

ELIZABETH II



1995 CHAPTER xi

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936, relating to Church of Scotland (Property and Endowments) Amendment. [19th December 1995]

WHEREAS the Provisional Order set forth in the Schedule hereunto annexed has been made by the Secretary of State under the provisions of the Private Legislation Procedure (Scotland) Act 1936, and it is requisite that the said Order should be confirmed by Parliament:

1936 c. 52.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. The Provisional Order contained in the Schedule hereunto annexed is hereby confirmed.
2. This Act may be cited as the Church of Scotland (Property and Endowments) Amendment Order Confirmation Act 1995.

Confirmation of
Order in
Schedule.
Short title.

SCHEDULE

Church of Scotland
(Property and Endowments)
Amendment

Provisional Order to amend the Church of Scotland (Property and Endowments) Act 1925 and the Church of Scotland (Property and Endowments) Amendment Act 1933, and to modify the effect of certain Orders made under the Churches (Scotland) Act 1905, so as to increase the discretionary powers of the General Assembly of the Church of Scotland in relation to certain property and endowments of the Church.

WHEREAS—

- (1) The supreme legislative, judicial and administrative Court of the Church of Scotland (hereinafter referred to as “the Church”) is the General Assembly of the Church (hereinafter referred to as “the General Assembly”):
- 1921 c. cxxv. (2) By the Church of Scotland (General Trustees) Order 1921, the Church of Scotland General Trustees (hereinafter referred to as “the General Trustees”) were incorporated with power to purchase, acquire, hold and sell, feu or otherwise dispose of lands and other property heritable and moveable and borrow on the security thereof, and with all other privileges of a body corporate:
- 1925 c. 33. (3) By the Church of Scotland (Property and Endowments) Act 1925 (hereinafter referred to as “the Act of 1925”) provisions were made in relation to the property and endowments of the Church and further powers and duties were conferred and imposed on the General Trustees:
- 1933 c. 44. (4) By the Church of Scotland (Property and Endowments) Amendment Act 1933 (hereinafter referred to as “the Act of 1933”) the Act of 1925 was amended and further provision was made in relation to the property and endowments of the Church:
- 1957 c. 30. (5) By the Church of Scotland (Property and Endowments) Amendment Act 1957 (hereinafter referred to as “the Act of 1957”) an alteration was made in the meaning of section 36 of the Act of 1925:
- 1978 c.i. (6) By the Church of Scotland (Property and Endowments) Amendment Order 1978 (hereinafter referred to as “the Order of 1978”), added powers of delegation were conferred (largely through amendment of the Act of 1925 and the Act of 1933) on the General Assembly and a further power of delegation was so conferred:
- (7) Section 36 of the Act of 1925 and sections 3(2), 6 and 8(2) of the Act of 1933, as amended by the Order of 1978, contain provisions which, while giving to the General Assembly (or any body to which it may delegate the necessary powers) a residual discretion as to the application of the property there described, stipulate that such property shall be appropriated or applied in the first place to meet the proper requirements of the parish there designated (or, in the case of the said section 36, of that parish or its neighbourhood); and section 34(1) of the Act of 1925 and section 8(1) of

the Act of 1933, in requiring that the property there described be applied in accordance with, or subject to, the said section 36, embody stipulations to similar effect:

(8) Section 3(2) of the Act of 1933 contains a further stipulation to the effect that the power to sell or otherwise dispose of certain assets shall be subject to the approval of the presbytery of the bounds; and proviso (ii) to that subsection contains a further stipulation that the transfer of certain assets in the way there specified shall be subject to the like approval of the presbytery of the bounds and of the kirk session:

(9) By the Churches (Scotland) Act 1905 (hereinafter referred to as “the Act of 1905”) a Commission was established with power by order to allocate church property between the Free Church and the United Free Church in Scotland, now united within the Church, and a number of orders made under the Act of 1905 —

1905 c. 12.

- (a) have contained a stipulation that the property comprised in the order shall be used for the purposes of and in connection with the particular United Free Church of Scotland Congregation named in the order, and
- (b) have contained a further stipulation that the proceeds of the sale or other disposition of such property shall be held and applied for those purposes:

(10) Much reorganisation has taken place, and many changes have occurred, since the stipulations mentioned in paragraphs (7) and (9) above were first imposed; those stipulations have become increasingly difficult both to interpret and to apply; and it is considered that their existence is no longer in the general interest of the Church:

(11) It is therefore expedient that those stipulations should (with certain exceptions relating to property comprised in an order made under the Act of 1905) be repealed and that the application of all the property to which they apply should be at the discretion of the General Assembly (or any body to which it may delegate the necessary powers):

(12) For similar reasons it is no longer appropriate that the statutory stipulations mentioned in paragraph (8) above should apply to the disposal or transfer of the assets there mentioned, and it is expedient that those stipulations also should be repealed:

(13) In seeking the changes mentioned above, the General Trustees act with the authority and the active approval of the General Assembly:

(14) The purposes aforesaid cannot be effected without an Order confirmed by Parliament under the provisions of the Private Legislation Procedure (Scotland) Act 1936:

1936 c. 52.

Now, therefore, in pursuance of the powers contained in the said Act of 1936, the Secretary of State orders as follows:—

1.—(1) This Order may be cited as the Church of Scotland (Property and Endowments) Amendment Order 1995; and the Act of 1925, the Act of 1933, the Act of 1957, the Order of 1978 and this Order may be cited together as the Church of Scotland (Property and Endowments) Acts and Orders 1925 to 1995.

Citation and commencement.

(2) This Order shall come into force on a date to be appointed by the General Trustees.

(3) Before the date so appointed the General Trustees shall publish in the Edinburgh Gazette notice of the date appointed, stating that it is the date appointed for the commencement of this Order.

2.—(1) In section 36 of the Act of 1925 (requirements of parish to be first charge on endowments), the words beginning “in the first place” and ending “part of a general fund at the disposal of the General Assembly or

Repeals and amendments.

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any body to which the General Assembly may delegate the necessary powers” are repealed and replaced by “for such ends, uses and purposes as the General Assembly, or any body to which the General Assembly may delegate the necessary powers, may direct”.

(2) In subsection (2) of section 3 of the Act of 1933 (non-statutory properties and endowments of quoad sacra parishes), the words “and to the approval of the presbytery of the bounds” are repealed; the words beginning “to apply the proceeds” and ending “fully met” are repealed and replaced by “the proceeds thereof”; and the words in proviso (ii) “, with the like approval of the presbytery of the bounds and of the kirk session of the parish concerned,” are repealed.

1844 c. 44.

(3) In section 6 of the Act of 1933 (power to dispose of certain churches and manses erected under the New Parishes (Scotland) Act 1844), the words beginning “in the first place” and ending “fully met shall be applied” are repealed.

(4) In section 8 of the Act of 1933 (application of properties and endowments on suppression or union of quoad sacra parishes), the words in subsection (1) “, subject to the provisions of section thirty-six of the principal Act,” are repealed; and the words in subsection (2) beginning “, in the first place” and ending “fully met shall be applied” are repealed.

Orders made
under Churches
(Scotland) Act
1905.
1905 c. 12.

3.—(1) In this section “relevant property” means property which was allocated, by an order made under the Act of 1905, to the United Free Church of Scotland to be used for the purposes of and in connection with a Congregation of that Church, but not including property which was at 30th October 1900 held by trustees upon titles which did not give to the General Assembly of the Free Church of Scotland any powers of regulation and direction as to its management and disposal.

(2) Notwithstanding anything contained in the order, or in the Act of 1905, relevant property, and any property which represents it, and the proceeds of sale of relevant property and of any such representative property, shall be appropriated for such ends, uses and purposes as the General Assembly, or any body to which the General Assembly may delegate the necessary powers, may direct.

(3) Nothing in this section shall prejudice or affect —

- (a) the terms of any trust, stipulation, condition or other requirement imposed by a donor or testator, appropriating property or its proceeds to some special Church purposes (as that term is used in the Act of 1905), or
- (b) any patrimonial right or interest of a superior or other third party —
 - (i) conferred by or reserved under any writ recorded in the Register of Sasines; or
 - (ii) registered in the Land Register of Scotland.

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