



Church of Scotland (Property and Endowments) Act 1925

1925 CHAPTER 33

PART III

TRANSFER OF PARISH CHURCHES, MANSES, GLEBES AND CHURCHYARDS

26 Parish churches, manses, glebes and churchyards

With a view to the transfer to and vesting in the General Trustees of all rights of property in and duties of maintenance or extension with respect to the churches, manses, and glebes of parishes quoad omnia (other than the churches and manses of the parishes quoad omnia mentioned in the Eighth Schedule to this Act), the transfer to and vesting in the respective parish councils of all such rights in and duties with respect to the churchyards of such parishes, and the extinction of all such rights and duties as aforesaid heretofore belonging to and incumbent upon heritors or ministers, the following provisions of this Part of this Act shall have effect, and shall apply to such parishes only.

27 Proceedings relating to matters mentioned in section three of 31 & 32 Vict. c. 96

No proceedings relating to any of the matters mentioned in section three of the Ecclesiastical Buildings and Glebes (Scotland) Act, 1868, shall be instituted or entertained before or by any presbytery or any court of law or the Commissioners except as hereinafter in this Act provided. The foregoing provision shall be deemed to have had effect as on and from the first day of February, nineteen hundred and twenty-five, but without prejudice to any proceedings instituted before that date or to the enforcement of any order, finding, judgment, interlocutor, or decree made, given, or pronounced therein, or to any contract or agreement made by heritors before that date or to any resolution passed by heritors to levy an assessment to meet expenditure incurred in pursuance of such contract or agreement, and any such assessment shall be recoverable as if this Act had not been passed.

28 Transfer of rights in parish churches and manses

- (1) Where the General Trustees are of opinion that any church or manse is not in a reasonable state of tenantable repair and that the duty of executing repairs is incumbent upon heritors, the General Trustees may agree with the heritors concerned for the repair of the same by or at the expense of the heritors or for the payment by the heritors to the General Trustees of a sum of money in lieu of repair, and failing agreement the General Trustees may within three years after the passing of this Act apply to the sheriff for an order directing the heritors to carry out such repairs (if any) not involving structural alterations as he may consider necessary, or if the General Trustees so require to pay to the General Trustees such sum of money in lieu of repair as the sheriff may determine. The sheriff shall deal with any such application in a summary manner and his decision shall be final.
- (2) Any heritor concerned or the General Trustees may apply to the sheriff for a certificate that all obligations incumbent on the heritors with respect to the church or manse of a parish have been fulfilled, and the sheriff shall deal with the application in a summary manner and shall issue a certificate to that effect if the General Trustees state or admit that all such obligations have been fulfilled, or if failing such statement or admission, he is satisfied either that any agreement or order made as aforesaid has been implemented, or that notwithstanding the absence of any such agreement no application has been made for such an order within three years after the passing of this Act, or that any application for an order so made has been refused. The certificate may be in or as nearly as may be in the form set out in the Eleventh Schedule to this Act, and shall contain or refer to a description of the subjects whether church or manse to which it relates and may be recorded by the General Trustees or by any heritor concerned in the appropriate Register of Sasines.
- (3) When a certificate issued by the sheriff under this section has been recorded as aforesaid—
 - (a) any liability or obligation incumbent on any heritor in connection with the subjects to which the certificate relates shall be at an end except the obligation or liability to assess or to be assessed for the repayment of any debt existing at the date of the certificate; and
 - (b) all rights of property in the said subjects shall by virtue of this Act and without the necessity of any further conveyance vest in and belong to the General Trustees, to the same effect as if a complete feudal title holding of the Crown in free blench farm for payment of a penny Scots yearly if asked only had been duly constituted in favour of the General Trustees.
- (4) Whereas in certain parishes, town councils in their capacity as town councils, or other public bodies (whether statutory or otherwise) or kirk sessions or persons are under the present law and practice or by Royal Warrant, charter, agreement or custom liable along with or in place of the heritors in obligations relating to the church or manse, it shall be lawful, in any such case, for the presbytery or the General Trustees or any other person concerned to apply to the sheriff to find and declare that the case ought to be dealt with by the Commissioners, and if the sheriff so finds and declares the provisions of this section shall have no further application to the case, and the Commissioners shall as soon thereafter as conveniently may be inquire into all circumstances relating to existing obligations in respect of the fabric and site of such church or manse and the maintenance of such fabric, and by order provide for the transfer to the General Trustees of the said fabric and site, and of all powers and duties with respect to the maintenance and repair of the said fabric.

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- (5) If in any application to the sheriff under this section a question arises as to whether or not the church or manse to which the application relates is the church or manse of a parish within the meaning of this section, that question shall be determined by the sheriff in a summary manner, and his determination shall be final.
- (6) Whenever in any parish it shall be necessary in consequence of anything done, or agreed, or ordered to be done under or in pursuance of this section to impose any ecclesiastical assessment upon lands and heritages in the parish, and such assessment is imposed according to the real rent thereof, the following provisions shall have effect, in lieu of the provisions of section three of the Ecclesiastical Assessments (Scotland) Act, 1900:—
- (a) No part of such assessment shall be imposed or levied upon lands and heritages occupied solely as the church and accessory buildings or burying-ground attached of any religious body, or as the dwelling-house with offices or garden or glebe land attached of the minister of such church;
 - (b) The rental on which each heritor shall be assessed shall be his total rental within the parish as appearing in the valuation roll (whether such rental consists of one or more subjects), but subject to deduction of the sum of thirty pounds;
 - (c) The amount of the deficiency created in the total amount of the assessment, by allowing the said deduction of thirty pounds to every heritor, shall be defrayed by the General Trustees;
 - (d) No heritor, who by reason of any exemption or deduction allowed by this subsection is relieved altogether from assessment in respect of the execution of any repair, or in respect of any payment by the heritors in lieu of repair, shall be entitled at any meeting of the heritors to take part in the discussion of, or to vote upon, any question concerning any plans for or the execution of the said repair, or the defraying of the expenses of the same, or any question concerning an agreement involving payment by the heritors in lieu of repair.
- (7) Whenever in any parish it shall be necessary in view of anything to be done or agreed, or in consequence of anything done or agreed, or ordered to be done under or in pursuance of this section to call a meeting of heritors, a circular letter containing an intimation of the meeting shall be sent twenty-one clear days before the meeting to every known heritor whose total rental within the parish as appearing in the valuation roll (whether such rental consists of one or more subjects) exceeds the sum of thirty pounds, and intimation of the meeting shall also be given by advertisement in a newspaper circulating in the parish once during each of two successive weeks and within the said period of twenty-one days.
- (8) Subject to the modifications in the two immediately preceding subsections of this section the existing law and practice relating to heritors' meetings and ecclesiastical assessments shall apply to meetings of heritors to be held and ecclesiastical assessments to be imposed under, or in consequence, or pursuance of this section.

29 Rights with respect to sitting accommodation in parish churches

On the expiry of one year from the date on which any church is by or in pursuance of this Act transferred to the General Trustees the right of allocating sitting accommodation in the church, whether with or without payment therefor, and the right of disposal of any proceeds therefrom shall belong to the kirk session, or to

such other body as the General Assembly may direct and any existing right to such accommodation shall cease and terminate.

30 Transfer of rights in glebes

With respect to glebes, the following provisions shall have effect:—

- (1) It shall be the duty of the clerk of every presbytery within one year after the passing of this Act to furnish to the Commissioners a list of the glebes appropriated to the ministers of the parishes in the presbytery, and of any cases where a minister has accepted or is entitled to any annual payment in place of glebe, and at the same time to intimate in which cases (if any) it is claimed by the presbytery (whether on the representation of the minister concerned or otherwise) that the heritors concerned have not fully implemented the obligations incumbent on them according to the present law and practice with respect to the provision and enlargement of a glebe :
- (2) As soon as conveniently may be after the receipt of the said lists, the Commissioners shall inquire into all circumstances relating to existing rights of property in the glebes, and in any payments in place of glebe, and shall thereafter make orders relating to the glebes and payments :
- (3) Every such order shall make provision for—
 - (a) the implement by the heritors of any obligations incumbent on them as aforesaid which have not already been implemented; and
 - (b) the transfer to and vesting in the General Trustees of the ownership of the glebes; and
 - (c) the preservation of the existing rights of all persons other than the heritors or the minister of the parish who, under or in pursuance of any general or local Act of Parliament or otherwise, have acquired any right in any glebe or any part thereof, whether as purchasers, feuars, or tenants, and the payment of any feu-duties, casualties, or rent to the General Trustees in place of the minister; and
 - (d) the manner in which—
 - (i) any burden upon the glebe created under section eighteen of the Glebe Lands (Scotland) Act, 1866; and
 - (ii) any of the costs, charges and expenses referred to in that section which have not been made a burden on the glebe
 may be dealt with, discharged and extinguished; and
 - (e) the transfer to the General Trustees of any feu-duties and Government or other securities or investments representing the price or consideration received for any glebe or part thereof or right therein under or in pursuance of the Glebe Lands (Scotland) Act, 1866, the Feudal Casualties (Scotland) Act, 1914, or any other general or local Act of Parliament, or any decree of the Court of Teinds, or any grant or contract validly made by a minister and held by any persons acting as trustees in trust for the payment of the income to the minister of the parish; and
 - (f) the conversion into a money payment of any right of pasturage over any lands which is possessed by the minister as minister of the parish, and the redemption of that money payment, if the heritor or heritors concerned so desire, in such manner as may be agreed upon between the General Trustees and such heritor or heritors, or as, failing agreement, may be fixed by the Commissioners; and

- (g) the protection of the interests of the ministers or assistants and successors who at the passing of this Act are incumbents of the benefice of any parish.

31 Redemption of feu duty affecting glebe

Where the glebe or any part thereof has been feued to the proprietors of conterminous lands in terms of section seventeen of the Glebe Lands (Scotland) Act, 1866, and the feu-duty payable therefor has been transferred to the General Trustees by an order made by the Commissioners, the said proprietors or their successors shall be entitled to redeem the feu-duty affecting the glebe or any part thereof—

- (a) for such consideration or in such manner as may be agreed upon between the person liable and the General Trustees; or
- (b) at any term of Whitsunday or Martinmas after three months' notice either—
 - (i) by payment to the Trustees of such a sum as would, if invested at the time of payment in Consolidated 2 ½ per cent. annuities produce an annual sum equal to the feu duty; or
 - (ii) by transfer to the General Trustees of such an amount of Consolidated 2 ½ per cent. annuities as would produce an annual sum equal to the feu duty.

32 Transfer of parish churchyards

- (1) The property of any churchyard heretofore held by the heritors of any parish shall as at and from the passing of this Act by virtue of this Act and without the necessity of any further conveyance be transferred from the heritors and vested in the parish council to the same effect as if the churchyard had been as at that date transferred by the heritors to the council in pursuance of subsection (6) of section thirty of the Local Government (Scotland) Act, 1894: Provided that due regard and respect shall be had by the parish council to the memory of the dead and the wishes of their relatives before any ground already allocated as a burial ground shall be treated as being vacant and unoccupied ground and re-allocated by the parish council as the burial place for another family or for the interment of another body: Provided also that in addition to the powers and duties by the said subsection transferred from the heritors to the parish council the power or duty of enlarging or extending the churchyard and assessing for the cost of such enlargement or extension shall also be so transferred and for the purpose of providing ground for such enlargement or extension or additional accommodation in a suitable and convenient situation, the parish council shall have and may exercise all the powers relating to the acquisition of land for burial grounds contained in the Burial Grounds (Scotland) Act, 1855, and the costs of providing, maintaining, and managing ground so acquired, so far as they require to be defrayed out of any rate, shall be a charge on the poor rate or the assessment under the said Act of 1855, as the parish council may determine: Provided further that where any churchyard transferred to a parish council by or in pursuance of this Act surrounds or adjoins any church or other ecclesiastical building vested in the heritors or in the General Trustees or in any other body holding the same in trust for the purpose of worship or for preservation as an ancient or historic monument—
 - (a) the churchyard shall be held subject to a right of access to the minister and the congregation attending the church, and such other persons as may resort thereto for the purpose of public or private worship, or of inspecting or repairing the church, or for any other lawful purpose; and

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- (b) no funeral shall be allowed to take place during the usual time of the ordinary services in the church; and
 - (c) any road or path through the burial ground shall be kept in good and sufficient repair by the parish council; and
 - (d) where the use of part of the churchyard is required for the enlargement or repair of the church it may be so used in any case where it might lawfully have been so used if this Act had not been passed and subject to the like conditions and restrictions, and where used for the purpose of the enlargement of the church the part so used shall thereupon vest in the heritors or the General Trustees or other body holding the church as aforesaid.
- (2) The provisions relating to the sale of the right of burial contained in section eighteen of the Burial Grounds (Scotland) Act, 1855, shall apply to any churchyard transferred to a parish council by or in pursuance of this Act, and to any enlargement or extension thereof.
- (3) Where the powers and duties conferred and imposed by the Burial Grounds (Scotland) Act, 1855, are exercised and carried out by a local authority other than the parish council, the foregoing provisions of this section shall, with the necessary modifications, have effect as if that authority were named therein instead of the parish council, and any expenses of the local authority due to the operation of this section shall be defrayed in the same manner as expenses under the said Act of 1855. Where in any parish the powers and duties conferred and imposed by the said Act of 1855 are carried out by more than one local authority, this subsection shall be held to refer to the local authority carrying out the said powers and duties within the district where the churchyard is situated.
- (4) Where the property of a churchyard is held by the kirk session of the parish the foregoing provisions of this section shall, with the necessary modifications, have effect as if the kirk session were named therein and in subsection (6) of section thirty of the Local Government (Scotland) Act, 1894, instead of the heritors.
- (5) (a) Where a churchyard of a parish has been closed—
- (i) either before or after the passing of this Act under the Burial Grounds (Scotland) Act, 1855, or as a result of proceedings under the Public Health (Scotland) Act, 1897 ; or
 - (ii) before the passing of this Act by resolution of the heritors on the ground that no accommodation for further interments remains available therein; or
 - (iii) by desuetude during a period of twenty years or upwards prior to the passing of this Act;
- the kirk session of the parish may, within ten years after the passing of this Act, in the case of a churchyard which has been closed before the passing of this Act, or within ten years after the date of the closing of a churchyard in the case of a churchyard closed after the passing of this Act, intimate in writing to the parish council or other local authority to whom the churchyard has been transferred that the kirk session desire to take over the custody, maintenance, and control of such churchyard, and the parish council or other local authority, as the case may be, shall, on receiving such intimation, transfer the custody, maintenance, and control of such churchyard to the kirk session, subject always to such conditions (if any) as the parish council or other local authority may appoint with respect to the public right of access to the churchyard free of charge.

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- (b) Where a churchyard of a parish which has been transferred to a parish council or other local authority has been closed, or has ceased to be used for interment, the parish council or other local authority, as the case may be, may at any time, upon the application in writing of the kirk session of the parish, transfer the custody, maintenance, and control of such churchyard to the kirk session.
- (c) Where the custody, maintenance, and control of a churchyard have, in pursuance of this subsection, been transferred to the kirk session, the kirk session shall thenceforward be responsible for such custody, maintenance, and control, and for any expense in connection therewith.

33 Preservation of monuments, &c, in churches and churchyards

For the preservation and maintenance of any family burying ground, or enclosure, tombstone, monument, or other memorial to the dead, in any parish churchyard or parish church, any person who, in the case of a parish churchyard, satisfies the parish council or other body to whom the parish churchyard or the control thereof is transferred, and in the case of a parish church satisfies the General Trustees that he has an interest in such burying ground, enclosure, tombstone, monument, or other memorial, on the ground of relationship to the deceased person or persons therein buried or thereby commemorated, shall be entitled, with the approval of the parish council or other body to whom the parish churchyard or the control thereof is transferred, or the General Trustees, as the case may be, to provide for the preservation and maintenance of the same.