



# Church Property Measure 2018

2018 No. 8

## PART 4

### MISCELLANEOUS AND GENERAL

#### *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.
- (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.

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*Status: This is the original version (as it was originally enacted).*

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- (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.

#### **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.
- (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.