) This Measure shall apply to any interest mentioned in subsection (2) of this section which is acquired or held on charitable trusts, established for ecclesiastical purposes of the Church of England, and whereof:—
- (a) no present or past trustee (other than the personal representatives of a sole surviving trustee) is or has been any person other than the following:—
    - (i) an incumbent or churchwardens; or
    - (ii) an ecclesiastical corporation sole acting as a joint trustee with an incumbent or churchwardens; or
  - (b) the presently acting trustees (whether or not validly so appointed) are the persons specified in sub-paragraphs (i) or (ii) of paragraph (a) above, unless they are so acting in contravention of the terms of the trust; or
  - (c) the presently acting trustee is the parochial church council not validly so appointed, if the trusts have, immediately previously, been administered by the persons specified in sub-paragraphs (i) or (ii) of paragraph (a) above unless such persons were so acting in contravention of the terms of the trust.
- (2) This section shall apply to any interest being either:—
- (i) an estate or interest in any land; or
  - (ii) an interest in personal property, held or to be held on permanent trusts, except any estate or interest:—
    - (a) vested in an incumbent, by virtue of his office, in any church, churchyard or burial ground . . . <sup>F5</sup>;
    - (b) of an incumbent in land or buildings vested in him, before the thirteenth day of April, 1960, by virtue of section seventeen of the <sup>M2</sup>New Parishes Measure 1943, and thereafter by virtue of subsections (1) and (2) of section sixteen of that Measure (land and buildings acquired as sites of proposed churches, parsonage houses, etc.);
    - (c) vested in the Official Custodian for Charities;

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- (d) being a church educational endowment, as defined in section three of the <sup>M3</sup>Diocesan Education Committees Measure 1955;
  - [<sup>F6</sup>(e) being a short lease (within the meaning of section 6 of the Parochial Church Councils (Powers) Measure 1956);]
  - (f) vested in churchwardens in the goods, ornaments, and movables of the church of which they are churchwardens and in an incumbent or churchwardens in any other chattel.
- (3) Any question as to whether personal property is held or to be held on permanent trusts shall be determined for the purposes of this section by a person appointed by the bishop or, during a vacancy in a see, the guardian of the spiritualities:  
Provided that the [<sup>F7</sup>Charity Commission], in acting under the Schedule to this Measure, shall not be bound by any such determination.

#### Textual Amendments

- F5** Words repealed (1.4.1978) by [Endowments and Glebe Measure 1976 \(No. 4\), Sch. 8](#)
- F6** [S. 2\(2\)\(e\)](#) substituted (1.7.2015) by [Ecclesiastical Property Measure 2015 \(No. 2\), ss. 2\(3\), 3\(2\); S.I. 2015/1468, art. 2](#)
- F7** Words in s. 2(3) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\), s. 79\(2\), Sch. 8 para. 42; S.I. 2007/309, art. 2, Sch.](#)

#### Marginal Citations

- M2** [1943 No. 1.](#)
- M3** [1955 No. 1.](#)

### 3 Vesting of property in diocesan authority.

- (1) Where upon or after the commencement of this Measure an incumbent or churchwardens or an ecclesiastical corporation sole or a parochial church council hold, acquire or administer any interest to which this Measure applies, it shall be their duty to inform the diocesan authority thereof in writing.
- (2) If the diocesan authority becomes aware of the existence of any interest to which this Measure may apply (whether as the result of any such information as aforesaid or otherwise) it shall act in accordance with the Schedule to this Measure and may and, subject to the said Schedule, shall by deed vest any interest to which this Measure applies in itself <sup>F8</sup>....
- (3) Any vesting declaration made by the diocesan authority pursuant to this Measure shall have the operation specified in paragraph (b) of subsection (1) of section forty of the <sup>M4</sup>Trustee Act 1925.
- (4) It shall be the duty of any person in whom is vested any interest to which this Measure applies and to which any vesting declaration made under this Measure relates, but which, or the right to transfer which, is not by such declaration alone vested in the diocesan authority, to make or concur in making such transfers or other assurances to the diocesan authority as the authority may reasonably require.
- (5) Any interest which may be vested in the diocesan authority under this section shall so vest subject to all trusts, charges, tenancies, liabilities and other legal incidents affecting the same.

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- [<sup>F9</sup>(5A) Where any interest is vested in the diocesan authority under this section, the managing trustees shall keep the authority indemnified in respect of—
- (a) all liabilities subject to which the interest is vested or which may at any time affect the property;
  - (b) all rates, taxes, insurance premiums and other outgoings of whatever nature which may from time to time be payable in respect of the interest;
  - (c) all costs, charges and expenses incurred by the authority in relation to the acquisition or insurance of the interest or as trustee of the interest; and
  - (d) all costs, proceedings, claims and demands in respect of any of the matters mentioned in paragraphs (a) to (c) of this subsection.]
- (6) The exercise by the diocesan authority of the powers specified in this section and in the Schedule to this Measure shall not affect or prejudice the jurisdiction or powers of the High Court or the [<sup>F10</sup>Charity Commission] to establish a scheme for the administration of any charity to which this Measure applies or otherwise.

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**Textual Amendments**

- F8** Words in s. 3(2) omitted (1.7.2015) by virtue of [Ecclesiastical Property Measure 2015 \(No. 2\)](#), **ss. 2(4), 3(2)**; S.I. 2015/1468, art. 2
- F9** S. 3(5A) inserted (1.7.2015) by [Ecclesiastical Property Measure 2015 \(No. 2\)](#), **ss. 2(5), 3(2)**; S.I. 2015/1468, art. 2
- F10** Words in s. 3(6) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), **Sch. 8 para. 43**; S.I. 2007/309, art. 2, Sch.
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**Marginal Citations**

- M4** 1925 c. 19.

#### 4 Consent of diocesan authority to acquisition of property.

After the commencement of this Measure neither an incumbent nor churchwardens shall acquire any interest in land or personal property to which this Measure applies except an interest in personal property by gift or under a will without the consent of the diocesan authority.

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**Modifications etc. (not altering text)**

- C1** Ss. 4, 5 excluded (1.10.2015) by [The Ecclesiastical Property \(Exceptions from Requirement for Consent to Dealings\) Order 2015 \(S.I. 2015/1545\)](#), arts. 1(2), **2(2)** (with art. 2(3)(4))

#### 5 Provisions as to property vested in the diocesan authority.

No managing trustees of property [<sup>F11</sup>vested in the diocesan authority] pursuant to the provisions of this Measure shall sell, lease, let, exchange, [<sup>F12</sup>or charge the property] without the consent of the diocesan authority <sup>F13</sup>..., in addition to any other consents or orders required by law <sup>F14</sup>....

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#### Textual Amendments

- F11** Words in s. 5 substituted (1.7.2015) by [Ecclesiastical Property Measure 2015 \(No. 2\)](#), **ss. 2(6)(a)**, 3(2); [S.I. 2015/1468](#), [art. 2](#)
- F12** Words in s. 5 substituted (1.7.2015) by [Ecclesiastical Property Measure 2015 \(No. 2\)](#), **ss. 2(6)(b)**, 3(2); [S.I. 2015/1468](#), [art. 2](#)
- F13** Words in s. 5 omitted (1.7.2015) by virtue of [Ecclesiastical Property Measure 2015 \(No. 2\)](#), **ss. 2(6)(c)**, 3(2); [S.I. 2015/1468](#), [art. 2](#)
- F14** Words in s. 5 omitted (1.7.2015) by virtue of [Ecclesiastical Property Measure 2015 \(No. 2\)](#), **ss. 2(6)(d)**, 3(2); [S.I. 2015/1468](#), [art. 2](#)

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### [<sup>F15</sup>5A Consent not required if consideration below specified amount

- (1) The requirement for consent under section 4 or 5 does not apply if the consideration on the transaction in question is less than such amount as may be specified in, or determined in accordance with, an order made by the Archbishops' Council.
- (2) An order under this section—
  - (a) may make different provision for different purposes, different cases or different areas;
  - (b) may, in connection with the determination of an amount, confer a discretion on a person of a specified description.
- (3) An order under this section may not be made unless—
  - (a) a draft of the order has been laid before the General Synod and approved by it with or without amendment, and
  - (b) the draft so approved has been referred to the Archbishops' Council.
- (4) On referral of the draft, the Council must—
  - (a) if the draft was approved without amendment, make the order by applying its seal;
  - (b) if the draft was approved with amendment—
    - (i) make the order by applying its seal, or
    - (ii) withdraw the draft for further consideration.
- (5) An order under this section [<sup>F16</sup>may not come into force unless] it is sealed by the Council.
- (6) If the Business Committee of the General Synod determines that a draft of an order under this section does not need to be debated by the General Synod, the draft is to be treated as approved for the purposes of this section unless a member of the General Synod gives notice in accordance with the standing orders that the member—
  - (a) wishes the draft order to be debated, or
  - (b) wishes to move an amendment to it.
- (7) The Statutory Instruments Act 1946 applies to an order under this section as if—
  - (a) this Measure were an Act, and

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- (b) the order were a statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

**Textual Amendments**

- F15** S. 5A inserted (1.7.2015) by [Ecclesiastical Property Measure 2015 \(No. 2\)](#), **ss. 2(7)**, 3(2); S.I. 2015/1468, art. 2
- F16** Words in s. 5A(5) substituted (retrospectively) by [Church of England \(Miscellaneous Provisions\) Measure 2018 \(No. 7\)](#), **ss. 8(9)**, 11(8)(b), 17(2)(b)

**6 Short title commencement and extent.**

- (1) This Measure may be cited as the Incumbents and Churchwardens (Trusts) Measure 1964.
- (2) This Measure shall come into operation on the first day of January, 1965.
- (3) This Measure shall extend to the whole of the Provinces of Canterbury and York except the Channel Islands and the Isle of Man:  
Provided that, if an Act of Tynwald so provides, this Measure shall apply to the Isle of Man subject to such modifications, if any, as may be specified in such Act of Tynwald.

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## SCHEDULE

### SECTIONS 2 AND 3

- 1 Upon becoming aware of the existence of any property which may be affected by this Measure the diocesan authority shall consider whether this Measure applies to any interest therein. If the diocesan authority is of the opinion that this Measure does not apply to any interest therein it shall so inform any persons acting in any trust upon which such property may be held.
- 2 If the diocesan authority is of the opinion that this Measure applies to an interest in such property it shall send a notice to the persons believed by the diocesan authority to have or be entitled to the general control and management of the property, to the incumbent and to the <sup>F17</sup>Charity Commission] describing the property concerned and the trusts upon which the relevant interest therein is held. The notice shall state that it is proposed to vest such interest in the diocesan authority <sup>F18</sup>... on or after a specified date which shall not be earlier than three months after the date of the notice, and that any person who desires to object to the said vesting or make any representation relating thereto should make such objection or representation in writing to the diocesan authority before the specified date. The address of the diocesan authority shall be set forth in the said notice.

#### Textual Amendments

- F17** Words in Sch. para. 2 substituted (27.2.2007) by [Charities Act 2006 \(c. 50\), s. 79\(2\), Sch. 8 para. 45\(2\)](#); [S.I. 2007/309, art. 2, Sch.](#)
- F18** Words in Sch. para. 2 omitted (1.7.2015) by virtue of [Ecclesiastical Property Measure 2015 \(No. 2\), ss. 2\(8\), 3\(2\)](#); [S.I. 2015/1468, art. 2](#)

- 3 The <sup>F19</sup>Charity Commission] may make such enquiries into the matter as <sup>F20</sup>it thinks] fit (always provided that the provisions of this Measure shall impose no duty upon <sup>F21</sup>the Commission] to make any investigation or enquiries) and may make any objection of representation or tender such advice to the diocesan authority as <sup>F20</sup>it thinks] proper on or before the date specified by the notice referred to in paragraph 2 of this Schedule.

#### Textual Amendments

- F19** Words in Sch. para. 3 substituted (27.2.2007) by [Charities Act 2006 \(c. 50\), s. 79\(2\), Sch. 8 para. 45\(3\) \(a\)](#); [S.I. 2007/309, art. 2, Sch.](#)
- F20** Words in Sch. para. 3 substituted (27.2.2007) by [Charities Act 2006 \(c. 50\), s. 79\(2\), Sch. 8 para. 45\(3\) \(b\)](#); [S.I. 2007/309, art. 2, Sch.](#)
- F21** Words in Sch. para. 3 substituted (27.2.2007) by [Charities Act 2006 \(c. 50\), s. 79\(2\), Sch. 8 para. 45\(3\) \(c\)](#); [S.I. 2007/309, art. 2, Sch.](#)

- 4 If the said notice relates to any interest in land the diocesan authority shall satisfy itself that the said notice or a copy thereof has been exhibited at the principal entrance of the church of the parish in which such land is situate for a continuous period of at least one month expiring on or before the date specified in the said notice.
- 5 The diocesan authority shall consider all such objections, representations and advice as it may receive relating to such property. If the <sup>F22</sup>Charity Commission

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has] made no objection or have withdrawn any objection which [<sup>F23</sup>it] may have made and if the diocesan authority remains of the opinion that the Measure applies to such property the authority shall make a declaration under seal which shall have the effect prescribed by sub-sections (2) and (3) of section three as regards any property therein mentioned.

**Textual Amendments**

- F22** Words in Sch. para. 5 substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 45(4) (a); S.I. 2007/309, art. 2, Sch.
- F23** Word in Sch. para. 5 substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 45(4) (b); S.I. 2007/309, art. 2, Sch.

- 6 The diocesan authority shall by such declaration or by a separate deed establish a scheme for the management of the charity limited to securing the establishment and continuation of managing trustees thereof who shall be the incumbent or churchwardens and, where appropriate, an ecclesiastical corporation sole to act as joint managing trustee with them or any of them.
- 7 The diocesan authority shall inform any person who has made objections or representations or has tendered advice under this Schedule of the execution of any declaration vesting property to which such objections, representations or advice related.
- 8 A declaration of vesting under this Schedule may, where appropriate, relate to more than one item of property and to property held, acquired or administered by more than one body of trustees.



**Changes to legislation:**

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