



# Ecclesiastical Jurisdiction and Care of Churches Measure 2018

2018 No. 3

## PART 5

### MISCELLANEOUS

#### *Burials and consecration*

#### **88 Burials in parish burial ground**

- (1) A person who, but for this subsection, would have no right of burial in the churchyard or other burial ground of a parish has that right if, at the date of the person's death, his or her name is entered on the church electoral roll of the parish.
- (2) A person who has a right of burial in the churchyard or other burial ground of a parish has a right to have his or her cremated remains buried there.
- (3) But subsection (2) does not give a person a right to have his or her cremated remains buried in a churchyard or burial ground in which burials have been discontinued by an Order in Council under the Burial Act 1853 or 1855 except—
  - (a) in accordance with a faculty authorising the burial, or
  - (b) in an area which has been set aside by a faculty for the burial of cremated remains generally.
- (4) A person who does not have a right of burial in the churchyard or other burial ground of a parish may not be buried there, or have his or her cremated remains buried there, without the consent of the minister of the parish.
- (5) In deciding whether to give consent under subsection (4), the minister must have due regard to any general guidance given by the PCC of the parish in question.
- (6) For the avoidance of doubt it is hereby declared that the bishop of a diocese may consecrate land in the diocese for the sole purpose of the burial of cremated remains.

- (7) In this section, “minister”, in relation to a parish, means—
- (a) the incumbent of a benefice to which the parish belongs,
  - (b) if the benefice is vacant, the minister acting as priest in charge of the parish or the curate licensed to the charge of the parish, or
  - (c) if there is no minister or curate of that description, the rural dean of the deanery in which the parish is situated.

## **89 Consecration of ground added to churchyard**

- (1) This section applies where ground adjoining a churchyard has been or is added to it.
- (2) The bishop of the diocese may, at the churchyard or in the church to which the ground belongs, sign an instrument declaring and recording the consecration of the ground, without the need for the chancellor or registrar of the diocese to be present.
- (3) The instrument must be in the form of a plan of the ground with the following endorsement—  

“I, ..., Bishop of ... , do hereby declare and record the ground added to the churchyard of ... , as on the plan, to be consecrated ground and part of the churchyard.”
- (4) The instrument is to be treated as signed by the bishop of the diocese if it is signed by a bishop nominated by him or her for the purposes of this section (whether another diocesan bishop or a suffragan or assistant bishop).
- (5) The signature on the instrument must be witnessed by—
  - (a) the chancellor,
  - (b) a surrogate,
  - (c) a clerk in Holy Orders beneficed or licensed to serve in the diocese, or
  - (d) the churchwardens of the church concerned.
- (6) Once the instrument, having been signed and witnessed, is deposited in the registry of the diocese, it has the same effect as a sentence of consecration.
- (7) Sections 5 to 7 of the Consecration of Churchyards Act 1867 (conveyancing procedure etc.) apply for the purposes of this section and sections 90 and 91 as they apply for the purposes of that Act.

## **90 Reservation of right to burial in land added to churchyard**

- (1) This section applies where a person, by way of a gift, transfers land which is to be added to a consecrated churchyard as referred to in section 89; and it does not matter whether or not the person resides in the parish in which the churchyard is situated.
- (2) The person may reserve the exclusive right in perpetuity of burial and of placing monuments and gravestones in a part of the added land; but that part must not exceed one-sixth of the area of the whole of the added land.
- (3) Where the right under subsection (2) is reserved, the part in question must be shown and coloured on the plan referred to in section 89.
- (4) A memorandum in the following form must be written on the instrument referred to in that section—

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

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“We, ... (*Rector, Vicar or Incumbent*) and ... and ..., Churchwardens, of ... declare the piece of land (*insert description and measurement*), and coloured ... on this plan, to be the burial place of ..., the giver of the land added to the churchyard of ... , his or her heirs and assigns.

Signed ...

Witnessed ...

Dated ...”

- (5) The memorandum must be signed by the incumbent and churchwardens of the parish in which the churchyard is situated, with each signature being witnessed; and the memorandum must specify the date on which it is signed and witnessed.
- (6) Once the memorandum has been signed and witnessed, and the land has been declared to be consecrated, the memorandum operates as an exclusive right in perpetuity in the specified land.
- (7) The right forms part of the real estate of the person who reserved the right or of any successor in title to the right.
- (8) The costs of preparing and executing the memorandum are to be borne by the person by whom the reservation is made.
- (9) “Land” includes messuages, tenements and hereditaments, houses and buildings of any tenure.

## **91 Conditions on reservation under section 90**

- (1) A body may not be buried in the land in which a right is reserved under section 90, nor may a monument or gravestone be placed on the land, without the consent of the person who is for the time being the owner of the right.
- (2) But consent is not required under subsection (1) for the burial of a deceased owner, or of a spouse or widow or widower of a deceased owner who has been or is about to be buried in the land.
- (3) The bishop of the diocese, or any person acting under the bishop’s authority, has the same right to object to the placing of a monumental inscription within the reserved ground and to procure its removal as the bishop has to object to a monumental inscription in any consecrated ground and to procure its removal.
- (4) The land in which a right is reserved under section 90 may not be included in an Order in Council under the Burial Act 1853 or 1855 which provides for the discontinuance of burials in the churchyard to which the land belongs.
- (5) But burials in the land may be discontinued under a separate Order in Council under either of those Acts founded on the basis of a special report that the ground is in such a state as to render further burials in the land prejudicial to the public.

## **92 Power of bishop to remove legal effects of consecration**

- (1) This section applies where the bishop of a diocese, on the application of the archdeacon of an archdeaconry in the diocese in relation to a building or land which is in the archdeaconry and which is subject to the legal effects of consecration, is satisfied that—

- (a) the building or land is not held or controlled by an ecclesiastical corporation or a diocesan board of finance, and
  - (b) no purpose will be served by its remaining subject to the legal effects of consecration.
- (2) The bishop may by order direct that the building or land or part of it is not to be subject to the legal effects of consecration; and, accordingly, where an order under this section is made, the faculty jurisdiction ceases to extend to the building or land or part concerned.
- (3) An order under this section may impose such conditions or requirements as the bishop thinks fit as to—
  - (a) the preservation or disposal of any human remains believed to be buried in or beneath a building affected by the order or in land affected by it and of any tombstones, monuments or memorials commemorating the deceased persons;
  - (b) the maintenance of orderly behaviour in or on the building or land affected by the order.
- (4) For the purposes of subsection (3)(a), the order may apply to the building or land such provisions of section 78 of and Schedule 6 to the Mission and Pastoral Measure 2011 (disposal of human remains) as are specified in the order, with or without modifications or adaptations.
- (5) A condition or requirement within subsection (3)(a) may not be imposed by an order under this section except with the consent of the Secretary of State.
- (6) A condition or requirement imposed by an order under this section is enforceable as if—
  - (a) the archdeacon were the owner of the adjacent land, and
  - (b) the condition or requirement were a negative covenant expressed to be entered into for the benefit of that adjacent land.
- (7) For the purposes of subsection (6), the enforcement of a condition or requirement is to be regarded as being for the benefit of the archdeacon.
- (8) Section 84 of the Law of Property Act 1925 (which enables the Upper Tribunal to discharge or modify restrictions affecting land), other than subsection (2) of that section, does not apply in relation to a condition or requirement imposed by an order under this section.
- (9) A condition or requirement imposed by an order under this section is a local land charge; and for the purposes of the Local Land Charges Act 1975, the bishop who made the order is to be treated as the originating authority as respects the charge.
- (10) The bishop must send each order he or she makes under this section to the registrar of the diocese; and the registrar must file each order in the diocesan registry.
- (11) The registrar is entitled to such fees as may be authorised by an order under section 86 for—
  - (a) filing an order under subsection (10);
  - (b) permitting a search for and inspection of an order filed under that subsection;
  - (c) providing a copy of an order filed under that subsection.
- (12) For the purposes of subsection (10), an order may be sent by post to the registrar, delivered to him or her, or left at his or her proper address; and for that purpose and

the purposes of section 7 of the Interpretation Act 1978, a person’s proper address is that person’s last known address.

- (13) “Ecclesiastical corporation” means a corporation in the Church of England, whether sole or aggregate, established for spiritual purposes.
- (14) “Diocesan board of finance” has the same meaning as in the Endowments and Glebe Measure 1976 (see section 45 of that Measure).
- (15) The definition of “land” in Schedule 1 to the Interpretation Act 1978 does not apply to this section.

### **93 Section 92: application to Crown land**

- (1) Section 92 applies to Crown land and to buildings situated on Crown land as it applies to other land and buildings.
- (2) But a condition or requirement within section 92(3)(b) may not be imposed by an order under section 92 in relation to Crown land or a building situated on Crown land without the consent of the appropriate authority.
- (3) For the purposes of subsection (2), land which is used for the purposes of the Church of England and which will become Crown land on ceasing to be so used or on the exercise of a right of re-entry is to be treated as Crown land.
- (4) “Crown land” and “appropriate authority” each have the same meaning as in Part 13 of the Town and Country Planning Act 1990 (see section 293 of that Act).
- (5) Any question as to which authority is the appropriate authority in relation to any land or building is to be determined by the Treasury.