



# Ecclesiastical Jurisdiction and Care of Churches Measure 2018

2018 No. 3

## PART 4

### FACULTY JURISDICTION

#### *Subject-matter of faculty*

#### **61 Vesting of privately owned parts of church**

- (1) The consistory court of a diocese may grant a faculty to vest a building forming part of, and physically connected with, a church in the diocese in the person in whom the church is vested.
- (2) Proceedings for obtaining a faculty under this section may be brought only by—
  - (a) the incumbent of the benefice to which the parish in which the church is situated belongs, or
  - (b) the PCC for that parish.
- (3) The court may grant a faculty under this section only if it is satisfied of the following four matters.
- (4) The first matter is that—
  - (a) the person in whom the church is vested is not the owner entitled to possession of the building, or
  - (b) there is reasonable doubt as to who has a right of ownership or possession over the building.
- (5) The second matter is that the incumbent or PCC, or some other person, has taken all reasonable steps since, or shortly before, the commencement of the proceedings to communicate with every person who may reasonably be supposed to have a right of ownership or possession (whether absolute or limited) over the building.

*Status: Point in time view as at 01/09/2020.*

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- (6) The third matter is that—
- (a) despite the steps mentioned in subsection (5) being taken, there has been no communication with any such person as is mentioned in that subsection, or
  - (b) every such person with whom communication has been made and who, on reasonable grounds, claims a right of ownership or possession over the building consents to the grant of the faculty.
- (7) The fourth matter is that, during the seven years immediately before the commencement of the proceedings, no works of repair, redecoration or reconstruction have been carried out on the building by or on behalf of a person claiming title to the building that is adverse to the title of the person in whom the church is vested.
- (8) In proceedings for obtaining a faculty under this section, the court may appoint a solicitor to represent all the persons, known or unknown, who—
- (a) may have a right of ownership or possession over the building, but
  - (b) are not represented.
- (9) The proper costs of a solicitor appointed under subsection (8) in the proceedings are to be paid by the person bringing the proceedings, unless the court orders otherwise.
- (10) Where a faculty is granted under this section, the building specified in it is, by virtue of the faculty itself and without any further or other assurance or conveyance, to vest in the person in whom the church is vested as part of the church for all purposes; and any rights of property of any other person in the building terminate on the grant of the faculty.
- (11) The reference in subsection (8) to a solicitor includes a reference to a body which—
- (a) is recognised under section 9 of the Administration of Justice Act 1985, or
  - (b) holds a licence in force under Part 5 of the Legal Services Act 2007.

**Commencement Information**

**II** S. 61 in force at 1.9.2018 by S.I. 2018/720, art. 2

**62 Demolition of church**

- (1) The consistory court of a diocese may not grant a faculty for the demolition or partial demolition of a church otherwise than in accordance with subsection (2), (3) or (4).
- (2) A court may grant a faculty for the demolition or partial demolition of a church if—
  - (a) the court is satisfied that another church or part of a church will be erected on the site or curtilage of the church or part in question, or on part of the site or curtilage, to take the place of the church or part, and
  - (b) the person bringing the proceedings has obtained the written consent of the bishop of the diocese.
- (3) A court may grant a faculty for the partial demolition of a church if—
  - (a) the court is satisfied that the part of the church left standing will be used for public worship according to the rites and ceremonies of the Church of England for a substantial period after the demolition, and
  - (b) the person bringing the proceedings has obtained the written consent of the bishop of the diocese.

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- (4) A court may grant a faculty for the partial demolition of a church if it is satisfied that the demolition is necessary for the purposes of the repair or alteration of the church or the reconstruction of the part to be demolished.
- (5) A reference in this section to the partial demolition of a church—
  - (a) is a reference to removal of such part of the church as would, in the opinion of the court, significantly affect its external appearance, and
  - (b) does not include a reference to the destruction or removal of minor or ancillary structures forming part of the building.

#### Commencement Information

**I2** S. 62 in force at 1.9.2018 by S.I. 2018/720, art. 2

### 63 Emergency demolition of church

- (1) The chancellor of a diocese may by an instrument in writing signed by him or her authorise the demolition of the whole or part of a church in the diocese if the chancellor is satisfied that—
  - (a) the demolition is urgently necessary in the interests of health or safety or for the preservation of the church,
  - (b) it is not practicable to secure health or safety or (as the case may be) the preservation of the church by works of repair or works for affording temporary support or shelter, and
  - (c) the works to be carried out are limited to the minimum measures immediately necessary.
- (2) An instrument under this section may require the person to whom it is issued (subject to the person obtaining any faculty required) to carry out such works for the restoration of the church following its demolition or partial demolition as the instrument may specify.
- (3) In the case of partial demolition of a church which is a listed building or is in a conservation area, an instrument under this section must require the person to whom it is issued, as soon as practicable after the works have been carried out, to give the local planning authority notice in writing describing the works.
- (4) Where the chancellor of a diocese issues an instrument under this section, he or she must send a copy of the instrument to—
  - (a) the Church Buildings Council, and
  - (b) the local planning authority.
- (5) “Listed building” and “conservation area” each have the same meaning as in the Planning (Listed Buildings and Conservation Areas) Act 1990 (see section 91 of that Act); and “local planning authority”, in relation to an area, means the body exercising the functions of the local planning authority under section 8 of that Act in that area.
- (6) The power conferred by this section does not affect any power of a chancellor which was exercisable under a rule of law on 1 March 1993 and is still exercisable on the commencement of this section.

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#### Commencement Information

**I3** S. 63 in force at 1.9.2018 by S.I. 2018/720, art. 2

### 64 Erection of building on disused burial ground

- (1) The consistory court of a diocese may, in spite of section 3 of the Disused Burial Grounds Act 1884 (which prohibits the erection of a building on a disused burial ground except for the purpose of enlarging a place of worship), grant a faculty permitting the erection of a building on a disused burial ground in the diocese otherwise than for the purpose specified by that section, if either of the following conditions is satisfied.
- (2) The first condition is that no interments have taken place in the land on which the building is to stand during the period of 50 years preceding the date of the petition for the faculty.
- (3) The second condition is that—
  - (a) no personal representative or relative of a person whose remains have been interred in the land during that period has objected to the grant of the faculty, or
  - (b) any such objection has been withdrawn.
- (4) The power conferred by this section does not affect any other power which the court has to authorise the erection of a building on a burial ground.
- [<sup>F1</sup>(5) Relative”, in relation to a person, means—
  - (a) a spouse or civil partner, parent or grandparent or child or grandchild of the person, or
  - (b) a person who is, or is the child of, a brother, sister, uncle or aunt of the person.
- (6) The reference in subsection (5)(a) to a person's spouse includes a reference to a spouse of the same sex as that person.]

#### Textual Amendments

**F1** S. 64(5)(6) inserted (1.9.2020) by [Church of England \(Miscellaneous Provisions\) Measure 2020 \(No. 1\)](#), ss. 6(11), 16(3); S.I. 2020/835, art. 2

#### Commencement Information

**I4** S. 64 in force at 1.9.2018 by S.I. 2018/720, art. 2

### 65 Exclusive right to burial places

- (1) Where an exclusive right to a burial place was granted or acquired before 15 April 1964 (the day on which the Faculty Jurisdiction Measure 1964 was passed), the right is to cease on 15 April 2064 or, if the terms of the grant or acquisition provide for the right to cease before that date, in accordance with the provision made by those terms, unless—
  - (a) it has been enlarged or continued by a faculty granted on or after 15 April 1964, but before the commencement of this section, in accordance with section 8 of the Faculty Jurisdiction Measure 1964, or

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- (b) it is enlarged or continued by a faculty granted after the commencement of this section.
- (2) The reference in subsection (1) to an exclusive right to a burial place acquired before 15 April 1964 includes a reference to an exclusive right of burial reserved before that date under section 9 of the Consecration of Churchyards Act 1867.
- (3) Where an exclusive right to a burial place was granted by a faculty granted on or after 15 April 1964 but before the commencement of this section, the right is to cease at the end of the period of 100 years beginning with the date of the faculty or, if the faculty provides for the right to cease before the end of that period, in accordance with the provision made by the faculty, unless—
  - (a) it has been enlarged or continued by a faculty granted before the commencement of this section in accordance with section 8 of the Faculty Jurisdiction Measure 1964, or
  - (b) it is enlarged or continued by a faculty granted after the commencement of this section.
- (4) An exclusive right to a burial place may not be granted or acquired after the commencement of this section otherwise than by—
  - (a) the grant of a faculty, or
  - (b) the reservation of an exclusive right of burial under section 90(2).
- (5) The period for which an exclusive right to a burial place may be granted, enlarged or continued by a faculty granted after the commencement of this section must not exceed 100 years beginning with the date of the faculty.
- (6) A reference in this section to an exclusive right to a burial place is a reference to a right, whether absolute or limited, to the exclusive use of a particular part of a churchyard, burial ground or other consecrated land for the purposes of sepulture.
- (7) This section does not apply to a burial ground or cemetery provided under the Local Government Act 1972.

#### Commencement Information

**I5** S. 65 in force at 1.9.2018 by S.I. 2018/720, art. 2

## 66 Monuments

- (1) The consistory court of a diocese may grant a faculty for the moving, demolition, alteration or carrying out of other work to a monument erected in or on, or on the curtilage of, a church or other consecrated building or on consecrated ground, even if the owner of the monument—
  - (a) withholds consent to the faculty, or
  - (b) cannot be found after reasonable efforts to find him or her have been made.
- (2) The monuments in relation to which a power to grant a faculty under this section is exercisable include a monument erected under or affected by a faculty, whenever granted.
- (3) If the court is satisfied that the matter is of such urgency that it would not be reasonable to require the petitioner to seek the consent of the owner of the monument or to take

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the steps referred to in subsection (1)(b), it may grant the faculty (even though the consent has not been obtained and those steps have not been taken).

- (4) “Monument” includes a tomb, gravestone or other memorial, and any kerb or setting forming part of it; and a reference to a monument includes a reference to a monument erected after the passing of this Measure.
- (5) “Owner”, in relation to a monument, means—
  - (a) the person who erected the monument, or
  - (b) after that person's death, the heir or heirs at law of the person or persons in whose memory the monument was erected.
- (6) The reference in subsection (1) to consecrated ground does not include a reference to a consecrated burial ground to which section 11 of the Open Spaces Act 1906 applies.
- (7) In proceedings to which section 3 of the Faculty Jurisdiction Measure 1964 applies which were pending on 1 January 2015 (the date on which the substitution of subsection (3) of that section came into force) and which are still pending on the commencement of this section, the court may exercise the power under subsection (3) of this section.
- (8) But subsection (7) of this section does not prevent the continuing application to such proceedings of subsection (3) of that section as originally enacted (which prevents the grant of a faculty affecting a monument if the owner does not consent).

**Commencement Information**

**I6** [S. 66](#) in force at 1.9.2018 by [S.I. 2018/720](#), [art. 2](#)

**67 Sale of books in a parochial library**

- (1) A faculty may be granted for the sale of a book remaining in or belonging to a parochial library.
- (2) The proceeds from the sale of a book under a faculty under this section must be applied for such ecclesiastical purposes of the parish in which the library is situated as may be specified in the faculty.
- (3) Before granting a faculty under this section, the consistory court of the diocese concerned must seek advice from the advisory committee.
- (4) Any question as to whether a particular library is, or is not, a parochial library is to be determined by the Charity Commission.

**Commencement Information**

**I7** [S. 67](#) in force at 1.9.2018 by [S.I. 2018/720](#), [art. 2](#)

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