



# Mission and Pastoral Measure 2011

2011 No. 3

## PART 6

### BUILDINGS CLOSED FOR REGULAR PUBLIC WORSHIP

#### *Vesting of property and other supplementary provisions*

#### **71 Vesting of property**

- (1) Where a pastoral (church buildings disposal) scheme or a pastoral church buildings scheme to which section 58 applies provides for the demolition of the building closed for regular public worship or any part of it, the building or part and any land which under the scheme is to be sold, given, exchanged or let with the site of the demolished building or part shall, by virtue of this Measure, without any conveyance or other assurance, vest in the appropriate body on the date when the relevant provisions of the scheme come into operation.

In this subsection “the appropriate body” means the body, being either the Commissioners or the diocesan board of finance, by which in accordance with the scheme the building or part in question is to be demolished.

- (2) Where a pastoral (church buildings disposal) scheme or a pastoral church buildings scheme to which section 58 or 59 applies provides for empowering the Commissioners to sell, give or exchange the building closed for regular public worship or any part of it or any land annexed or belonging to the building or the church of which it forms part for a use or uses specified or described in the scheme, the building or part or land shall vest in the Commissioners on the date when the relevant provisions of the scheme come into operation.
- (3) Where a pastoral (church buildings disposal) scheme or pastoral church buildings scheme to which section 58 or 59 applies provides for land annexed or belonging to a building closed for regular public worship to be appropriated to use as the site for a parsonage house or part of the house or as parsonage land the land shall on the date when any such provision comes into operation vest in the incumbent of the benefice

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in which the land is situated as property of the benefice and without any conveyance or further assurance.

- (4) Where a pastoral (church buildings disposal) scheme or pastoral church buildings scheme to which section 58 or 59 applies provides for land annexed or belonging to a building closed for regular public worship or the whole or part of the site of a demolished building or land annexed or belonging to it to be appropriated for any ecclesiastical purposes of the parish the land or site shall on the date when any such provision comes into operation vest in the diocesan board of finance without any conveyance or further assurance to be held on trust for the parochial church council for that parish to be used for those purposes.
- (5) Where a pastoral (church buildings disposal) scheme or a pastoral church buildings scheme to which section 58 or 59 applies provides for the use, holding, letting or licensing by the diocesan board of finance of the building closed for regular public worship or any part of it or any land annexed or belonging to the building or the church of which it forms part for a use or uses specified or described in the scheme, and the building or part or land is not, on the date when the relevant provisions of the scheme come into operation, vested in the board, it shall, by virtue of this Measure, without any conveyance or other assurance, vest in the board on that date.
- (6) Where a pastoral (church buildings disposal) scheme or a pastoral church buildings scheme to which section 58 or 59 applies provides for appropriating any land to use as part of a churchyard or burial ground, the land shall, on the date when the relevant provisions of the scheme come into operation, vest by virtue of this Measure, without any conveyance or other assurance, in the person in whom the churchyard or burial ground is vested.
- (7) Where a pastoral (church buildings disposal) scheme or a pastoral church buildings scheme to which section 59 applies provides for the care and maintenance by the Churches Conservation Trust of a building closed for regular public worship or any part of it or any land annexed or belonging to the building or the church of which it forms part, the building or part or land shall, by virtue of this Measure, without any conveyance or other assurance vest in the Trust.
- (8) Where a pastoral (church buildings disposal) scheme provides for transferring to the diocesan board of finance responsibility for the care and maintenance of any land annexed or belonging to a building closed for regular public worship or the church of which it forms part, the land shall, by virtue of this Measure, without any conveyance or other assurance, vest in the board.
- (9) Any property vesting under this section or under section 61(1) shall vest free of any trust or burial rights:
 

Provided that any person entitled to burial rights may claim compensation in respect of the loss of the rights, and any such claim in default of agreement shall be referred to and determined by the consistory court of the diocese, subject to an appeal to the Dean of the Arches and Auditor, and the amount of any compensation awarded shall be paid by the diocesan board of finance and the payment shall be treated as money expended on the property for the purpose of furthering its disposal or use.
- (10) The body in whom any property vests under this section or under section 61(1) shall be deemed to have an interest, for the purposes of faculty proceedings, in any other property so vested or any property formerly annexed or belonging to or held with property so vested.

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**Commencement Information**

**I1** S. 71 in force at 1.7.2012 by [S.I. 2012/1](#), [art. 2](#)

## 72 Rights of way and other easements

- (1) Where any land annexed or belonging to a church the whole or part of which is a building closed for regular public worship does not vest by virtue of this Measure, in the diocesan board of finance, the Commissioners or the Churches Conservation Trust, the pastoral (church buildings disposal) scheme or (in a case to which section 58 or 59 applies) the pastoral church buildings scheme may provide for conferring on any of the bodies in whom the building or the site of the building or any part of the building or site or any other land annexed or belonging to the church vests, such rights of way or other easements over or in the land not so vesting as appear to the Commissioners to be necessary—
- (a) to enable any property so vesting to be used for a use or uses specified or described in the pastoral church buildings scheme or the pastoral (church buildings disposal) scheme, or to facilitate such use;
  - (b) to enable any property so vesting which is to be sold, given, exchanged or let by the Commissioners (otherwise than for any such use), to be used for such purposes as appear to the Commissioners to be reasonable, or to facilitate such use; or
  - (c) to enable the Churches Conservation Trust to perform its functions with respect to any property so vesting in the Trust, including the giving of reasonable access to members of the public.
- (2) Where rights of way over land adjoining or adjacent to a church to which or to a part of which a declaration of closure for regular public worship relates were, before the declaration took effect, enjoyed by persons attending the church, and the church or part vests, by virtue of this Measure, in the Churches Conservation Trust or the diocesan board of finance, the said rights of way shall be enjoyed by the Trust or the board, as the case may be, so far as is necessary for the performance of its functions and by members of the public for the purpose of visiting the church.
- (3) Where rights of way or other easements have been acquired by the Commissioners under section 73 and land for the benefit of which the rights were acquired vests in the Churches Conservation Trust by virtue of this Measure those rights shall also vest in the Trust.

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**Commencement Information**

**I2** S. 72 in force at 1.7.2012 by [S.I. 2012/1](#), [art. 2](#)

## 73 Acquisition of rights of way and other easements

Where the Commissioners consider that it is necessary or appropriate to acquire any right of way or other easement for the benefit of land which has vested or is to vest in the Churches Conservation Trust by virtue of this Measure or is to be disposed of by them under this Measure they may acquire the right of way or easement in question.

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**Commencement Information**

**I3** S. 73 in force at 1.7.2012 by [S.I. 2012/1](#), [art. 2](#)

**74 Removal of legal effects of consecration of buildings and land**

- (1) Where any consecrated building or part of a building or land is vested in the Commissioners under section 71 or is appropriated to a use or uses specified or described in a pastoral (church buildings disposal) scheme or a pastoral church buildings scheme to which section 58 or 59 applies or is vested in the diocesan board of finance in pursuance of a pastoral (church buildings disposal) scheme, then, unless the scheme otherwise provides—
  - (a) the building or part of a building or land shall not be subject to the legal effects of consecration; and
  - (b) in particular, the jurisdiction of any court or person with respect to the granting of faculties shall cease to extend to the building or part of a building or land.
- (2) Where any consecrated building or part of a building or land is vested in the Churches Conservation Trust under section 71, the jurisdiction under subsection (1)(b) shall cease to extend thereto, and accordingly any works or alterations may be carried out in or in relation to the building or part of a building or land without the need for a faculty, but subject thereto and subject to any terms included in a lease under section 57(10) it shall continue to be subject to the legal effects of consecration.
- (3) If any building or part of a building or land to which this section applies is subsequently restored to its former use or is appropriated to another use for which consecration would be required this section shall cease to apply.

**Commencement Information**

**I4** S. 74 in force at 1.7.2012 by [S.I. 2012/1](#), [art. 2](#)

**75 Power to impose and enforce covenants**

- (1) Without prejudice to any restriction or requirement in a pastoral (church buildings disposal) scheme or a pastoral church buildings scheme to which section 58 or 59 applies, the Commissioners or the diocesan board of finance may, in exercising their powers under this Part to sell, give, exchange or let or, as the case may be, to let or license, any building or land, include in the conveyance, lease or other instrument such covenants imposing conditions and requirements as to the use of the building or land concerned as the Commissioners or board think necessary or expedient to give effect to the provisions of the scheme or otherwise to secure the suitable use of the building or land; and, in a case where the land is sold, given or exchanged, any such covenants shall be enforceable as if the Commissioners or board were the owners of adjacent land and the covenants were expressed to be entered into for the benefit of that adjacent land, and in the case of covenants of a positive character as if they were negative.
- (2) Where any such covenant is subsequently varied or released by agreement, any sum of money received by a diocesan board of finance in consideration of the variation or release of a covenant imposed by the board shall be paid to the Commissioners and section 63(5) shall apply in relation to the sum so paid, and in relation to any sum of

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money received by the Commissioners in consideration of the variation or release of a covenant imposed by them, as it applies in relation to the proceeds of any sale or exchange under section 63(2), (3) or (4).

- (3) Section 84 (except subsection (2)) of the Law of Property Act 1925 (c. 20) (which enables the Upper Tribunal to discharge or modify restrictions affecting land) shall not apply in relation to conditions and requirements imposed under subsection (1).

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**Commencement Information**

**I5** S. 75 in force at 1.7.2012 by [S.I. 2012/1](#), [art. 2](#)

## **76 Disposal of font, communion table and plate, and other contents**

- (1) Where a pastoral church buildings scheme or pastoral (church buildings disposal) scheme makes provision for a church or part of a church to be demolished or appropriated to any use specified or described in the scheme the bishop shall, unless the scheme makes other provision, give directions as to how the font, communion table and plate used for the purpose of Holy Communion shall be dealt with but, if the church or part is so demolished or appropriated before any such directions are given or fully implemented, the diocesan board of finance shall, subject to any provision of the scheme, be responsible for the care, maintenance and safeguarding of any such items.
- (2) In a case to which subsection (1) applies, the scheme may also make provision with respect to the disposal of any other contents of the church, not being tombstones, monuments or memorials commemorating deceased persons buried in the church or in any land belonging or annexed to the church.
- (3) Where any items are disposed of in accordance with subsection (1) or (2) the bishop shall, subject to any provision of the scheme, give directions as to how any proceeds of their sale are to be applied.
- (4) Where a pastoral (church buildings disposal) scheme or a pastoral church buildings scheme to which section 59 applies provides for the care and maintenance of a church or part of a church by the Churches Conservation Trust or where a pastoral (church buildings disposal) scheme provides for a church or part of a church to remain vested in the diocesan board of finance, the scheme may also provide for the vesting in and the care and maintenance by the Trust or the board, as the case may be, of any of the contents of the church or provide for the disposal of any of the contents other than any tombstones, monuments or memorials as are referred to in subsection (2).
- (5) No faculty shall be required for anything done in pursuance of this section.

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**Commencement Information**

**I6** S. 76 in force at 1.7.2012 by [S.I. 2012/1](#), [art. 2](#)

## **77 Trusts for the repair etc. of buildings closed for regular public worship and contents**

- (1) If and so long as a building closed for regular public worship or part of it—

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- (a) is vested in the diocesan board of finance pending the making or in pursuance of a pastoral (church buildings disposal) scheme;
- (b) is vested in the Churches Conservation Trust in pursuance of a pastoral (church buildings disposal) scheme or a pastoral church buildings scheme to which section 59 applies; or
- (c) is vested in the Commissioners or the board for use or uses specified or described in a pastoral church buildings scheme or pastoral (church buildings disposal) scheme;

any property of a charity the purposes of which include the repair and maintenance of the building or the provision or maintenance of ornaments or other contents of the building shall continue to be applicable for that purpose:

Provided that—

- (i) in the case mentioned in paragraph (c), it shall only be so applicable if the scheme so provides; and
- (ii) if the building closed for regular public worship consists of part of a church or only part of the building is vested, it shall only be so applicable if and to the extent that the scheme so provides.

- (2) If and so long as any land annexed or belonging to a building closed for regular public worship is vested in the diocesan board of finance in pursuance of a pastoral (church buildings disposal) scheme or is vested in the Churches Conservation Trust in pursuance of a pastoral (church buildings disposal) scheme or a pastoral church buildings scheme to which section 59 applies, then, if that land comprises a churchyard, any property of a charity the purposes of which include the maintenance of the churchyard shall continue to be applicable for that purpose:

Provided that if part only of the churchyard is so vested, the property shall only be so applicable if and to the extent that the scheme so provides.

- (3) Nothing in subsections (1) and (2) shall affect the powers to make schemes in respect of any such charity under [<sup>F1</sup>the Charities Act 2011 ], and paragraph 9(6) of Schedule 3 to this Measure shall apply to charities affected by a pastoral (church buildings disposal) scheme as it applies to charities affected by a pastoral scheme or order.
- (4) Where the purposes of a charity include the giving of sermons or lectures in any church and, by reason of a declaration of closure for regular public worship relating to the church or a part thereof, the sermons or lectures cannot be given in that church, they shall be given in the parish church of the parish in which the church is situated, or in such other church as the bishop may direct in an instrument under seal with the approval of the Charity Commission.

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**Textual Amendments**

**F1** Words in s. 77(3) substituted (14.3.2012) by [Charities Act 2011 \(c. 25\)](#) , s. 355 , [Sch. 7 para. 147](#) (with s. 20(2) , [Sch. 8](#) )

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**Commencement Information**

**I7** S. 77 in force at 1.7.2012 by [S.I. 2012/1](#) , [art. 2](#)

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## 78 Disposal of human remains

- (1) Where any human remains are believed to be buried in or beneath a building closed for regular public worship or in any land to which a pastoral (church buildings disposal) scheme applies, the body or person in whom the property is vested or to whom it is leased or licensed shall not, subject to this section, demolish, sell, lease or otherwise dispose of it or any part of it, or use it or any part of it, or carry out any development of it or any part of it, unless—
  - (a) as respects the human remains, either the Secretary of State has made an order under subsection (3) in relation to such demolition, use or development or the remains have been removed and reinterred or cremated in accordance with the provisions of Schedule 6; and
  - (b) any tombstones, monuments or memorials commemorating the deceased persons have been disposed of in accordance with those provisions,and (in either case) the other requirements of that Schedule have been complied with.
- (2) The requirements of subsection (1) and of Schedule 6 shall not apply—
  - (a) to a building closed for regular public worship the whole of which is to be used, without any structural alteration, as a place of religious worship for a university, college, school or other institution, or as a private chapel or monument, or for religious worship by a Church other than the Church of England, so long as the whole of it continues to be so used without any structural alteration involving the disturbance of human remains or the removal of any tombstones, monuments or memorials commemorating deceased persons;
  - (b) to any land which remains annexed or belonging to a building closed for regular public worship used as mentioned in paragraph (a);
  - (c) to any land which is to be used as part of a churchyard or burial ground and is vested under section 71(6) in the person in whom the churchyard or burial ground is vested;
  - (d) to any land which is to be used as part of a burial ground and has been conveyed to a burial authority constituted by or under an enactment.
- (3) Where it appears to the Secretary of State that the demolition of a building closed for regular public worship or part thereof, or the intended use or development of any property to which a pastoral (church buildings disposal) scheme applies or any part of such property, will not involve the disturbance of human remains, he or she may, after consultation with the bishop and the Commonwealth War Graves Commission, by order provide for dispensing with the requirements (so far as they concern human remains) of subsection (1) and of Schedule 6 in relation to the demolition of the building or part thereof, or such use or development of the property or part, as may be prescribed by or under the order, subject to such conditions, restrictions, and requirements as may be so prescribed, and in relation to any sale, lease or other disposal of the property for the purpose of such use or development.
- (4) Any order made under subsection (3) may be amended or revoked by a subsequent order made in like manner and subject to the like conditions, and, if at any time the requirements of subsection (1) and of Schedule 6 are complied with in respect of the property, the order shall cease to have effect.
- (5) Where an order is made under this section in respect of any property, a copy of it certified by or on behalf of the Secretary of State to be a true copy, shall be deposited

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with the registering authority (within the meaning of the Local Land Charges Act 1975 (c. 76)), and the order shall be a local land charge.

- (6) Where, by virtue of any such order, human remains are not removed and reinterred or cremated, the requirements of subsection (1) and of Schedule 6, so far as they relate to the disposal of tombstones, monuments and memorials, shall nonetheless apply.
- (7) Where there is situated in any building or part of a building closed for regular public worship or any land to which a pastoral (church buildings disposal) scheme applies any monument or memorial commemorating a deceased person whose remains are not buried in the building or part of it or land, the body or person in whom the building or part or land is vested or to whom it is leased or licensed shall not demolish, sell, lease or otherwise dispose of it or use it for any use or carry out any development of it, unless the monument or memorial has been disposed of in such manner as the bishop after consultation with the diocesan advisory committee for the care of churches has directed, or the bishop has after such consultation dispensed with this requirement.
- (8) No faculty shall be required for anything done in pursuance of this section or Schedule 6.
- (9) In this section any reference to a pastoral (church buildings disposal) scheme shall include a reference to the provisions of a pastoral scheme or a pastoral church buildings scheme providing for the matters referred to in section 44, 58 or 59.

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

**C1** S. 78 power to apply (with modifications) conferred (1.9.2018) by [Ecclesiastical Jurisdiction and Care of Churches Measure 2018 \(No. 3\)](#), [ss. 92\(4\), 99\(2\)](#) (with s. 93, Sch. 4 Pt. 1); S.I. 2018/720, art. 2

**Commencement Information**

**I8** S. 78 in force at 1.7.2012 by [S.I. 2012/1](#), [art. 2](#)



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