

## REVISION OF ECCLESIASTICAL STATUTE LAW

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The following is the final section of a series of draft proposals made by a working party of the Society for the simplification of Ecclesiastical Statute Law. Previous parts were printed in 1990, at 2 Ecc. L. J. 42. and in 1992 at 2 Ecc. L. J. 305. The draft is intended only as a basis for discussion within the Society and further afield. [Page references in brackets refer to Halsbury's Statutes, 4th edition, volume 14.]

This section of the working party proposals is mainly concerned with church property law. The existing general property law is conspicuous for duplications, subsequent exemptions from its provisions, and long sentences (785 to 1018). An example of an excessively long sentence is section 1 of the Ecclesiastical Leasing Act 1842 which consists of 72 lines (818). We have therefore recommended the repeal of a series of Acts and Measures to be replaced by a single new Church Property Measure which would be confined to necessary basic propositions. We have also recommended the retention of certain other existing legislation and the replacement of the remaining provisions on corn rents by a new Measure.

We recommend that the following should be *repealed*, insofar as they are still extant:

SUPPRESSION OF RELIGIOUS HOUSES ACT 1539 (785)  
 ECCLESIASTICAL LEASES ACT 1571 (787)  
 ECCLESIASTICAL LEASES ACT 1572 (789)  
 ECCLESIASTICAL LEASES ACT 1575 (791)  
 CLERGY RESIDENCES REPAIR ACT 1776 (792)  
 ECCLESIASTICAL LEASES ACT 1800 (793)  
 GIFTS FOR CHURCHES ACT 1803 (797)  
 GIFTS FOR CHURCHES ACT 1811 (798)  
 BURIAL GROUND ACT 1816 (799)  
 CHURCH BUILDING ACT 1822 (801)  
 ECCLESIASTICAL CORPORATIONS ACT 1832 (803)  
 ECCLESIASTICAL LEASES ACT 1836 (806)  
 ECCLESIASTICAL LEASES (AMENDMENT) ACT 1836 (810)  
 PARSONAGES ACT 1838 (811)  
 ECCLESIASTICAL HOUSES OF RESIDENCE ACT 1842 (812)  
 ECCLESIASTICAL LEASING ACT 1842 (817)  
 NEW PARISHES ACT 1843 (832)  
 ECCLESIASTICAL LEASING ACT 1858 (833)  
 ECCLESIASTICAL LEASES ACT 1865 (839)  
 PARSONAGES ACT 1865 (840)  
 CONSECRATION OF CHURCHYARDS ACT 1867 (841)  
 CONSECRATION OF CHURCHYARDS ACT 1868 (846)  
 COMPULSORY CHURCH RATE ABOLITION ACT 1868 (847)  
 NEW PARISHES ACTS AND CHURCH BUILDING ACTS  
 AMENDMENT ACT 1869 (850)  
 BAPTISMAL FEES ABOLITION ACT 1872 (853)

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CHURCH SEATS ACT 1872 (853)

ISLE OF MAN (CHURCH BUILDING AND NEW PARISHES) ACT 1897  
(854)

LAW OF PROPERTY ACT 1922, ss 43, 191(1), (3) (855)

ECCLESIASTICAL DILAPIDATIONS MEASURE 1923 (856)

ECCLESIASTICAL DILAPIDATIONS (AMENDMENT) MEASURE 1929  
(859)

TITHE ACT 1536 (1019)

PLACES OF WORSHIP SITES ACT 1873 (1158)

PLACES OF WORSHIP SITES AMENDMENT ACT 1882 (1161)

(DRAFT) CHURCH PROPERTY MEASURE 199...

ARRANGEMENT OF CLAUSES

PART I

*Parochial churches and churchyards*

1. Acquisition of land by Church Commissioners.
2. Grant of land to Commissioners for church sites etc.
3. Grant of land to Incumbent for church sites etc.
4. Grants by ecclesiastical corporations to extend burial grounds.
5. Procedures for consecration of churches and burial grounds.
6. Services in reconstructed churches.
7. Confirmation of title to churchyards, etc.
8. Dealings with surplus land.

PART II

*Cathedral Property*

9. Transfer to capitular body of land vested in dignitaries.
10. Schemes for transfer of property to Commissioners and capitular bodies.
11. Acquisition and disposal of land by capitular bodies.
12. Transfer of land by schemes.
13. Christ Church Cathedral.

PART III

*Parsonages*

14. Acquisition and erection of new parsonage houses etc.
15. Powers of selling parsonage houses etc.
16. Power to divide and improve parsonage houses during vacancy in benefice.
17. Provision as to exercise of foregoing powers.
18. Application of money derived from sales or exchanges.
19. Interim income.
20. Notice of application of money.
21. Consent and approval.
22. Assurances.
23. Bishop to certify parsonage house of benefice.
24. Provision for parishes without parochial church councils.
25. Notices where bishop is also patron.
26. Rules.
27. Application to benefices in the patronage of the Crown or Duke of Cornwall.
28. Letting of certain part of parsonage house prohibited.

29. Provision to have effect where part of parsonage house has been let by incumbent prior to 1st April 1978.
30. Diocesan Board of Finance may require incumbent, etc. to furnish particulars of certain leases.
31. Provisions for transfer of parsonage land to Diocesan Board of Finance.
32. Repair of former parsonage house whilst vested in incumbent.

#### PART IV

##### *Glebe*

33. Diocesan glebe land to be held for benefit of diocesan stipends fund.
34. Means by which land may become diocesan glebe land.
35. Powers of Diocesan Boards of Finance to deal with diocesan glebe land.
36. Power to vary list of transactions, the terms of which require the Commissioners' approval.
37. Enforcement of restrictive covenants.
38. Grant or appropriation of diocesan glebe land.
39. Rent-free house for team vicar on diocesan glebe land.
40. Moneys arising from dealings etc. with diocesan glebe land to be paid to the Commissioners.
41. Commissioners to be informed of certain matters affecting diocesan glebe land.

#### PART V

##### *Parochial Trust Property*

42. Definitions and scope of Part V.
43. Separation of ecclesiastical and secular holding of parochial trust property.
44. Normal trusteeship of parochial trust property.
45. Diocesan authority property.

#### PART VI

##### *Miscellaneous and General*

46. Loans for ecclesiastical property.
47. Stamp duty.
48. Pew rents.
49. Baptismal fees.
50. Definitions and interpretation.
51. Amendments, transitional provisions and repeals.
52. Extent and application.
53. Short title and commencement.

Schedule 1 Transactions relating to Diocesan Glebe land the terms of which require the Commissioners' approval.

Schedule 2 Amendments.

Schedule 3 Transitional provisions.

Schedule 4 Acts and Measures repealed.

#### PART I

##### PAROCHIAL CHURCHES AND CHURCHYARDS

1. *Acquisition of land by Church Commissioners.*
  - (1) The Commissioners may acquire by way of gift, devise or purchase –

- (a) a church or part of a church, or any other building fit to be used as or converted into a church;
  - (b) any land as a site for a new church, or for a church to be substituted for an existing church, or for enlarging the site of an existing church;
  - (c) any land for providing a new churchyard or burial ground or for extending an existing churchyard or burial ground;
  - (d) any land required for providing access to or improving the amenities of any such church, churchyard or burial ground.
- (2) Any conveyance of land under this section shall be in such form as the Commissioners may prescribe, and shall not be valid unless the seal of the Commissioners is affixed thereto.
- (3) Any land acquired pursuant to subsection (1) shall vest in the incumbent for the time being of the benefice within the area of which the land is situated.
- (4) Any land vested in the Commissioners at the date of the passing of this Measure for any of the purposes mentioned in subsection (1) shall on the consecration of the church or burial ground vest in such incumbent as aforesaid.
- (5) It shall be lawful for the Commissioners to accept gifts and bequests of money to be laid out in the purchase of land for any of the purposes aforesaid, and to hold any property real or personal for any such purpose.
2. *Grant of land to Commissioners for church sites etc.*
- (1) It shall be lawful for any of the following to grant land, whether for full or reduced consideration or by way of gift, to the Commissioners for any of the purposes mentioned in the last foregoing section:
- (a) in the case of land belonging to Her Majesty in right of the Crown, the Crown Estate Commissioners or other government department having the management of the land;
  - (b) in the case of land belonging to her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy;
  - (c) in the case of land belonging to the Duchy of Cornwall, the Duke or other possessor of the Duchy of Cornwall;
  - (d) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of such a department, that department;
  - (e) the incumbent of a benefice, acting in his corporate capacity;
  - (f) any other corporation sole or aggregate;
  - (g) in the case of part of a common or of the waste of any manor, the lord of that manor;
  - (h) any trustees for charitable purposes.
- (2) The power conferred by paragraphs (a) and (d) of the forgoing subsection shall be exercisable only with the consent of the Treasury, the power conferred by paragraph (g) only with the consent of the Secretary of State, and the power conferred by paragraph (h) only with the consent of the Charity Commissioners (save in the case of an exempt charity within the meaning of the Charities Act 1960).
- (3) Purchase money arising on a sale under paragraph (e) of subsection (1) shall be paid to the Commissioners and appropriated for the benefit of the diocesan stipends fund.
- (4) A conveyance under paragraph (g) of subsection (1) shall be effectual for vesting in the Commissioners the fee simple of the land as if every person

having any right of common in or over the land had joined in the conveyance.

(5) In giving or withholding consent to a grant under paragraph (g) of subsection (1), the Secretary of State shall have regard to the same considerations, and shall, if necessary, hold the same inquiries as are directed by the Commons Act 1876 to be taken into consideration and held by him before forming an opinion whether an application under the Inclosure Acts shall be acceded to or not. Where it appears to the Secretary of State that any rights of common will be substantially affected, he shall as a condition of giving his consent require that compensation shall be paid to the persons entitled to such rights, and in such case sections ninety-nine to one hundred and seven of the Lands Clauses Consolidation Act 1845 shall be incorporated with this Measure and shall apply as if the Commissioners were the promoters of the undertaking.

(6) Where the land to be acquired by the Commissioners for any of the purposes aforesaid forms part of land subject to any rent or other annual or recurring charge and it appears to the Commissioners and the grantor of the land that the part of the land to be retained is of ample value to bear the said rent or charge, the part to be granted to the Commissioners may be conveyed to them free from the rent or charge, and the remaining part shall continue to be liable therefor in the same manner as the whole land was originally liable, and the Commissioners are hereby authorised to do all such acts as may be necessary to give effect to this provision.

3. *Grant of land to Incumbent for church sites etc.*

(1) It shall be lawful for any of the following to grant land within the area of any benefice or extra-parochial place, by way of gift or exchange, to the incumbent of that benefice or the minister of that extra-parochial place, as the case may be, for any of the purpose mentioned in section 1 of this Measure:

- (a) in the case of land belonging to Her Majesty in right of the Crown, the Crown Estate Commissioners or other government department having the management of the land;
- (b) in the case of land belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy;
- (c) the incumbent of a benefice, acting in his corporate capacity;
- (d) any other corporation sole or aggregate;
- (e) in the case of part of a common or of the waste of any manor, the lord of that manor.

(2) No single grant of land in exercise of the power conferred by paragraph (a), (b) or (e) of the foregoing subsection shall exceed five acres in extent, and no single grant under paragraph (c) or (d) shall exceed one acre in extent.

(3) A conveyance under paragraph (e) of subsection (1) shall be effectual for vesting in the incumbent or minister to whom the conveyance is made and his successors the fee simple of the land as if every person having any right of common in or over the land had joined in the conveyance.

4. *Grants by ecclesiastical corporations to extend burial grounds.*

(1) It shall be lawful for any ecclesiastical corporation sole or aggregate to grant land adjacent to an existing churchyard or burial ground within the

area of any benefice or extra-parochial place, to the incumbent of that benefice or the minister of that extra-parochial place, as the case may be, by way of exchange only for the purpose of extending such churchyard or burial ground.

(2) No single grant of land in exercise of the power conferred by the foregoing subsection shall exceed one acre in extent.

(3) The power conferred by subsection (1) shall be exercisable by an incumbent only with the consent of the bishop.

5. *Procedure for consecration of churches and burial grounds.*

(1) Subject to the provisions of subsection (2), the consecration of any land or building shall only take place on the petition in writing of the freehold owner of the land in question, addressed to the bishop of the diocese or other Ordinary of the place where the land is situated, and having annexed or endorsed a sufficient plan of the land intended for consecration. The Ordinary may require, as a condition of granting the petition, that the petition be signed by such additional persons as he considers appropriate.

(2) Land which is vested in the Commissioners, having been acquired by them or their predecessors for any of the purposes mentioned in section 1(1) of this Measure, may be consecrated on the petition of the incumbent and churchwardens of the place where the land is situated, without the Commissioners themselves being required to join in the petition. Land, the freehold of which belongs to the incumbent of a benefice which is for the time being vacant, may be consecrated on the petition of the churchwardens of the parish alone.

(3) Consecration of the land added to an existing churchyard or burial ground, or land on which an extension to an existing church has been or will be built, may be effected by the procedure set out in the following subsection.

(4) The procedure referred to in the foregoing subsection is that an Instrument of Consecration shall be signed by the Ordinary, at the land to be consecrated, in the presence of any two clergy of the diocese; and having been attested by them and deposited in the diocesan registry, shall have the same effect as a Sentence of Consecration. The instrument shall be endorsed, in the following form, on the plan annexed to the petition:

‘We A by Divine Permission Lord Bishop of B do hereby declare and record the ground added to the [churchyard of C] [burial ground known as D], as shown edged red on the plan [below] [overleaf], to be consecrated ground and part of the said [churchyard] [burial ground].

(5) Consecration of land to which subsection (3) applies may, and consecration of any other land shall, be effected by the reading and signature of the Ordinary, at the land to be consecrated, in the presence of the diocesan registrar or of an ecclesiastical notary deputed in his stead, and subsequent deposit in the diocesan registry, of a Sentence of Consecration in the accustomed form.

6. *Services in reconstructed churches.*

All marriages, rites and ceremonies solemnised or performed, whether before or after the passing of this Measure, in a church which was built, repaired or enlarged

after its consecration and before the ceremony in question, shall be valid and effectual to the same extent as they would have been if performed in the same building prior to the rebuilding, repair or enlargement; notwithstanding that the works may have resulted in the realignment or partial demolition of the external walls of the building or an alteration of the position of the communion table.

7. *Confirmation of title to churchyards, etc.*

Any ground consecrated as a churchyard or burial ground shall after twenty years from the date of consecration be considered as discharged from all adverse titles, claims and demands whatsoever, and as absolutely vested in the burial authority, trustees or other freehold owner (if any) on whose petition the land was consecrated (or its or their successor) if of none then in the incumbent of the benefice within the area of which it lies.

8. *Dealings with surplus land.*

(1) An incumbent in whom unconsecrated land is vested for any of the purposes mentioned in section 1(1) of this Measure shall have power, with the consent of the bishop and of the Commissioners, and after obtaining the authority of a faculty if the land forms part of the curtilage of the church,

- (a) to sell the land or any part thereof;
- (b) to exchange the land or part thereof for other land more suitable for the purpose for which the original land was acquired, and to receive or pay money by way of equality of exchange;
- (c) to appropriate or convey the land or part thereof to any person for any charitable purpose affecting the parish in which the land is situated;
- (d) with the consent of the Diocesan Board of Finance, to convey the land or part thereof to that board as diocesan glebe land;
- (e) if the land was acquired by way of gift, to re-convey it or part thereof to the grantor or his successors without consideration.

(2) No person shall give consent under the foregoing subsection unless satisfied that the land concerned is no longer required for the purpose for which it was acquired.

(3) No land acquired by way of gift or for nominal consideration shall be dealt with under paragraph (c) or (d) of subsection (1) without the consent of the grantor or his successor in title, unless –

- (a) the land is conveyed for the widening of a highway; or
- (b) a certificate is sealed by the Commissioners stating that they are satisfied that it is not reasonably practical to apply for such consent.

(4) Proceeds of any sale under this section shall be paid to the Commissioners and applied by them to such purposes, being for the benefit of the parish or benefice in the area of which the land is situate, as may be agreed by the Commissioners and the bishop after consultation with the incumbent if any.

(5) The Commissioners shall have the like powers, in relation to unconsecrated land vested in them for any of the purposes mentioned in section 1(1) of this Measure, as are conferred upon an incumbent by this section.

PART II  
CATHEDRAL PROPERTY

9. *Transfer to capitular body of land vested in dignitaries.*
- (1) Where at or after the passing of this Measure any land is or becomes vested for an estate in fee simple as a corporation sole or for an original term exceeding ten years in a dean provost or canon of a cathedral, that land together with any easements rights or privileges annexed thereto shall by virtue of this section and without any conveyance assignment transfer or other assurance vest in the capitular body of the cathedral of which they are dean provost or a canon.
- (2) The vesting of land by virtue of this section shall not affect any previously existing trust lease contract or any mortgage or other charge affecting the land at the date of vesting.
- (3) (a) A capitular body shall not sell or otherwise dispose of any land vested in it by virtue of this section or of section 15 of the Cathedrals Measure 1963 without first consulting the dean provost or canon in whom it would have been vested but for the provisions of those sections.
- (b) A purchaser for value from a capitular body of land affected by this subsection shall not be bound to enquire whether the provisions of the foregoing paragraph have been complied with and the title of such a purchase to the land shall not be affected by any failure so to comply.
10. *Scheme for transfer of land to Commissioners and capitular bodies.*
- (1) The Commissioners with the consent of the administrative body of the cathedral church concerned may prepare and submit to Her Majesty in Council for confirmation a scheme providing –
- (a) for the transfer to the Commissioners of the whole or part of the land belonging to any capitular body (other than the cathedral church and the buildings belonging thereto) for such consideration and on such terms as the Commissioners think fair and reasonable, including the extinguishment of any right of the Commissioners to receive any part of the income or property of that capitular body;
- (b) for the transfer of land by the Commissioners to any capitular body either in consideration of a reduction of any annual sum payable by the Commissioners to the capitular body or in consideration of the payment of any sum of money or the transfer of any property to the Commissioners or for no consideration.
- (2) A scheme under the last foregoing subsection may –
- (a) amend or repeal the provisions of any other scheme made under any Act or Measure relating to the land of the cathedral church concerned, other than provisions forming part of the constitution and statutes of the cathedral church;
- (b) contain such incidental, consequential or supplementary provisions as may be necessary or expedient for giving full effect to the scheme.
- When any such scheme shall be approved by her Majesty in council it shall be lawful for her Majesty in Council to make an order or orders ratifying the same, and specifying the time or times when such scheme or the several parts thereof shall take effect.

11. *Acquisition and disposal of land by capitular bodies.*

(1) A capitular body shall, subject to the provisions of this section, have the following powers, that is to say:

- (a) to sell, let, exchange, mortgage or charge land, and to dedicate land for the purposes of a highway;
- (b) to acquire land by gift *inter vivos* or by will;
- (c) to acquire land required for providing access to land owned by the capitular body or for improving the amenities of any such land;
- (d) to acquire land for improving the amenities of the cathedral church;
- (e) to acquire land for any ecclesiastical educational or other purpose connected with the cathedral church or any parish of which the cathedral church or any part of the cathedral church is the parish church;
- (f) to acquire land for the provision of houses to be occupied by persons engaged or to be engaged in duties connected with the cathedral church.

(2) Before exercising any powers conferred by the last foregoing subsection, the capitular body shall obtain the consent of the Commissioners and also in the case of the disposal, leasing, mortgaging or charging of a house of residence –

- (a) the consent of the bishop;
- (b) the consent of the dean, provost or residentiary canon who normally occupies the house except during a vacancy in the office of the dean, provost or residentiary canon, as the case may be; and
- (c) where the house is allocated for the use of the holder of a dignity the right of presentation to which is vested in Her Majesty, the consent of Her Majesty;

provided that no consent shall be required under this subsection for:

- (i) the grant of a lease to a clerk in Holy Orders holding office in the cathedral church or to any person employed in the cathedral church;
- (ii) the acquisition of land by gift *inter vivos* or by will;
- (iii) any transaction for which the sanction of an order is required under section 29 of the Charities Act 1960;
- (iv) any transaction relating to land which at the passing of this Measure is held by the Dean and Chapter of the Cathedral Church of Saint Paul in London as part of the Tillingham Estate; or
- (v) transactions requiring consent under the Care of Cathedrals Measure 1990.

(3) The Commissioners may by order except from the provisions of the last foregoing subsection transactions relating to land forming part of an estate specified in the order or transactions of a class so specified or relating to property of a class so specified.

(4) The powers conferred by this section may be exercised notwithstanding that the consideration for any transaction executed thereunder may not be the full consideration.

(5) The sealing by the Commissioners of any document under this section shall be conclusive evidence that all the requirements of this section with respect to the transaction to which the document relates have been complied with.

(6) A statement in a document sealed by the capitular body that the consent of the Commissioners is not required under this section shall be conclusive evidence of that fact.

12. *Transfer of land by schemes.*

Where a scheme under this Part of this Measure provides for the transfer of any land, the scheme may also provide for the vesting without any conveyance or other assurance of the land to be transferred.

13. *Christ Church Cathedral.*

This Measure shall not apply to the Cathedral Church of Christ in Oxford.

### PART III PARSONAGES

14. *Acquisition and erection of new parsonage houses, etc.*

(1) The incumbent of a benefice, or during a vacancy the bishop shall, subject to the provisions of this Measure, have the following powers, that is to say

(a) to erect or purchase a house or purchase land for the site of a house or land to be enjoyed therewith, being respectively suitable for the residence and occupation of the incumbent of the benefice, but so that the total area of any land purchased including the site of any house or other buildings shall not exceed six acres;

(b) to improve any house erected or purchased under the preceding paragraph or any house acquired by way of exchange under the provisions of this Measure, or any house forming part of the property of the benefice which it is proposed to constitute the residence house of the benefice.

(2) In cases where the foregoing powers or any of them are exercised by the bishop, he shall have power to enter upon the land of the benefice for the purpose of exercising such powers.

(3) No power conferred by subsection (1) of this section shall be exercisable without the consent of the Commissioners, the Parsonages Board and (in cases where the power is exercised by the incumbent) the bishop.

(4) The Commissioners shall have power exercisable in their discretion to lend money to the incumbent or bishop (as the case may be) for any of the purposes of this Part of this Measure.

(5) If the bishop shall during a vacancy in any benefice have exercised the powers of erecting or improving a house conferred by this section and the vacancy shall have been filled before the completion of the work of erection or improvement, the incumbent of the benefice shall complete such work in accordance with the plans and specifications authorised by the bishop with such modifications (if any) as may be agreed to by the bishop and the Parsonages Board and, in default of his so doing, it shall be lawful for the Board so to complete such work.

15. *Powers of selling parsonage houses, etc.*

(1) Where any house or land enjoyed therewith belonging to a benefice shall be unsuitable for the purposes of the benefice, by reason of location, size or otherwise, or where for other good and sufficient reason it shall be thought advisable to sell and dispose of such house and land or any part thereof, the incumbent of the benefice or during a vacancy the bishop shall, subject to the provisions of this Part of this Measure, have the following powers, that is to say –

(a) to sell such house and land or any part thereof, with any land contiguous thereto belonging to the benefice, either together or in parcels;

(b) to demolish such house and any buildings occupied therewith, or any of them and to sell the materials and the site thereof, or both, or any part thereof.

(2) Where power to sell exists as provided in the foregoing subsection the incumbent or bishop, as the case may be, shall also have the following powers, that is to say –

(a) to exchange the house and land, or any part thereof, in relation to which such power of sale exists for any other house and land to be enjoyed therewith which is suitable for the residence and occupation of the incumbent of the benefice;

(b) to pay and receive money in respect of equality of exchange.

(3) Upon a sale or exchange under the powers of this part of this Measure –

(a) any hereditament, easement, right or privilege of any kind may be excepted, reserved or granted over or in relation to any land retained for the benefice affected, or disposed of or in relation to any part thereof;

(b) any restriction with respect to building on or other user of land or with respect to any other thing as may be imposed and made binding, so far as the law permits, by covenant, condition, or otherwise.

(4) No power conferred by this section shall be exercisable –

(a) without the consent of the Commissioners, the Parsonages Board, and (in cases where the power is exercised by the incumbent) the bishop;

(b) without the consent of the Crown Estate Commissioners where the property proposed to be disposed of is held under any grant made by or on behalf of Her Majesty in right of her Crown; or

(c) over or in respect of any property vested in trustees.

(5) All money arising from any sale or exchange under the provisions of this section shall be paid to the Commissioners whose receipt shall be a sufficient discharge to the person paying such money.

16. *Power to divide and improve parsonage houses during vacancy in benefice.*

(1) During a vacancy in a benefice the bishop shall have power, with the consent of the Commissioners and the Parsonages Board, to authorise the sequestrators of the benefice –

(a) to divide the residence house of the benefice into two or more parts or to reduce the size of the residence house in any other way;

(b) to enlarge the residence house;

(c) to carry out improvements to the residence house and buildings occupied therewith;

(d) to carry out improvements to the driveway, paths and gardens of the residence house;

and for the purpose of carrying out work authorised under this section the sequestrators may enter upon the land of the benefice.

(2) Where the bishop during a vacancy in a benefice exercises his power under subsection (1) of this section and the vacancy is filled before the work undertaken in pursuance of that power has been completed, the incumbent succeeding to the benefice shall, to the extent of any money specially applicable or lent by the Commissioners, complete that work with such modifications, if any, as may be agreed by the bishop, the Commissioners and the Board, and in default of his so doing, the Board may complete the work, and for that purpose may enter upon the land of the benefice.

17. *Provisions as to exercise of foregoing powers.*

(1) An incumbent or bishop proposing to exercise any of the powers conferred on him by any of the foregoing sections of this Part of this Measure shall give the prescribed notice to the registered patron of the benefice affected and to the parochial church council of the parish within which that benefice is situate, and the Commissioners shall, before consenting to the exercise of such power, consider any objections raised within the prescribed time by such patron or council, and, if satisfied that such objections ought not to prevent the exercise of such power, shall inform the patron or council, as the case may require, of the reasons upon which such conclusion is founded.

(2) Where it shall appear desirable to the Parsonages Board that any powers conferred by any of the foregoing sections of this Part of this Measure should be exercisable in any benefice, the Board shall make a report to the bishop, and if the bishop and the incumbent of the benefice, or during a vacancy the bishop acting alone, shall request the Board so to do, the Board may frame proposals for the exercise of such power in accordance with the provisions of this Part of this Measure, and such proposals shall be communicated by the Board to the bishop and (except during a vacancy) to the incumbent.

(3) The Commissioners may make such recommendations as may be deemed fit as to the costs, charges and expenses which may be incurred in connection with the exercise of any power conferred by any of the foregoing sections of this Part of this Measure, and any recommendations so made shall, if the Board concur in them, be binding on the person exercising such power.

18. *Application of money derived from sales or exchanges.*

(1) Subject to the provisions of this section, the Commissioners shall in their discretion apply and dispose of any money arising from any sale or exchange under this Part of this Measure for one or more of the following purposes, that is to say –

(a) in payment of the costs, charges and expenses of such sale or exchange;

(b) for or towards any one or more of the purposes of the powers contained in section 14(1) and (2) and section 16(1) of this Measure;

(c) in repayment of any money expended with the previous consent of the Commissioners and the Parsonages Board for the purpose of rendering the property sold or exchanged more readily saleable or capable of exchange;

(d) in payment to the incumbent of the benefice affected of the whole or any part of the expenses reasonably incurred by him in respect of his removal from one residence to another, the storage of his furniture, and the rent paid by him for any temporary residence pending his occupation of the new residence house of the benefice; provided that no payment shall be made under the provisions of this paragraph unless the consent of the bishop and the Board shall have first been obtained; and unless full allowance has first been made for any income derived by the incumbent from any sale or exchange under this Part of the Measure;

(e) in repaying to an incumbent such amounts as he may have paid to the Commissioners in reduction of a loan made by them for or towards the erection or purchase of a house of residence;

(f) in repaying to the Commissioners the whole or any part of any grant made by them for or towards the erection or purchase of a residence house;

(g) if such money shall not have been wholly expended for one or more of the above-mentioned purposes, in erecting, rebuilding, improving or enlarging any house, cottage or farm buildings required for or belonging to the benefice.

(2) Provided that in any case where such money shall have arisen from the sale or exchange of property purchased originally or built or improved either wholly or in part by means of a loan or which is subject to any mortgage or charge in favour of the Commissioners arising under any Act or Measure and any principal money or interest shall remain owing on account of such loan or under such mortgage or charge, the Commissioners may apply such money in or towards the discharge of such principal money or interest.

(3) Any money arising from any sale or exchange of any part of the property of a benefice under this Part of this Measure, in so far as such money shall not be applied and disposed of under the foregoing provisions of this Part of this Measure, or under section 36(2) of the Endowments and Glebe Measure 1976, shall be allocated by the Commissioners to the capital account of the diocesan stipends fund of the diocese to which the benefice belongs or to the pastoral account of that diocese, or partly to one and partly to the other, as the Diocesan Board of Finance may determine.

#### 19. *Interim income.*

In any case where any income shall be derived from any money arising from any sale or exchange under this Part of this Measure, pending the application and disposition of such money under the foregoing provisions of this Part of this Measure, such income shall be added to the capital by way of accumulation, unless the Commissioners shall think fit to pay the whole or any part thereof to the incumbent of the benefice concerned or otherwise apply the same as income of the benefice on account of which the same shall have been received.

20. *Notice of application of money.*

The Commissioners shall give the prescribed notice to the registered patron of the benefice affected and to the parochial church councils of the parishes situated within the area of that benefice of any proposed application and disposition of money under section 18(1)(ii) of this Measure, and shall consider any representations made by such patron or councils with regard to such application and disposition.

21. *Consent and approval.*

(1) Any consent or approval of a bishop under this Part of this Measure shall be signified by writing under his hand.

(2) Any consent or approval of a Parsonages Board may be given by an instrument in writing signed by the secretary of the Board.

22. *Assurances.*

(1) Land sold, purchased or exchanged under this Part of this Measure shall be conveyed by or to the incumbent of the benefice affected in his corporate capacity, and so that during a vacancy the bishop shall have power to convey or to take under a conveyance in the name and on behalf of the incumbent of the benefice in his corporate capacity, and no conveyance so made or taken shall on the vacancy being filled be capable of being disclaimed or renounced by any incumbent succeeding to the benefice.

(2) The sealing by the Commissioners of any conveyance executed under this Part of this Measure shall be conclusive evidence that all the requirements of this Part of this Measure with respect to the transaction carried out by such conveyance have been complied with.

(3) Every conveyance of land purchased or acquired by way of exchange for a benefice under this Part of this Measure shall be registered in the prescribed manner in the registry of the diocese concerned.

(4) In any case where any land sold or exchanged under this Part of this Measure is subject to any mortgage or charge in favour of the Commissioners, the conveyance thereof under this Part of this Measure shall be effectual to pass the same discharged from such mortgage or charge, and such mortgage or charge shall attach to the purchase money arising on the sale or to any money paid to the Commissioners by way of equality of exchange and to the house and land acquired by way of exchange.

23. *Bishop to certify parsonage house of benefice.*

(1) Any house erected, purchased, acquired by way of exchange or improved under the powers of this Part of this Measure as the residence of an incumbent of a benefice shall as from the date on which the bishop so certifies in writing be deemed and taken for the purposes of section 1 of the Clergy Residence Measure (199–) to be the parsonage house of the benefice for which the same is erected, purchased, acquired by way of exchange or improved for all purposes.

(2) If a parsonage house of a benefice is divided into two or more parts, one only of the said parts shall as from the date on which the bishop so certifies in writing be deemed and taken to be the parsonage house of the benefice.

24. *Provisions for parishes without parochial church councils.*

Where it is proposed that the powers conferred by this Part of this Measure shall be exercised in relation to any benefice and at the time of such proposed exercise

there is no parochial church council constituted in any of the parishes within the area of that benefice, the following provisions shall have effect:

- (a) any notice or information required to be given under this Part of this Measure to the parochial church council of the parish concerned shall be deemed to be duly given if given to the churchwardens of that parish;
- (b) the churchwardens of the parish concerned shall have the same powers of raising objections, making representations and giving consents as are conferred on parochial church councils by this Part of this Measure, and every objection, representation or consent so raised, made or given, shall be as effectual for all the purposes of this Part of this Measure as if there were a parochial church council duly constituted in that parish, and such objection, representation or consent had been duly raised, made or given by such parochial church council.

25. *Notices where bishop is also patron.*

In any case where the bishop is himself the registered patron of a benefice in right of his see (either solely or with others), it shall not be necessary to give the bishop in his capacity as registered patron any notice or information which is required to be given to the registered patron under this Part of this Measure.

26. *Rules.*

- (1) The Commissioners shall make rules for prescribing anything which is to be prescribed hereunder, and generally for carrying this Part of this Measure into effect.
- (2) No rule made by the Commissioners in pursuance of this Part of this Measure shall come into force until it has been submitted for approval to and approved by the General Synod.
- (3) The Statutory Instruments Act 1946 shall apply to any rules approved by the General Synod under this section as if they were a statutory instrument and were made when so approved and as if this Measure were an Act providing that any such rules shall be subject to annulment in pursuance of a resolution of either House of Parliament.

27 *Application to benefice in the patronage of the Crown or Duke of Cornwall.*

Where Her Majesty in the right of her Crown or of the Duchy of Lancaster, or the possessor for the time being of the Duchy of Cornwall, is a patron of a benefice in respect of which notice is to be served on the patron under this Measure, such notice shall be served in accordance with directions which shall be given by the Lord Chancellor to the Commissioners from time to time.

28. *Letting of certain part of parsonage house prohibited.*

Neither the incumbent of a benefice nor any sequestrators thereof shall grant a lease of any excluded part of a parsonage house and any lease granted in contravention of this section shall be void.

29. *Provisions to have effect where part of parsonage house has been let by incumbent prior to 1st April 1978.*

- (1) Where any excluded part of a parsonage house belonging to a benefice is the subject of a lease, the incumbent shall within seven days after any sum in respect of rent under the lease is received by him pay that sum to the

Diocesan Board of Finance for the diocese to which the benefice belongs (hereafter in this section referred to as "the Board").

- (2) Any sum which an incumbent is required by subsection (1) above to pay to the Board shall be recoverable as a debt due to the Board from the incumbent or his personal representative.
- (3) Any sum paid to the Board under subsection (1) above shall be deemed to be income of the Board arising from the diocesan glebe land of the diocese and shall be deemed not to form part of the income of the incumbent by whom the sum was paid.
- (4) The Board may require the incumbent to take all necessary steps to enforce any covenant by the lessee contained in the lease and, in particular, the covenant to pay rent.
- (5) If the incumbent fails to take or prosecute such steps or requests the Board to do so on his behalf, the Board may take or continue, in the name and on behalf of the incumbent, proceedings for enforcing any such covenant, and shall be deemed for that purpose to be the duly authorised attorney of the incumbent and his successors; and the incumbent shall leave the conduct of the proceedings in the hands of the Board.
- (6) The Board shall indemnify the incumbent in respect of any costs reasonably incurred by him in any proceedings to enforce any such covenant and not recovered from the other party.
- (7) The Board shall make good to the incumbent or defray on his behalf the cost of fulfilling his obligations under the lease and of meeting any expenses of maintenance, repairs and insurance of the premises subject to the lease which fall to be borne by him.
- (8) Any payments made by the Board under subsection (7) above shall be deemed to have been made to meet recurring outgoings attributable to the diocesan glebe land of the diocese.
- (9) During a vacancy in a benefice the preceding provisions of this section shall have effect with the substitution for references to the incumbent of references to the sequestrators of the benefice.

30. *Diocesan Board of Finance may require incumbent, etc. to furnish particulars of certain leases.*

The Diocesan Board of Finance for a diocese may from time to time require the incumbent, or the sequestrators, of a benefice belonging to the diocese to supply the Board with particulars of any part of the parsonage land of the benefice which is the subject of a lease and of the terms of the lease, and any person to whom a requirement under this section is directed shall comply with the requirement.

31. *Provisions for transfer of parsonage land to Diocesan Board of Finance.*

- (1) Where the Commissioners are satisfied that any parsonage land belonging to a benefice or any part thereof, and in particular, a parsonage house or any excluded part thereof, is not necessary for the convenient occupation of the incumbent or, as the case may be, is not required as the residence house of the benefice, they may, subject to subsection (2) below, by order under their seal provide for the transfer of that land on such date as may be specified in the order to the Diocesan Board of Finance.

(2) Before exercising their powers under this section the Commissioners shall consult the Diocesan Board of Finance and the incumbent or any sequestrators concerned.

(3) On the date specified in an order under this section –

(a) the land referred to therein shall without any conveyance or assurance vest in the Board by virtue of this section subject to and with the benefit of any previously existing tenancies and any covenants, conditions, agreements, easements and rights to which that land is subject and of which it has the benefit immediately before that date; and

(b) if the order so provides, subject to all such rights in the nature of easements as are necessary for the reasonable enjoyment of any other parsonage land belonging to the benefice in question or any church land, being rights which were formerly exercisable by the incumbent of that benefice in right of his benefice;

and where the order contains a provision made in pursuance of paragraph (b) above, such rights as are referred to in that provision shall on and after the date so specified take effect by virtue of this section as legal easements appurtenant to the land referred to in that provision.

(4) An order under this section may also provide that on the date specified in the order there shall, without any conveyance or other assurance, vest by virtue of this section in the Board to which any parsonage land is transferred by the order all such rights in the nature of easements over any other parsonage land belonging to the benefice in question or any church land as are necessary for the reasonable enjoyment of the land transferred, being rights which were formerly exercisable by the incumbent of that benefice in right of his benefice.

(5) An order under this section may vest land in the Diocesan Board of Finance subject to or with the benefit of any existing tenancy, covenant, condition, agreement, easement or right.

(6) Any land which vests in a Diocesan Board of Finance by virtue of this section shall be held by the Board as part of the diocesan glebe land of the diocese.

(7) An order under this section may contain such incidental or supplementary provisions as appear to the Commissioners to be necessary or expedient for giving effect to the purpose of the order.

(8) The Commissioners may by a further order under this section remedy any defects or omissions which in their opinion exist in the original, or any previous amending order made by them thereunder.

### 32. *Repair of former parsonage house whilst vested in incumbent.*

(1) Any dwellinghouse which was previously a parsonage house and should, in the opinion of the Commissioners, be retained for use as such in the future, shall together with the land enjoyed therewith, and so long as the house continues to be the property belonging to a benefice, be deemed to be a parsonage house for the purpose of the Repair of Benefice Buildings Measure 1972.

(2) In relation to a dwellinghouse held under a lease, this section shall not apply in relation to any repairs for which the landlord is responsible.

## PART IV

## GLEBE

33. *Diocesan glebe land to be held etc. for benefit of diocesan stipends fund.*

The diocesan glebe land of a diocese shall be held, managed and dealt with by the Diocesan Board of Finance for the benefit of the diocesan stipends fund of the diocese.

34. *Means by which land may become diocesan glebe land.*

(1) A Diocesan Board of Finance may, with the consent of the Commissioners, acquire land to be held as part of the diocesan glebe land of the diocese.

(2) Subject to subsection (3) below, a Diocesan Board of Finance may, with the consent of the Commissioners and of the Charity Commissioners, appropriate for use as diocesan glebe land of the diocese any land vested in the board, and any land appropriated under this subsection shall be held by the Board as part of such glebe land.

(3) Where any land is vested in a Diocesan Board of Finance pursuant to section 6(2) of the Parochial Church Councils (Powers) Measure 1956 or section 3 of the Incumbents and Churchwardens (Trusts) Measure 1964, no appropriation of that land under subsection (2) above shall be made without the consent of the parochial church council concerned or the managing trustees of that land, as the case may be.

35. *Powers of Diocesan Boards of Finance to deal with diocesan glebe land.*

(1) Subject to subsections (2) to (4) below, a Diocesan Board of Finance may sell, exchange, lease, mortgage or otherwise deal with any diocesan glebe land of the diocese on such terms as the Commissioners may approve, being terms which the Commissioners consider proper and advisable; and where the amenities of any land will be affected by the proposed transaction and the Commissioners think it necessary to do so in the interest of safeguarding those amenities, they may, notwithstanding anything in section 33 of this Measure, approve such terms as having regard to all the circumstances they consider reasonable and proper.

(2) Whenever the Commissioners approve a scheme prepared by a Diocesan Board of Finance under section 19 of the Endowments and Glebe Measure 1976 they shall authorise that Board in writing to enter into and carry out any transaction relating to the diocesan glebe land of the diocese other than a transaction specified in Schedule 1 to this Measure, without the approval of the Commissioners.

(3) If the Commissioners are satisfied –

(a) that the scheme for management of the diocesan glebe land of a diocese which has been approved by them under the said section 19 of the Endowments and Glebe Measure 1976 is not being complied with, or

(b) that the scheme is not being so operated as to result in the efficient management of that land,

they may by notice in writing given to the Diocesan Board of Finance suspend the authorisation given to that Board under subsection (2) above (or, in the

case of authorisation given prior to the coming into force of this Measure, under subsection 20(2) of the Endowments and Glebe Measure 1976), and as from the date on which notice is received by the Board that authorisation shall be of no effect unless and until the suspension is cancelled under subsection (4) below.

(4) If a Diocesan Board of Finance on which a notice has been served under subsection (3) above satisfies the Commissioners that the scheme for the management of the diocesan glebe land of the diocese is being complied with or, as the circumstances require, that the Board has taken the action necessary to ensure that the scheme will thereafter be so operated as to result in the efficient management of that land, the Commissioners shall by notice in writing given to the Board cancel the suspension effected under subsection (3) above.

(5) Before a Diocesan Board of Finance applies to the Commissioners for their approval of the terms of any transaction under subsection (1) above, the Board shall serve on the incumbent of the benefice in the parish of which the land to which the transaction relates is situated or, if the benefice is vacant, on the churchwardens of that parish a notice informing him or them of the nature of the proposed transaction, identifying the land to which it relates and the easements (if any) over any church land or parsonage land of which that land has the benefit, and stating that written representations with respect to the transaction may be made to the Board not later than a date specified in the notice, being not less than twenty-one days after service of the notice.

(6) Where a transaction consists of the lease of diocesan glebe land which had it not become such land would be an excluded part of a parsonage house, a notice under subsection (5) above shall, if the benefice is vacant, be served on the bishop of the diocese as well as on the churchwardens of the parish.

(7) When making an application to the Commissioners for their approval of the terms of any transaction under subsection (1) above, any such Board shall forward with the application a copy of any representations which have been made to the Board under subsection (5) above with respect to the transaction or, if no such representations were made to the Board on or before the date specified in the notice required by that subsection, a statement by the Board to that effect.

(8) Before deciding whether to approve the terms of any transaction under subsection (1) above the Commissioners shall consider any representation a copy of which has been sent to them under subsection (7) above, and where the transaction consists of the lease of such land as is referred to in subsection (6) above they shall, if the incumbent concerned so requests, or if during a vacancy the bishop of the diocese or the churchwardens of the parish so request, give him or them, as the case may be, an opportunity to make oral representations to their representative with respect to the proposed transaction.

(9) As a condition of giving their approval to the terms of any transaction under subsection (1) above the Commissioners may require the Board to include in their conveyance, deed of exchange, lease or other document such provisions, if any, as appear to them to be necessary to give effect to those terms.

(10) A statement in a document signed by the secretary or other duly authorised officer of the Commissioners that the Commissioners have approved the terms of any transaction under subsection (1) above which is specified in the document shall be conclusive evidence that those terms have been so approved.

(11) A statement in a document giving effect to a transaction made by a Diocesan Board of Finance under this section that the approval of the Commissioners of the terms of the transaction is not required under subsection (1) above shall, if the document is sealed with the seal of the Board or is signed on behalf of the Board by a person duly authorised by the Board to act on its behalf, be conclusive evidence of that fact.

36. *Power to vary list of transactions, the terms of which require the Commissioners' approval.*

(1) The Commissioners may by order vary any of the provisions of Schedule 1 to this Measure either by adding one or more entries or by altering or deleting any entry for the time being contained in it, and the references in section 35(2) of this Measure, or in any authorisation given thereunder, to that Schedule shall be construed as a reference to that Schedule as for the time being in force.

(2) Every order made under subsection (1) above shall be laid before the General Synod and shall not come into operation unless and until it has been approved by the General Synod.

(3) The Statutory Instruments Act 1946 shall apply to any order approved by the Synod under subsection (2) above as if the order were a statutory instrument and were made when so approved and as if this Measure were an Act providing that any such order should be subject to annulment in pursuance of a resolution of either House of Parliament.

37. *Enforcement of restrictive covenants.*

When a Diocesan Board of Finance has sold, exchanged or leased any diocesan glebe land of the diocese and the document giving effect to the transaction contains a restrictive covenant imposed for the benefit of any church land or parsonage land, that covenant shall be enforceable by the Board as if it were the owner of that land.

38. *Grant or appropriation of diocesan glebe land.*

(1) Notwithstanding anything in section 33 of this Measure, a Diocesan Board of Finance may, in the exercise of its powers under section 14 of the New Parishes Measure 1943 (powers of certain bodies to grant to the Commissioners buildings or land for any purpose mentioned in section 13 of that Measure) and with the consent of the Commissioners, grant to the Commissioners –

(a) any building on any diocesan glebe land of the diocese, being a building which consists of a church or part of a church or is fit to be used or to be converted into a church;

(b) any such land as a site for a new church or for a church to be substituted for an existing church or for enlarging the site of an existing church;

- (c) any land for providing a new or extending an existing churchyard or burial ground;
- (d) any such building or land for, or for the extension of, a house of residence for an incumbent;
- (e) any such land required for providing access to or improving the amenities of any such church, churchyard, burial ground or house of residence;

and no such Board may in the exercise of the said powers grant any such building or land for any other purpose mentioned in section 13 of that Measure.

(2) Notwithstanding anything in Part I of this Measure, a Diocesan Board of Finance may with the consent of the Commissioners appropriate any such building or land for any purpose mentioned in paragraph (bb) of section 13(1) of the said Measure of 1943 (provision of building or land for use as church hall or for use both as a place of worship and a church hall etc.).

(3) Where any building or land is appropriated by such a Board under subsection (2) above, the parochial church council of the parish in which the building or land is situated shall have the like powers and obligations in relation to it as if it were vested in the Board pursuant to section 6(2) of the Parochial Church Councils (Powers) Measure 1956.

### 39. *Rent-free house for team vicar on diocesan glebe land.*

Notwithstanding anything in section 33 of this Measure, a Diocesan Board of Finance may permit a person holding the office of vicar in a team ministry to reside in a dwellinghouse situated on the diocesan glebe land of the diocese without payment of any rent.

### 40. *Moneys arising from dealings, etc. with diocesan glebe land to be paid to the Commissioners.*

(1) Subject to subsection (2) below, the proceeds of, or the capital money arising from, any dealing with or the grant of any lease of the diocesan glebe land of a diocese, and any other payment in the nature of capital made to a Diocesan Board of Finance in respect of such land, shall be paid by the Board to the Commissioners immediately after the completion of the transaction in question or, as the case may be, the payment is made, and the amount so paid shall be allocated by the Commissioners to the capital account of the diocesan stipends fund of that diocese.

(2) Where any diocesan glebe land of a diocese is subject to a mortgage, and any estate or interest in that land is sold or exchanged by the Diocesan Board of Finance, any principal money or interest owing under the mortgage at the date of the completion of the transaction may be discharged by the Board out of the proceeds arising from the sale or exchange.

(3) Where a payment has been made to the Commissioners under subsection (1) above, the costs, charges and expenses of the transaction in question shall be charged on the capital account of the diocesan stipends fund of the diocese concerned and shall be paid by the Commissioners out of that fund.

(4) All rents and other periodical payments in the nature of income received by a Diocesan Board of Finance in respect of the diocesan glebe

land of that diocese, less so much of any such payments as is required to enable the Board to meet any recurring outgoings attributable to that land or the expenses incurred in managing that land, shall be paid by the Board to the Commissioners at such times and in such manner as the Commissioners may specify, and, subject to subsection (5) below the sums so paid shall be allocated by the Commissioners to the income account of the diocesan stipends fund of that diocese.

(5) Any periodical or other payment for or in respect of mines and minerals vested in a Diocesan Board of Finance as part of the diocesan glebe land of the diocese, other than surface rents, shall be treated as a payment in the nature of capital for the purposes of subsection (1) above.

(6) Any question whether any sum paid to the Commissioners under this section should be allocated to the capital account or income account of a diocesan stipends fund, any question whether any outgoings are recurring outgoings attributable to the diocesan glebe land of a diocese, and any question whether any expenses were or will be incurred in managing such land, shall be conclusively determined by the Commissioners.

41. *Commissioners to be informed of certain matters affecting diocesan glebe land.*

Every Diocesan Board of Finance shall keep the Commissioners informed of such matters as the Commissioners may from time to time prescribe, being matters arising from any notices given to the Board by a government department or local or public authority or public undertakers and affecting the diocesan glebe land of the diocese.

## PART V

### PAROCHIAL TRUST PROPERTY

42. *Definitions and scope of Part V.*

(1) This Part of this Measure shall apply to all property both real and personal which:

(a) is held by any person, on the day on which this Part comes into effect (“the appointed day”), upon trust for any ecclesiastical purpose of the Church of England within a particular parish (in this Part referred to as “the parish in question”) or in connection with the work of the Church within a parish; or

(b) becomes liable after the appointed day to be held upon trust for any such purpose;

other than property held by the Commissioners and the interests of incumbents and lay rectors in any church, churchyard or parsonage land.

(2) In this Part:

“parochial trust property” shall mean property to which this Part applies;

“ecclesiastical trustees” shall mean persons holding or managing parochial trust property who are either ecclesiastical corporations sole or aggregate, or managing such property in right of such office;

“secular trustees” shall mean persons holding or managing parochial trust property who are not ecclesiastical trustees;

a “secular trustee body” shall mean a corporation which is a secular trustee, or a body or persons all of whom are secular trustees;

“diocesan authority property” shall mean parochial trust property which consists (a) of any interest in land (other than a periodic tenancy, a lease for less than a year or an advowson) or (b) of personal property held upon trusts which restrict the expenditure of capital;

a “Parochial authority” shall mean either an incumbent and churchwardens or a parochial church council.

43. *Separation of ecclesiastical and secular holding of parochial trust property.*

(1) As from the appointed day parochial trust property may only be held in accordance with section 44 or 45 of this Measure, or by a secular trustee body.

(2) Where parochial trust property is, at the appointed day, held or managed by a body of trustees which includes both secular and ecclesiastical trustees, then –

(a) that body of trustees may, within three months from the appointed day, resolve that the property shall thenceforth be held in accordance with section 44 or 45 of this Measure (whichever is applicable to the type of property concerned), specifying by or on behalf of which parochial authority the property is to be held, and shall send written notice of their resolution to the diocesan authority and to the Charity Commissioners; and the property shall thereupon vest in accordance with the section specified in the resolution, notwithstanding anything to the contrary in the trust deed or other instrument governing the property;

(b) if the body of trustees has not passed such a resolution as is mentioned in paragraph (a) of this subsection by the expiry of the period of three months from the appointed day, then on the expiry of that period all ecclesiastical trustees shall cease to be trustees of the property, and any provision for ecclesiastical trustees contained in the trust deed or other instrument governing the property shall become void and of no effect.

(3) Where parochial trust property is acquired after the appointed day by a body of trustees which includes both secular and ecclesiastical trustees, then the provisions of subsection (2) of this section shall apply as though the date of such acquisition were the appointed day.

(4) Where parochial trust property is held at the appointed day solely by ecclesiastical trustees, but those trustees include persons other than a diocesan authority, a parochial church council, an incumbent, or churchwardens, then the provisions of section 44 or 45 of this Measure shall apply as though such persons were not trustees, and (if such persons were the only trustees) as though the property had been vested in the incumbent and churchwardens of the parish in question.

(5) Where parochial trust property is left, by a testamentary disposition taking effect after the appointed day, to or for the purposes of a named church (being a church of the Church of England) without any legal person

or trustees being named to receive the gift, then the gift shall take effect as though it were expressed as a gift to the parochial church council of the parish in which the church in question is situate.

44. *Normal trusteeship of parochial trust property.*

Parochial trust property may be held (subject to section 45 of this Measure) by a parochial authority of the parish in question.

45. *Diocesan authority property.*

- (1) Diocesan authority property may not be held by a parochial authority.
- (2) Any diocesan authority property which would have been so held, but for the provisions of subsection (1) of this section, shall vest (without any conveyance, stock transfer or other assurance) in the diocesan authority, subject to all trust debts and liabilities affecting the same.
- (3) Property which is held at the appointed day by a diocesan authority pursuant to section 3 of the Incumbents and Churchwardens (Trusts) Measure 1964 (or as a custodian trustee, if the managing trustees thereof are an incumbent and churchwardens), shall be deemed to have vested in the diocesan authority under this section.
- (4) As from the appointed day parochial trust property may be transferred directly to a diocesan authority, by an instrument (sufficient in law in relation to the type of property to be transferred) stating that the property is to be held under this section on behalf of the incumbent and churchwardens or the parochial church council of a stated parish; Provided that property which is not diocesan authority property shall not be so transferred without the diocesan authority's consent.
- (5) Where, on account of the burden of maintenance of buildings comprised in any real property, or on account of the onerous trusts or liabilities attached to any property (being property proposed to become diocesan authority property under the management of a parochial authority but not being, in either case, property vested in the diocesan authority on the appointed day), the diocesan authority considers that it would be inexpedient to accept a transfer of the property, the diocesan authority within two months of it becoming aware of the proposed transfer, may serve notice of its refusal upon the parochial authority in question and upon the persons desiring to effect the transfer of the property; and thereupon any transfer of any interest in the property to the diocesan authority or to a parochial authority shall be of no effect, and no such transfer shall be made without the diocesan authority's consent; Provided that the parochial authority in question may apply to the bishop to review such a refusal, and the bishop shall have power to direct the diocesan authority to accept the proposed transfer.
- (6) The management, administration and disposition of property vested in the diocesan authority under this section shall be the responsibility of the parochial authority in which the property would have vested but for subsection 1 of this Section or on whose behalf the property is stated to be held by an instrument under subsection 5 of this Section; and the diocesan authority shall perform or join in all necessary acts to give effect to decisions of the parochial authority in question; Provided always that the parochial authority shall not sell, let, exchange, charge or take any legal proceedings with respect to the property without the consent of the diocesan authority (in addition to any other consents which may be required by law).

(7) Where any property is vested in a diocesan authority under this section the parochial authority in question shall keep the diocesan authority indemnified in respect –

- (a) all liabilities incident to the property;
- (b) all outgoings of whatever nature payable in respect of the property;
- (c) all costs charges and expenses incurred by the diocesan authority in relation to the acquisition or insurance of the property or as trustee thereof; and
- (d) all costs proceedings claims and demands in respect of the foregoing.

(8) Any reference in this section to acts or decisions of a parochial authority, being an incumbent and churchwardens, shall be taken to refer to acts or decisions of the incumbent or churchwardens or a majority of them.

(9) A clerk licensed as priest-in-charge of a parish which has no incumbent shall be entitled to act in relation to parochial trust property held under this section as though he were the incumbent.

## PART VI MISCELLANEOUS AND GENERAL

### 46. *Loans for Ecclesiastical property.*

Any corporation, being the patron of an ecclesiastical benefice, may lend money interest free to build, rebuild, repair or purchase any ecclesiastical property within the area of each benefice or to assist such purposes.

### 47. *Stamp duty.*

All transactions authorised by Parts I and III of this Measure shall be exempt from stamp duty.

### 48. *Pew rights.*

(1) All rights to pews or to seats in any church or chapel of the Church of England may be offered in writing by the holder thereof by way of surrender to the bishop of the diocese concerned.

(2) Upon the bishop's acceptance in writing of such surrender all rights and liabilities of the holder in respect of such pews or seats shall be extinguished on the date on which the surrender is so accepted.

(3) Thereafter the said pews or seats shall forever be available for the use in common of the parishioners of the parish concerned.

### 49. *Baptismal fees.*

No fee or reward may be demanded for the administration of the sacrament of baptism or for the registration thereof.

50. *Definitions and interpretations.*

(1) In this Measure, except insofar as the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them:

“administrative body” means, in the case of a dean and chapter cathedral, the body by which administrative functions in relation to the cathedral church are performed by virtue of paragraph (b) of section 7 of the Cathedrals Measure 1963, and in the case of a parish church cathedral, the body by which administrative functions in relation to the cathedral church are performed by virtue of paragraph (b) of section 8 of that Measure;

“bishop” means, when used in relation to a cathedral church, the bishop of the diocese in which the cathedral church is situated, and, when used in relation to any church, parish, district or other area or place, the bishop of the diocese in which the church, parish, district or other area or place is situated, or if the parish, district, area or place is situated partly in one diocese and partly in another, the bishop of each such diocese;

“canon” includes a non-residentiary canon or prebendary but not a minor canon or any person not in Holy Orders;

“capitular body” means, in the case of a dean and chapter cathedral, the dean and chapter, and, in the case of a parish church, the cathedral chapter;

“cathedral church” means any cathedral church in England existing at the passing of this Measure except the Cathedral Church of Christ in Oxford;

“church land” means the site of any church together with the churchyard and other land annexed or belonging to the church, and any burial ground vested in the incumbent of a benefice (when the benefice is full) but not annexed or belonging to a church;

“the Commissioners” means the Church Commissioners;

“dean and chapter cathedral” means any cathedral church in respect of which there is a corporate body known as the dean and chapter;

“Diocesan authority” means the Diocesan Board of Finance or any body appointed by the Diocesan Synod to act as trustee of diocesan trust property;

“Diocesan Board of Finance” means, in relation to a diocese, the board of that name constituted under the Diocesan Boards of Finance Measure 1925 for that diocese or recognised under section 9 of the Diocesan Stipends Funds Measure 1953 as being the board of finance for that diocese for the purpose of that Measure;

“diocesan glebe land” means glebe land acquired by a Diocesan Board of Finance under any provision of this Measure or of the Endowments and Glebe Measure 1976 and any other land acquired by such a Board, being land which by virtue of, or of any enactment amended by, a provision of this Measure or of the Endowments and Glebe Measure 1976 is to be held as part of the diocesan and glebe land of the diocese;

“diocesan stipends fund” means, in relation to a diocese, the fund of that name established under the Reorganisation Areas Measure 1944 or the Pastoral Reorganisation Measure 1949 or the Diocesan Stipends Funds Measure 1953 for that diocese;

“full consideration” means the best consideration that could reasonably be expected to be obtained;

“house of residence” and “residence house” include all buildings, gardens and other land held herewith;

“incumbent” means any rector or vicar of a parish or parishes with cure of souls but not including a vicar of a team ministry;

“incumbents and churchwardens” means any incumbent and the churchwardens of any parish within the area of that incumbent’s benefice;

“land” includes land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments, also a manor, a rent and other incorporeal hereditaments other than an advowson, and an easement, right, privilege or benefit in, over or derived from land;

“lease” includes an underlease and a tenancy and an agreement for a lease, underlease or tenancy, and “lessee” shall be construed accordingly;

“mines and minerals” includes any stratum or seam of minerals or substances in or under any land, and powers of searching for, working and getting the same, and “minerals” includes sand and gravel;

“mortgage” includes charge;

“parish” includes a conventional district but excludes any parish whose parish church is a cathedral;

“parish church cathedral” means any cathedral other than a dean and chapter cathedral;

“Parsonage Board” means, in relation to a diocese, the Board appointed or designated under section 1 of the Repair of Benefice Buildings Measure 1972 for the purpose of that Measure;

“parsonage house” means a residence vested in the incumbent of a benefice (when the benefice is full), being his official residence, and includes the buildings, gardens, orchards, paddocks, walls, fences and appurtenances occupied with the residence; and “excluded part of a parsonage house” means any part of a parsonage house which by reason of a certificate of the bishop under section 23 of this Measure or section 11 of the Parsonages Measure 1938 is to be deemed not to form part of that house;

“parsonage land” means any of the following –

- (a) a parsonage house;
- (b) any excluded part of a parsonage house;
- (c) any building, part of a building or land which the incumbent of a benefice has acquired or agreed to acquire as a parsonage house or for the site of such a house;
- (d) any building, part of a building or land vested in the incumbent of a benefice (when the benefice is full) being a building or land which in the opinion of the Commissioners should be retained for use as a parsonage house or as the site for such a house;

(e) any parsonage house or part thereof which ceases to be, or to be part of, such a house by virtue of a pastoral scheme or order and for which no provision for its transfer is made by that scheme or order;

(f) any parsonage house or part thereof which has ceased to be, or to be part of, such a house otherwise than by virtue of a pastoral scheme or order and in relation to which the consent of the Commissioners for its sale under Part III of this Measure or under the Parsonage Measure 1938 has been given;

“pastoral order” means an order made by the bishop under section 8 of the Pastoral Measure 1983;

“pastoral scheme” means a scheme made by the Commissioners and confirmed by Order in Council under Part I of the Pastoral Measure 1983 and includes any scheme made in pursuance of proposals by a joint pastoral committee appointed under section 13 of that Measure;

“property held on permanent trusts” means property which is permanent endowment within the meaning of section 45(3) of the Charities Act 1960;

“sale” in relation to an easement, right, privilege, or benefit in, over or derived from land, includes grant.

(2) Any question whether any land is parsonage land shall be conclusively determined by the Commissioners.

(3) Any reference in this Measure to any enactment shall be construed as a reference to that enactment as amended by any subsequent enactment, including this Measure.

#### 51. *Amendments, transitional provisions and repeals.*

(1) Schedule 2 to this Measure, which contains minor and consequential amendments of certain enactments, shall have effect.

(2) The transitional provisions in Schedule 3 to this Measure shall have effect.

(3) The enactments specified in Schedule 4 to this Measure are hereby repealed to the extent specified in column 3 of that Schedule.

#### 52. *Extent and application.*

This Measure shall extend to the whole of the provinces of Canterbury and York, except the Channel Islands and the diocese of Sodor and Man, but may be applied to the Channel Islands or either of them, as defined in the Channel Islands (Church Legislation) Measures 1931 and 1957, in accordance with those Measures, and shall, if an Act of Tynwald so provides, extend to the Isle of Man subject to modifications, if any, as may be specified in such Act of Tynwald.

#### 53. *Short title and commencement.*

(1) This Measure may be cited as the Church Property Measure 199...

(2) Part V of this Measure shall come into force on the appointed day and the remainder shall come into force on the day on which it is passed.

(3) The appointed day shall be such day not later than twelve months after the passing of this Measure as the Archbishops of Canterbury and York may jointly determine and shall be notified in the London Gazette.

SCHEDULES  
SCHEDULE 1

Sections 35 and 36.

TRANSACTIONS RELATING TO DIOCESAN GLEBE LAND THE  
TERMS OF WHICH REQUIRE THE COMMISSIONERS' APPROVAL

Sale.

Exchange

Lease granted wholly or partly in consideration of a premium.

Lease for a term of 21 years or more.

Lease of such land as is referred to in section 35(6) of this Measure.

Lease, licence or agreement relating to the searching for, or working and getting of, mines and minerals and any other operation arising therefrom.

Mortgage.

SCHEDULE 2

Section 51(1)

AMENDMENTS

Section 19 of the Cathedrals Measure 1963 shall no longer have effect insofar as it relates to land.

SCHEDULE 3

Section 51(2)

TRANSITIONAL PROVISIONS

Any consent, approval, appropriation, scheme, dealing or other transaction given, made or authorised prior to the coming into force of this Measure pursuant to sections 18, 19(1), 20, 21, 22, 23, 24, 25 and 27 of the Endowments and Glebe Measure 1976 shall have effect as though made under this Measure.

SCHEDULE 4

Section 52(3)

ACTS AND MEASURES REPEALED

[A list is set out in the Note on Church Property law, which Note precedes the draft Church Property Measure. To that list there should be added the three more recent Measures as listed below.]

Chapter or Number	Short Title	Extent of Repeal
1 & 2 Geo 6 No. 3	Parsonages Measure 1938	The whole Measure
1963 No. 2	Cathedrals Measure 1963	Section 20
1976 No. 4	Endowments and Glebe Measure 1976	Sections 18, 19(1), 20, 21, 22, 23, 24, 25, 27, 29, 30, 31, 32, 33 and 34.

The following Acts or Measures are reasonably clear, useful and in use, so no change is proposed.

CHANCEL REPAIRS ACT 1932 (860)  
 ECCLESIASTICAL DILAPIDATIONS (CHANCEL REPAIRS) MEASURE  
 1940 (874)  
 INSPECTION OF CHURCHES MEASURE 1955 (893)  
 REDUNDANT CHURCHES AND OTHER RELIGIOUS BUILDINGS ACT  
 1969 (933)  
 SHARING OF CHURCH BUILDINGS ACT 1969 (938)

PLACES OF WORSHIP (ENFRANCHISEMENT) ACT 1920 (1163)  
 This is clear, of general application and could be useful, so no proposal is made.

A group of Acts and Measures in Part 5 of Halsbury (784 to 109) deal largely with the powers of the Church Commissioners in relation to various subjects. As explained in our Note 3 under Cathedrals Measure 1963 (2 Ecc. L. J. 45), we have left these powers untouched.

The Acts in Part 6 of Halsbury (1100 to 1142) relate to the Church in Wales and Overseas. Those in Part 7 (1143 to 1157) relate to Religious Bodies other than the Church of England. As these Acts all affect persons outside England or persons who are not members of the Church of England we have made no proposals.

Part 9 of Halsbury (1166 to 1285) deals with Corn Rents. These began as tithe commutation payments for allotments of land, or in consideration of receiving land, and the unrepealed provisions of the Tithe Acts continue to be relevant to these. The Corn Rents Act 1963 prospectively repealed some of the Tithe Acts in toto, plus large parts of other Tithe Acts, on the basis that the Commissioners of Inland Revenue would make a "scheme" for the redemption of "corn rents", which "scheme" would reproduce such parts of the Tithe Acts as they considered essential.

Because the Commissioners of Inland Revenue have never made such "scheme" as aforesaid, but only a scheme for redemption of a particular corn rent, as and when so requested, it is proposed that the power to do so contained in the 1963 Act be converted into a duty, and that in any event, after an interval of sixty years (being the period adopted in the Tithe Act 1936 and Rentcharges Act 1977 respectively), all remaining "corn rents" and tithes should be extinguished altogether.) Tithes and Offerings Act 1548 and Tithe Acts of 1838, 1840 and 1878 are still effective, but eventually they would cease to have effect under the proposed Measure.

An Act, not a Measure, would be needed if the provisions were to include any Welsh corn rents.

#### (DRAFT) CORN RENTS AND TITHES (ABOLITION) MEASURE 199...

1. *Duty to make scheme for apportionment and redemption of corn rents.*

The Commissioners of Inland Revenue shall as soon as reasonably practicable and in any event within five years from the passing of this Act make such scheme or schemes for the apportionment and redemption of corn rents and otherwise as is provided in section 1 of the Corn Rents Act 1963.

2. *Extinguishment of corn rents and tithes.*

Notwithstanding anything herein or in the Corn Rents Act 1963, all corn rents and other payments for which provision was made by section 30(1) of the Tithe Act 1936, and all additional payments, being payments which by virtue of enactment or custom are charged on or otherwise payable in relation to land wholly or partly in lieu of corn rents or tithes, and all tithes in kind, shall be extinguished as from a date sixty years after the passing of this Act.

3. *Short title, extent, repeal, savings and commencement.*

- (1) [Citation]
- (2) [Extends to England only]
- (3) [Binds the Crown]
- (4) [Enactments in Schedule to be repealed, so far as not repealed by any other enactment]
- (5) [Commencement]

SCHEDULE  
REPEALS

Under Section 3(4)

<i>Short Title</i>	<i>Extent of Repeal</i>
Tithe Act 1832	The whole Act
Tithe Act 1836	The whole Act
Tithe Act 1839	The whole Act
Tithe Act 1842	The whole Act
Tithe Act 1846	The whole Act
Tithe Act 1847	The whole Act
Tithe Act 1860	The whole Act
Tithe Act 1891	The whole Act
Tithe Act 1918	The whole Act
Tithe Annuities	
Apportionment Act 1921	The whole Act
Tithe Act 1925	The whole Act