

Mission and Pastoral Measure 2011

Code of Recommended Practice
Volume 2:
Dealing with Consecrated Church
Buildings

1st Edition – July 2012

Mission and Pastoral Measure 2011
Code of Recommended Practice – Dealing with Consecrated Church
Buildings

From time to time amendments and supplements will be notified by email. In order to receive notification you are invited to email your request to mpmcode@churchofengland.org. The Code can also be downloaded from the [Church Commissioners' website](http://www.ccpastoral.org/mpm2011code) (<http://www.ccpastoral.org/mpm2011code>).

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List of Common Acronyms

2011 Measure	Mission and Pastoral Measure 2011
2009 Measure	Ecclesiastical Offices (Terms of Service) Measure 2009
2007 Measure	Dioceses, Pastoral and Mission Measure 2007
2006 Measure	Pastoral (Amendment) Measure 2006
1983 Measure	Pastoral Measure 1983
AMS	Ancient Monuments Society
BMO	Bishops' Mission Order
CC	Church Commissioners
CBC	Church Buildings Council
CBUDC	Church Buildings (Uses and Disposals) Committee of the Church Commissioners
CCT	Churches Conservation Trust
CD	Conventional District
CPO	Compulsory Purchase Order
CRR	Church Representation Rules
CTBI	Churches Together in Britain and Ireland
CUF	Church Urban Fund
CWGC	Commonwealth War Graves Commission
DAC	Diocesan Advisory Committee
DBF	Diocesan Board of Finance
DBP	Diocesan Board of Patronage
DCA	Department for Constitutional Affairs
DCC	District Church Council
DCLG	Department of Communities and Local Government
DCMS	Department for Culture, Media and Sport
DDA	Diocesan Debtors Account
DEFRA	Department for Environment, Food and Rural Affairs
DPA	Diocesan Pastoral Account
DPB	Diocesan Parsonages Board
DMPC	Diocesan Mission and Pastoral Committee
DSF	Diocesan Stipends Fund
E & G MEASURE	Endowments & Glebe Measure 1976
EH	English Heritage (See also HBMC)

EIG	Ecclesiastical Insurance Group
GS	General Synod
HBMC	Historic Buildings and Monuments Commission for England
JPCC	Joint Parochial Church Council
LA	Local Authority
LBC	Listed Building Consent
LPA	Local Planning Authority
MoJ	Ministry of Justice
NPM	New Parishes Measure 1943
NSM	Non-Stipendiary Ministry (now known as Self Supporting Ministry)
OLM	Ordained Local Ministry
PC	Privy Council
PCC	Parochial Church Council
P in C	Priest in Charge
PH	Parsonage House
PP	Planning Permission
PR	Pastoral Reorganisation
RAM	Reorganisation Areas Measure 1944
RCHME	Royal Commission on the Historical Monuments of England
RD	Rural Dean
RCF	Redundant Churches Fund (former name of CCT)
SAC	Statutory Advisory Committee of Church Buildings Council
SSM	Self Supporting Ministry (formerly Non Stipendiary Ministry)
SoP	Suspension of Presentation or Statement of Particulars
SPAB	Society for the Protection of Ancient Buildings
T & CP	Town & Country Planning (Acts)
TPO	Tree Preservation Order
TR	Team Rector
TV	Team Vicar
UBM	Union of Benefices Measure 1923
VIC SOC	Victorian Society

Chapter 12 - Introduction

The introduction to Volume 2 of the Code again sets out the background to the Mission and Pastoral Measure 2011, the Code's purpose and various roles assigned under the Measure to diocesan and national Church bodies. This Volume of the Code is primarily concerned with the provisions regarding church buildings in the Measure, in particular the closure of consecrated church buildings for regular public worship and settling their future.

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Introduction

- 12.1** The Mission and Pastoral Measure 2011 (“the 2011 Measure”) is a Measure of the General Synod confirmed by both Houses of Parliament which has received Royal Assent and become part of the law of England.
- 12.2** It provides the legal basis for structural and organisational changes to enable the local church to be more effective in its mission and ministry while balancing needs and resources.
- 12.3** The 2011 Measure consolidated, with corrections and minor improvements, the Pastoral Measure 1983 and Parts 3, 4, 5 and 6 and section 61 of the Dioceses, Pastoral and Mission Measure 2007, and related enactments which are designed to make better provision for the cure of souls, and to assist in furthering the Church’s mission in the broadest sense.
- 12.4** The Measure in its essentials dates from the Pastoral Measure 1968 (“the 1968 Measure”) which replaced a number of existing statutes that dealt with pastoral reorganisation. The 1968 Measure also provided new comprehensive arrangements for dealing with church buildings no longer required for regular public worship. The 1983 revision brought some modifications and improvements. Subsequent changes, particularly in the Pastoral (Amendment) Measure 1994, the Teams and Groups Ministries Measure 1995, the Pastoral (Amendment) Measure 2006, and the Dioceses, Pastoral and Mission Measure 2007, have elaborated the legislation.
- 12.5** There are two volumes to this Code of Recommended Practice to the 2011 Measure:
- [Volume 1](#) – Deals primarily with pastoral reorganisation (including the legal process for rearranging benefices and parishes, and for teams and groups ministries)
 - Volume 2 – Deals with matters relating to church buildings under the Measure, most particularly to the process for closing consecrated church buildings for regular public worship and for settling their future.
- 12.6** In addition, separate guidance is available on the following aspects of the 2011 Measure:
- [House of Bishops’ Code of Recommended Practice on Bishops’ Mission Orders](#) (concerning Part 7 of the 2011 Measure dealing with Mission Initiatives)
 - [Wider Use of Part or Parts of a Church – A guide to section 68 of the Mission and Pastoral Measure 2011](#) concerned with powers to lease churches in use (Prepared by the Legal Office of the National Institutions of the Church of England)
- 12.7** This Volume of the Code is primarily concerned with matters concerning church buildings which may be dealt with in pastoral church buildings schemes and pastoral (church buildings disposal) schemes, in particular closure for public worship and

settling the future of closed church buildings. (See [Volume 1](#) for all other pastoral reorganisation matters).

Background to the Code

- 12.8** An initial Code to the Pastoral Measure 1968 was first issued in 1976. Its main aim was to provide practitioners with a distillation of best practice after the first few years' experience of working with the 1968 Measure. A second edition was issued in 1983 to coincide with the coming into operation of the Pastoral Measure 1983. There have been subsequent updates to take account of amendments which have been made to the 1983 Measure, principally by the Patronage (Benefices) Measure 1986, the Pastoral (Amendment) Measure 1994, the Team and Group Ministries Measure 1995, and the last Church of England (Miscellaneous Provisions) Measures 2000 and 2005. The last edition was updated to take account of the changes made by the Dioceses, Pastoral and Mission Measure 2007. This new edition takes fully into account the 2011 consolidated Measure which has a new layout. This edition also replaces the separate Code on Team and Group Ministries which is no longer being updated.

What the Code sets out to do

- 12.9** Under [s.98](#) of the 2011 Measure the Commissioners may at any time give advice to a mission and pastoral committee (DMPC) or diocesan board of finance (DBF) on any matter concerning its functions under the Measure and the Committee or board concerned shall have regard to any such advice (including that contained in the Code). This Code is intended to serve as the principal guidance, under [s.98](#), for those who operate the legislation for pastoral reorganisation, closed church buildings and associated matters. It provides guidance on process and seeks to identify those areas where problems are most likely to occur in practice. Please also see the Commissioners' website for both recommended [pastoral reorganisation forms and letters](#), and recommended [closed churches forms and notices](#) (previously Annexes to the Pastoral Measure 1983 Code of Practice).

Presentation

- 12.10** The Code is divided into 2 distinct volumes. This volume deals with all matters to do with church buildings under the 2011 Measure (including their closure and settling their future) while Volume 1 deals primarily with pastoral reorganisation. 24 distinct chapters are as follows:

In [Volume 1](#), Chapters 2-11 primarily cover **Parts 1-3 and Part 5 of the 2011 Measure** dealing with the preparation and processing by dioceses of proposals for pastoral reorganisation, the role of the Commissioners, the contents of schemes and orders and suspension of presentation.

In Volume 2, Chapters 12-24 primarily cover **Parts 4 and 6 of the Measure** dealing with church buildings, their closure, and settling the future of closed church buildings.

- 12.11** Pro-forma letters, proposals, notices and other forms for use by DMPCs are found on the Commissioners' website – [pastoral reorganisation](#) and [closed churches](#).

The [nine appendices](#) found at the end of this volume of the Code comprise a glossary of terms used in pastoral reorganisation and church closure; a summary of other Ecclesiastical Acts and Measures of interest; flowcharts detailing the progress of a Pastoral Church Buildings Scheme and settling the future of a closed church building. Also included are guidelines on vesting in the Churches Conservation Trust, and guidance on the contents of closed church buildings and the theology of mediation. The appendices also include an overview of the role of the Church Commissioners' Church Buildings (Uses and Disposals) Committee in relation to closed church building matters under the 2011 Measure. The final appendix provides the covenants to be included in the disposal of a closed church building.

- 12.12** The Code is not intended as a substitute for the Measure itself and should always be read in conjunction with the relevant sections of the Measure and the DPMM 2007.

Updating the Code

- 12.13** When the need arises, the Code will be updated in electronic format only. Subscribers should contact the Church Commissioners Policy Team on mpmcode@churchofengland.org to join the mailing list for this purpose. Please send suggestions for any amendment of the existing material or inclusion of new material to mpmcode@churchofengland.org also.

Key statutory bodies

Diocesan Mission and Pastoral Committees

- 12.14** Each diocese has a statutory diocesan mission and pastoral committee (DMPC) appointed under [s.2](#) of the 2011 Measure whose functions are as set out in [s.3](#). These Committees were originally appointed under the Dioceses, Pastoral and Mission Measure 2007 to replace former diocesan pastoral committees and diocesan redundant churches uses committees. The DMPC may be known locally by a different name and will have a written constitution provided by the diocesan synod.

Diocesan Boards of Finance

- 12.15** The Diocesan Board of Finance is a company constituted by the diocesan synod and regulated by the Companies Acts. A board of finance holds property for Church of England purposes, transacts business in that connection and acts as a committee of the diocesan synod. It normally also acts as the diocesan trust.

Diocesan Advisory Committees for the Care of Churches

- 12.16** Each diocese has a Diocesan Advisory Committee for the Care of Churches (DAC) set up under the Care of Churches and Ecclesiastical Jurisdiction Measure 1991. Its main functions are to give advice on the architecture, archaeology, art and history of places of worship to the diocesan chancellor, the archdeacon and the parishes.

Parochial Church Councils

- 12.17** Parochial Church Councils are representative bodies of parishioners elected from those on the electoral roll in accordance with the Church Representation Rules (see [Chapter 8](#)). They are usually chaired by incumbent.

Church Commissioners

- 12.18** The Church Commissioners exercise various functions under the 2011 Measure. Their statutory responsibilities under the Measure start when their Pastoral Division receives proposals or a draft scheme or order from dioceses. Their duty at this stage is to prepare and publish draft pastoral church buildings schemes or orders to give effect to the diocesan proposals or to validate draft pastoral schemes or orders before publication by a diocese. The main duty of the Commissioners' Mission and Pastoral Committee is to consider any representations made to them. In the case of a pastoral or pastoral church buildings scheme, if there are no representations or if their Mission and Pastoral Committee is of the opinion that it should proceed notwithstanding any representations and there is no successful appeal against that decision, the Commissioners make the scheme. In the case of an order, if there are no representations or if their Mission and Pastoral Committee is of the opinion that it should proceed notwithstanding any representations, the Commissioners return it to the bishop for making by him. If objectors obtain leave to appeal to the Privy Council against a decision by the Commissioners to proceed with a scheme notwithstanding representations against the scheme, the Commissioners have the responsibility of defending the scheme. There is no right to seek leave to appeal with respect to a pastoral order.
- 12.19** The Commissioners also perform a major role in relation to settling, under Part 6 of the Measure, the future of closed churches. This includes a similar role in considering any representations made with respect to any draft schemes they publish providing for the future of closed churches. A decision on the future of a closed church rests with the Commissioners. The Commissioners are also always ready to offer their informal advice on any matter that may be dealt with under the Measure.

Correspondence should be addressed to: The Pastoral and Closed Churches Secretary, Church Commissioners, Church House, Great Smith Street, London, SW1P 3AZ (tel: 020 7898 1000; fax: 020 7898 1873; website: <http://www.ccpastoral.org>).

Church Buildings Council

- 12.20** The Church Buildings Council (CBC) was established under the Dioceses, Pastoral and Mission Measure 2007 to serve as the single unified national Church source for information and advice on church buildings, whether in use or closed, other than

cathedrals. It has a wide sphere of responsibility in providing advice on the care and conservation of church fabrics and the treasures and furnishings which they contain and also has various statutory functions under the 2011 Measure (previously exercised before 2007 by the Council for the Care of Churches and the Advisory Board for Redundant Churches).

Under the 2011 Measure the DMPC is required to notify the CBC of any church where it might decide to make a recommendation for a declaration of closure for regular public worship. The CBC then produces a report about the historic and aesthetic qualities of the church and its contents, as well as any special features of its churchyard or burial ground. This report may also include advice on possible architectural or structural changes which would facilitate the church's use for other purposes consistent with regular public worship.

In the event of formal closure proposals going ahead, a special statutory advisory committee (the SAC) of the CBC provides information and advice to the Commissioners at various stages on proposals affecting the future of the building. The SAC also provides information and advice to the CCT on proposals affecting churches in its care.

Contact: Church Buildings Council, Church House, Great Smith St, London, SW1P 3AZ (tel: 020 7898 1000; website: <http://bit.ly/x0zrd5>).

Churches Conservation Trust

- 12.21** The Churches Conservation Trust (the CCT) has as its object "the preservation, in the interests of the nation and the Church of England, of churches and parts of churches of historic and archaeological interest or architectural quality" (together with their contents) which have been vested in it by pastoral church buildings or pastoral (church buildings disposal) schemes under [Part 6](#) of the Measure. The CCT may permit occasional use of its churches or grant a licence permitting their temporary use. It also has powers to lease churches in its care. "Occasional use" may include worship if this is authorised by the bishop after consultation with the local incumbent or priest-in-charge. The Trust welcomes participation at a local level in the day to day management of buildings which it owns, and produces a range of publications and general literature on the churches in its care, including guide books, county leaflets, and educational leaflets.

Correspondence should be addressed to: The Chief Executive, Churches Conservation Trust, 8 All Saints Street, London, N1 9RL (tel: 0845 303 2760; website: <http://www.visitchurches.org.uk/>).

General duty

- 12.22** [Section 1](#) of the 2011 Measure lays down an important general principle which governs the Measure as a whole – namely that “it shall be the duty of any person or body carrying out functions under the Measure to have due regard to the furtherance of the mission of the Church of England.”

12.23 The expression “have due regard to” is used in comparable contexts in other recent Measures. It is also common in secular legislation and there is a body of case law on its meaning and effect. This general duty covers a wide range of bodies and office holders and an equally wide range of functions. Other factors necessarily have to be taken into account in exercising particular functions, in some cases under express provisions elsewhere in the legislation. The “due regard” formula allows and requires a person or body exercising a particular function under the Measure to take account of all the relevant factors, giving each their proper weight in that particular context.

12.24 [Section 1](#) of the Measure has to be read together with [section 106](#), dealing with interpretation, whereby ‘functions’ includes both powers and duties and ‘mission’ is defined as:

“the whole mission of the Church of England, pastoral, evangelistic, social and ecumenical.”

This is a broad and inclusive phrase which was adopted in the Dioceses, Mission and Pastoral Measure 2007 and which is well established in Church legislation. It appears, for example, in the Parochial Church Councils (Powers) Measure 1956 in relation to the functions of a parochial church council. Some of the main factors which made it the appropriate meaning for the term “mission” in the 2007 Measure were:

- the wide range of functions covered by [s.1](#) of that Measure and the Pastoral Measure 1983; and
- the fact that the weight and importance to be given to different aspects of the Church’s mission must necessarily depend on the nature of the function concerned and the context in which it is being exercised (see [2.14 - 2.15](#) on considerations, functions and duties of the DMPC).

This continues to be the case under the Mission and Pastoral Measure 2011.

Chapter 13

The Role of the Diocesan Mission and Pastoral Committee

Church Buildings

While [Chapter 2 of Volume 1](#) of the Code sets out the role of the DMPC in some detail, including its appointment, membership and functions, and the development of proposals for pastoral reorganisation, this Chapter highlights the DMPC's particular responsibilities regarding church buildings, notably for those being considered for possible closure or those which have closed and whose future is to be settled. Where appropriate, links are provided to Volume 1 of the Code.

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Appointment and membership

- 13.1** [Chapter 2 of Volume 1](#) of the Code deals in some detail with the appointment and membership of the DMPC, including its powers to appoint sub-committees and the discharge of its responsibilities.
- 13.2** Given the wide range of duties of the DMPC it may decide to appoint a Sub-Committee to deal with its responsibilities for closed church buildings. Whatever arrangements are in place, the DMPC must obtain advice from the Commissioners, persons having expertise in the management, development and disposal of property, and such other professionals/advisors as it thinks fit when dealing with the future of closed church buildings. In carrying out these functions, members should also be sensitive to the Church's substantial responsibilities for its built heritage, within the context of national legislation and government policy in respect of the conservation of heritage assets, and adopt a positive approach to finding new uses for closed church buildings without pre-conceived views against certain common uses generally accepted as suitable in principle. A real interest in, and knowledge of, historic buildings, including their potential for adaptation, is important. Practical experience in marketing unusual properties will be valuable.

Annual and interim reports

- 13.3** In addition to the requirement under [s.5](#) to present an annual report to the diocesan synod, the DMPC is required to present a report annually to the Commissioners on the exercise of its use seeking functions under [s.3\(3\)\(e\)](#) for closed church buildings. This report should be made by 31 March each year. A copy of the annual report should be sent to the diocesan synod for information. Where relevant the report should cover:
- *Committee membership* (including recent or imminent changes)
 - *Number and frequency of meetings*
 - *Review of the Year:*
Summary of cases (progress, problems, and completed cases).
Churches in Pipeline - where closure is imminent or a possibility.
Churches to remain in use - any previously predicted closures which were averted, and how.
 - *Contents* - problems, successes, diocesan repository.
 - *Grants* - e.g. funding from other bodies towards repairs; assistance towards feasibility studies; TMA applications.
 - *Tour (if any)* - Visit reports.
 - *General observations* which may be of interest to a wider audience.

From the information provided the Commissioners will identify and make known any general themes or matters of common concern to DMPCs.

- 13.4** The Commissioners find it helpful to receive copies of DMPC agenda and minutes. The Commissioners may also seek periodic updates on the search for a new use for a particular building and the DMPC should advise them of any significant developments. If the DMPC concludes before the expiry of 2 years (but usually not before a minimum period of 6 months in respect of listed buildings or those in conservation areas) that no suitable use is likely to be found, it may report this to the Commissioners, setting out its reasons in full. The Commissioners will then decide whether to request that the DMPC renew its use seeking efforts at this stage, or to assume responsibility for this themselves under [s.55\(5\)](#), or to consult the SAC before reaching a decision on the future of the building.
- 13.5** Where DMPCs copy to the Commissioners the minutes of their meetings throughout the year the Commissioners do not need a separate annual report, although the DMPC may still prepare one for their own purposes and the Commissioners always find it helpful to learn the DMPC's overall assessment of particular problems or issues which arise during the year.
- 13.6** Otherwise the DMPC should report to the Commissioners on discharging its functions in respect of each closed church building at least every 6 months and also when and if required to do so by the Commissioners ([s.55\(3\)](#)).

Considerations, functions and duties

- 13.7** The functions and duties of the DMPC and matters to which it shall have regard are described in some detail in [2.14 – 2.15](#) of Volume 1 of the Code. These include two specific duties as set out in the 2011 Measure in regard to church buildings:
- to maintain an overview of matters relating to church buildings in the diocese and their use, other than matters which are within the jurisdiction of the consistory court or within the functions of the Diocesan Advisory Committee ([s.3\(d\)](#));
 - in the case of listed buildings or buildings in a conservation area, to make, in accordance with s.5, every endeavour to find a suitable alternative use or suitable alternative uses for churches which are proposed to be closed and building which have been closed for regular public worship in the diocese under a pastoral church buildings scheme and, in the case of any other such building, to develop proposals for the suitable alternative use or uses of the building or for the demolition of the building and the disposal of its site ([s.3\(e\)](#)).
- 13.8** For further guidance on carrying out the DMPC's duty under [s.3\(d\)](#) see [Chapter 14](#) and for the duty under [s.3\(e\)](#) see [Chapter 18](#).

Ascertainment of views of interested parties: statutory requirements

- 13.9** See [2.22 – 2.28](#) of Volume 1 of the Code.

13.10 For the purposes of [Part 4](#) of the Measure – for pastoral church buildings schemes – the interested parties include the local planning authority and the parish council (or chairman of the parish meeting if there is no parish council).

13.11 Before deciding to make any recommendations to the Bishop on proposals involving potential closure of a church building the DMPC must, in addition, obtain a CBC report (see [13.24](#)) and ascertain the views of the LPA.

Ascertainment of views: arrangements in practice

13.12 See [2.29 – 2.37](#) of Volume 1 of the Code.

13.13 As for pastoral schemes, the DMPC may treat any person or body with a recognised interest in a particular case as a “non-statutory” interested party and copy correspondence to such persons or bodies for their comments accordingly. When a declaration of closure for regular public worship in a multi-church parish is proposed, the DMPC is advised to involve any district church councils or the separate congregations as well as the PCC. In a single church parish it may also be advisable to consult the PCCs of any neighbouring parishes likely to be affected.

13.14 If the church has been grant aided by either EH or the HLF and closure proposals emerge during the period when any conditions attached to those grants are still in force then the relevant grant-making body should also be consulted (see also [22.12](#) and [24.25-24.28](#)).

13.15 In the event that the Commissioners subsequently publish a draft pastoral church buildings scheme providing for closure they are required to serve a copy, in addition to the interested parties, on the CBC, EH, the Joint Committee of the National Amenity Societies, the Commonwealth War Graves Commission and the CCT (if the draft scheme provides for vesting the building in the CCT). Additionally the Commissioners publish a notice of the draft scheme in a local newspaper. It is important that where feasible the local newspaper selected should be one with a wide readership in the area and appear at least weekly (see also [2.49-2.51](#) which deals with making the draft scheme available locally for inspection).

Submission of proposals to the Commissioners

13.16 As previously indicated, it is a requirement under the Measure that a CBC report (see [13.24-13.25](#)) should be obtained and considered by the DMPC before deciding to make a recommendation that a declaration of closure for public worship be made in respect of any church.

13.17 Upon any such draft proposals being approved by the bishop (with any amendments that appear to him to be desirable) he must sign and return them to the DMPC (they are no longer “draft proposals”). Where the proposals include proposals for the closure of a church building for regular public worship, the DMPC must then send a copy, as approved by the bishop, to each of the interested parties, informing them that

if the Commissioners prepare a draft scheme or order in pursuance of the proposals an opportunity will be given for making representations.

- 13.18** Examples of draft proposals are provided on the Pastoral Matters – Procedural and Administrative web page [here](#). The DMPC is encouraged to seek the Commissioners' informal advice on the wording of the draft proposals before circulating them formally to the interested parties for comment, particularly if in any doubt about their contents.
- 13.19** When submitting the draft proposals to the Commissioners, the DMPC should include the information set out in [2.47](#) of Volume 1 of the Code as required.

Draft proposals involving settling the future of the church building at the time of closure

- 13.20** It is possible in certain circumstances under [s.58](#) and [s.59](#) of the Measure to settle the future of a church building at the time of closure – see [15.8](#).
- 13.21** If the DMPC is considering any such possibility it should contact the Commissioners at the earliest opportunity and should not circulate draft proposals locally until the Commissioners have indicated that they are, in principle, satisfied with the emerging proposals for the future of the building in the event of closure.

When the future of a church building is under consideration

- 13.22** [Chapter 15](#) of the Code deals with issues surrounding the potential closure of a church building or part of a church for regular public worship. It also outlines the scope to lease part of the building while the church as a whole remains primarily in use. The remainder of this Chapter deals primarily with the process the DMPC follows with regard to closure.
- 13.23** Different procedures apply for pastoral schemes (where reorganisation does not include closure of a church building for regular public worship) and for pastoral church building schemes (any reorganisation including the closure of a church building for regular public worship). [Part 4](#) of the 2011 Measure sets out the procedure for making pastoral church building schemes. This requires additional elements of consultation and the Commissioners, rather than the DMPC, are responsible for preparing and publishing the draft church buildings scheme.

Reports from the Church Buildings Council

- 13.24** Before deciding to make a recommendation for the closure of a church for regular public worship, the DMPC must notify the CBC of the church and obtain from it a copy of a report about the historic and architectural qualities of that church and other churches in the area, the historic and aesthetic qualities of their contents and any special features of any churchyard or burial ground annexed to any of them. The report of the CBC is a significant source of information in the process of considering

the future of a church building. Neighbouring churches to that under consideration are normally dealt with fairly briefly in the CBC Report but the CBC is prepared, on request, to report fully on a group of churches when the DMPC wishes to look at them strategically.

- 13.25** The CBC should be given as much advance notice as possible by the DMPC of the likely need for a report so that efficient area visiting programmes can be planned. In every case the CBC should receive from the DMPC a copy of the most recent quinquennial inspection report, copies of the inventory and log book, name and address of key holder etc. as set out on its form PM1B.

Extent of consultation regarding closure proposals

- 13.26** Although not a statutory requirement, it is recommended that in cases involving a potential declaration of closure for regular public worship the DMPC gives careful consideration to holding wider informal consultation, perhaps by means of a local public meeting or meetings, in order to canvas opinion from members of the congregation and also from other interested members of the local community. The future of an historic church building in particular is likely to generate a much wider concern than merely from the churchgoing public and it is important that there is local awareness of the proposals in case practical alternatives to closure emerge. For example, where closure proposals are being considered mainly on financial grounds, it might be possible to generate interest and financial help from "friends" or others to help keep the church in use. Such solutions are more difficult to achieve if they are actively considered only at a later stage (see also [Chapter 19](#)).

Churches not used for worship since 1 April 1964

- 13.27** These procedures do not apply to [s.66\(1\)](#) orders, which provide a shortened procedure for the closure of churches which have not been used for worship since 1 April 1964 (e.g. ruins). In such cases the Commissioners can make an order declaring the church to be closed for regular public worship where the bishop certifies it has not been used for divine worship since that date and the incumbent (if any), patron and PCC give their consent. The usual consultation procedures do not apply in a case being dealt with under [s.66\(1\)](#). All that is required is for the DMPC secretary to submit form P10 and the accompanying papers together with the appropriate consent forms P11-14, copies of which are available on the Pastoral Matters – Procedural and Administrative web page [here](#). The provisions of [Part 6](#) of the Measure will then apply to the building and adjoining land as if there had been a declaration of closure in a pastoral church buildings scheme.

The role of the Commissioners in processing pastoral proposals

- 13.28** The Commissioners' role in processing pastoral proposals involving the closure of a church building for regular public worship is as set out in more detail in [Chapter 3](#) of the Code. This includes publication of a draft pastoral church buildings scheme and the consideration of any representations received. If the representations relate to any

proposals providing for the future of the building in the event of closure these will be considered by the Commissioners' Church Buildings (Uses and Disposals) Committee; representations on the proposed closure itself will be considered by the Commissioners' Pastoral Committee.

The role of the DMPC in settling the future of a closed church building

13.29 [Section 55\(1\)](#) of the 2011 Measure sets out in more detail the functions of the DMPC concerning the future of buildings proposed for closure or already closed for regular public worship. These are:

- in the case of a listed building or a building situated in a conservation area, to make every endeavour to find a suitable alternative use or uses for the building; or
- in the case of any other building to develop proposals for the suitable alternative use or uses of the building or for its demolition and disposal of its site.

13.30 Examples of suitable alternative uses are outlined in [Chapter 17](#) of the Code.

13.31 In carrying out these functions the DMPC is required to obtain advice from the Commissioners, persons having expertise in the management, development and disposal of property and such other professional advisors as it thinks fit ([s.55\(2\)](#)). It is also important that the DBF makes sufficient financial resources available to the DMPC to enable it to fulfil this duty. See [Chapter 16](#) for the DBF's responsibilities.

13.32 [Chapter 18](#) of the Code provides detailed guidance on the search for a suitable alternative use or on developing proposals for the future of an unlisted building outside a conservation area.

End of the use seeking period

13.33 As set out in the following chapters, the task of the DMPC is in most cases to come forward with a recommendation to the Commissioners on proposals for a suitable alternative use for a closed church building within two years of its closure (unless this period is extended by the Commissioners). If the DMPC has reached the conclusion that no such use can be found it should report so to the Commissioners.

13.34 Under [s.55\(5\)](#) the Commissioners may, in the case of any closed church building, require a DMPC to refer the case to them. If this happens it will be for the Commissioners, in consultation with the DMPC, to discharge the use seeking duty.

Chapter 14

Churches in Use and Miscellaneous Matters

This Chapter outlines the general provisions in the 2011 Measure regarding churches¹ in use, including designation of parish churches ([s.41](#)), places of worship ([s.43](#)), and powers to lease parts of churches in use ([s.68](#)). Finally, it covers the restoration of a closed church building to use for regular public worship ([s.70](#)).

- 14.1 [General](#)
- 14.2 - 14.3 [Designation of parish churches](#)
- 14.4 [Provision of a new parish church](#)
- 14.5 [No change in status of existing churches](#)
- 14.6 [Loss of parish church status](#)
- 14.7 [Restorations of former parish church to parish status](#)
- 14.8 - 14.10 [Preparatory explanations to parishes](#)
- 14.11 [Parishes with no parish church](#)
- 14.12 - 14.15 [Approval by the bishop of churches as suitable to be parish churches](#)
- 14.16 – 14.17 [Conveyancing of a parish church or chapel of ease](#)
- 14.18 [Multi-purpose buildings](#)
- 14.19 [Consecration](#)
- 14.20 – 14.22 [Wider uses of church buildings](#)

¹ ‘Church’ in the 2011 Measure means “a church or chapel which has been consecrated for the purpose of public worship according to the rites and ceremonies of the Church of England, and includes a building used or intended to be used partly for the purpose of such public worship and partly for the purpose of a church hall, whether the whole building is consecrated or only such a part thereof as is used or intended to be used for the purpose of such public worship, and any reference to the consecration of a church shall, in the case of such a building, be construed as including a reference to the consecration of the part of the building used or intended to be used for the purpose of such public worship aforesaid”. ([s.106\(1\)](#)).

General

- 14.1** The 2011 Measure includes various provisions relating to parish churches and other church buildings. Only a consecrated building can be a parish church but a parish may exist without a parish church and have instead a consecrated or unconsecrated parish centre of worship (or another building licensed by the bishop for worship).

**41(1)(a) &
41(5)**

Designation of parish churches

- 14.2** [S.41](#) includes provisions for determining or designating the parish church(es) of any parish, including a new or altered parish or for changing the parish church of any parish. As indicated, only a consecrated building can be a parish church. Any church or churches in a parish created or altered by a scheme may be designated as a parish church or as parish churches, whether or not they have previously enjoyed that status, but the designation will not take effect in respect of a church or building which was not previously a parish church until it has been approved as suitable by the bishop, after consultation with the DAC and the DMPC, and, if necessary, consecrated. Liturgical and functional suitability, the ease and cost of maintenance (including environmental sustainability) and diocesan policy may all be relevant issues when considering a potential change of status of a new or existing building.
- 14.3** [S.41\(5\)](#) sets out the provisions which apply where a parish has more than one parish church by virtue of such a designation. Broadly, each designated parish church would have the status and functions of a parish church for the whole parish. (Under the Churchwardens Measure 2001, two churchwardens must be appointed for each of the parish churches and that Measure applies separately to each pair of churchwardens, but all the churchwardens are churchwardens of the whole parish except so far as they may arrange to perform separate duties in relation to the several parish churches. A Scheme may make alternative provisions for the number of churchwardens.)

**41(1)(c) &
41(4)**

Provision of a new parish church

- 14.4** A pastoral scheme or order may contain provision for a new parish church (which may be a new or existing church or place of worship) in addition to or in substitution for any existing parish church of a parish. The church would have to be approved by the bishop as suitable and consecrated. Where a parish has no existing parish church an existing building can be designated as the parish church, without a scheme or order, provided that the building is approved as suitable and is consecrated.

No change in status of existing churches

41(3)

- 14.5** Where the area of a parish is altered by a scheme (and that would include a union of parishes) and the scheme makes no provision with respect to the status of any church within the area affected, each such church will have the same status after the reorganisation as before. If this is the intention it could be expressed in a footnote to the proposals.

Loss of parish church status

41(1)(b)

- 14.6** If it is desired that a parish church should lose its parish church status a specific provision must be made in the scheme to that effect. The church will then become a chapel of ease within the new or altered parish and it may (subject to the views of the bishop's legal advisers) need to be licensed for marriages.

Restoration of former parish church to parish church status

**41(1)(a) &
70**

- 14.7** Occasionally it is desired to restore to the status of a parish church a building which has previously been reduced to the status of a chapel of ease or declared closed for regular public worship. A pastoral church buildings scheme under [s.70](#) of the Measure is required in the case of a closed church which vests either in the DBF, the Commissioners or the CCT. The bishop will need to consider the suitability of the church to be a parish church.

Preparatory explanations to parishes

- 14.8** The status of a church following pastoral reorganisation and the preservation of rights of parishioners have often proved to be sensitive local issues and representations have arisen because of misunderstandings about the practical effects of a scheme. In the course of preliminary consultations between the DMPC and PCCs it is always desirable for the various options open to be explained fully so that an indication can be obtained of the degree of independence which individual congregations wish to retain (see also [2.20](#) and [2.36](#)).
- 14.9** In this connection it should be borne in mind that Rule 18 of Part II of the Church Representation Rules (see [Volume 1 Chapter 8](#)) contains separate powers under which, in a parish with more than one church or place of worship, arrangements can be made whereby due representation on the PCC is secured for each congregation.
- 14.10** Congregations can also be represented by district church councils; deputy wardens can be appointed for each church or place of worship. Chapter 8 gives examples in diagrammatic form of the various arrangements that may legally be made about church councils and churchwardens to suit differing circumstances.

Parishes with no parish church

43(1) - (3)

- 14.11** A parish need not have a parish church at all. However, in that event the bishop must license a building or part of a building (normally, but not necessarily, in the parish) for public worship, and he may designate that building as the parish centre of worship. Furthermore the bishop may designate any number of centres of worship within a parish regardless of the existence or not of any parish churches. Thus a (consecrated) chapel of ease may be designated as a parish centre of worship in the same way as an unconsecrated building or part thereof. Where a parish has no parish church a building designated as a parish centre of worship serves the same purposes but persons to be married may elect to be married in the parish church of any adjoining parish.

Approval by the bishop of churches as suitable to be parish churches

14.12 The bishop may only give his approval of a building or church as suitable to be a parish church after consulting both the DAC and the DMPC. In their consideration of such proposals the diocesan authorities are advised to consider the following factors:

- a. Liturgical: This is regarded as primarily the concern of the parish but the diocesan authorities may wish to consider - particularly in the case of new designs - such matters as whether the building contains sufficient space for the conduct of the rites and ceremonies of the Church of England with dignity and without inconvenience yet also provides sufficient flexibility to allow for future needs.
- b. Functional: Does the building provide adequate and convenient accommodation for the congregation and clergy and incorporate essential facilities and safety features?
- c. Economic: Will the standard of construction and the materials used ensure that the building will be economical to maintain and will have an adequate life, having regard to the nature of the community in which it is to be situated?

14.13 The approval of a church or building as suitable to be a parish church often forms part of proposals under the Measure which need to be dealt with in a pastoral scheme or order. If so, the bishop's approval of a church building as suitable to be a parish church will need to be incorporated in the pastoral scheme or order providing that notice of the approval is received before the scheme is made by the Commissioners or the order sent to the bishop for completion. If the bishop's approval is given later, he should seal an Instrument reflecting his approval and send a copy of it to the interested parties and others concerned (including the Commissioners). The shortened procedure under [s.17](#) is applicable in such cases.

14.14 As explained earlier, a scheme or order is not required for the designation of a church to be a parish church where the parish concerned has no existing parish church. When the bishop seals an Instrument reflecting his approval of the church as suitable to be a parish church and that church has been consecrated, it will, by virtue of [s.41\(4\)](#) of the Measure, automatically become the parish church of the parish. **41(4)**

14.15 [S.41\(1\)\(d\)](#) of the Measure enables a scheme to include a provision for the bishop to notify the Commissioners of his approval of a building or church as suitable to be a parish church and, if applicable, of its consecration. In practice, however, the Commissioners will be satisfied with this information being provided on request.

Conveyancing of a parish church or chapel of ease

14.16 The site of any new church or existing place of worship which is intended to become a parish church will, if it is not already vested in the incumbent, generally be conveyed/transferred to the DBF under the New Parishes Measure 1943 so that it will vest in the incumbent under the provisions of that Measure. For this purpose, the DBF will need to receive at an early stage:

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- a. A modern metric plan, based on the current OS edition, on a scale of 1/1250 or larger showing, where appropriate, means of access to the site. If the land forms part only of a church complex the Commissioners' Mapping Division should be consulted as to whether more detailed plans may be required.
 - b. Particulars of any easements which have to be granted or received in connection with the site.
 - c. Confirmation that planning permission has been granted.
- 14.17** Particulars of the title will be required by the Diocesan Registrar after the DBF have approved acceptance of the site. The DBF will look to the PCC for reimbursement of search and registration fees and any fees applying from the acquisition of the property. The Commissioners' consent to the transaction will be required if the seller is a connected person or the DBF has not obtained a surveyor's report confirming that the terms are the best that can reasonably be obtained.

Multi-purpose buildings

- 14.18** Multi-purpose buildings are normally best left in the ownership of the DBF or PCC, especially where only part is to be consecrated. Generally it is best to avoid split ownership (and conveyancing problems in terms of rights and cross-rights and maintenance etc.). There is no legal requirement for a parish church to be vested in the incumbent. If any part of the building is consecrated, the whole building will be subject to faculty jurisdiction (irrespective of ownership), as would be the unconsecrated remainder of any building licensed since 1992 unless part or parts are exempted by order of the bishop after consultation with the DAC ([s.11 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991](#)). Where in doubt, check the position with the Diocesan Registrar.

Consecration

- 14.19** Arrangements for consecration must be made through the diocesan registrar who will be able to advise what particulars are required. If the property concerned is, or will be, the subject of a conveyance/transfer to the DBF (to vest automatically in the incumbent), the date of consecration should not be fixed without prior consultation with the Diocesan Registrar to ensure that consecration does not take place until the transfer is completed. It is not possible to convey/transfer a consecrated building under the New Parishes Measure.

Wider uses of church buildings

- 14.20** The sale, lease or other disposal of the whole or any part of a consecrated church is prohibited other than under the Measure.

- 14.21** In recent years church buildings have been used increasingly for wider community activities of many kinds which are complementary to their primary purpose as places of worship. Since 2006 it has been possible for a lease under [s.68](#) to be granted of part of a church building in use, provided that taken as a whole, the building continues to be used primarily as a place of worship. These provisions will not be suitable for use in all churches, or in all circumstances, but they do provide a potentially very useful tool for parishes. [S.68](#) enables the Diocesan Chancellor to grant a faculty authorising an incumbent (or the bishop if the benefice is vacant) to grant a lease of part of a church in use for a specified number of years.
- 14.22** See [*Wider Use of Part or Parts of a Church Building: A Guide to Section 68 of the Mission and Pastoral Measure 2011*](#) for more guidance on the use of this power, and on the circumstances where the (partial) closure route under the Measure may be more appropriate. Further guidance on this is also found in [15.6 – 15.7](#).

Chapter 15

Closure for Regular Public Worship

This Chapter deals with the circumstances of the formal closure of a church building for regular public worship. Closure without simultaneously settling the building's future is provided for in [s.42](#), while [s.58-s.59](#) provide both for closure and the future of the closed building in the same scheme.

- 15.1 – 15.4 [Declaration of closure for regular public worship](#)**
- 15.5 [Premature closure](#)**
- 15.6 [Closure of part of a church](#)**
- 15.7 [Faculty vs. Mission and Pastoral Measure](#)**
- 15.8 [Closures other than under s.42 of the Measure](#)**
- a. [S.58: Provision by pastoral church buildings scheme for the appropriation or demolition of a closed church to be replaced by a new church or other place of worship](#)
 - b. [S.59\(1\): Provision by pastoral church building scheme for the future use of a closed church](#)
 - c. [S.59\(2\): Provision by pastoral church buildings scheme for transfer of a closed church to the Churches Conservation Trust](#)
 - d. [S.59\(4\): Provision by pastoral church buildings scheme for the demolition of all or part of a closed church building](#)
 - e. [Churches not used since 1964 or demolished other than under the Measure](#)
 - f. [Demolition of a consecrated church otherwise than under the Mission and Pastoral Measure 2011](#)
- 15.9 [Parish left without a parish church](#)**
- 15.10 [Parochial register and records](#)**
- 15.11 - 15.14 [Marking the closure of a church – some liturgical, missional and pastoral questions](#)**

Declaration of closure for regular public worship

42 & 58

- 15.1** [Chapter 13](#) outlines the role of the DMPC in the formulation of reorganisation proposals which include closure for regular public worship of part or the whole of a church building, and also sets out the process to be followed.
- 15.2** A declaration of closure may be made in respect of all or part of a consecrated parish church or chapel of ease which is no longer required as a parochial place of worship. Of all pastoral proposals a declaration of closure is most likely to prompt representations and the Commissioners will in that event need to be provided with full details of the grounds on which the church (or the part concerned) is considered to be no longer required. It is important, therefore, for the DMPC to be sure at the outset what these grounds are. The Measure refers to the church not being "required". The implication of this is clearly that the primary question is whether the building is needed pastorally. This needs to be considered in the context of s.3(1) of the Measure that the Committee should have regard to worship, mission and community as central to the work of the Church of England. Whilst knowledge that a particular church is in a bad state of repair and that adequate finance to pay for the necessary works is not available may often be an important factor, it should not normally be the principal one, although the DMPC, in carrying out its functions, has to have regard to the financial implications for the diocese and Church of England as a whole.
- 15.3** If a church is required (pastorally) in the vicinity then either every effort should be made to raise money; or consideration should be given to, say, dividing it or otherwise reducing it or leasing part of it (see [15.4](#) and [15.6](#)); or it might be considered for replacement under [s.58](#) of the Measure (see [18.28](#)) if the building itself is not regarded as suitable. Other factors will include the actual and potential support for the church; the availability of another place, or other places, of worship in the neighbourhood, their accessibility (including the availability of public transport or offers of private transport); and possibly traditions of churchmanship, etc. Also, in cases where the church's state of repair is an issue, it should have been ascertained whether grant aid would be obtainable through English Heritage, the Heritage Lottery Fund or local authority or other sources if the church were to continue in use.
- 15.4** A new mechanism was introduced in 2006 whereby a lease may be granted of part of a church building, provided that taken as a whole the building continues to be used primarily as a place of worship (see [15.6](#)). This will not be suitable for use in all churches, or in all circumstances, but provides a tool which some may find of value and may enable wider uses for the benefit of the church and the community, such as the use of crypts or vestries for a wide variety of community purposes. It may also be an alternative in appropriate circumstances to closure or partial closure (see [15.6](#) and [18.28](#)) of the church. For further details see the [Guide on Wider Use of Part or Parts of a Church Building](#).

Premature closure

68(1)

- 15.5** [S.68\(1\)](#) of the Measure provides that 'it shall not be lawful to make any order or give any direction for closing a church on the ground that it is no longer required for use as a church and the only procedure for closing a church on that ground shall be by way

of a declaration of closure for regular public worship....'. This has to be read in conjunction with Canon B14A of the Canons of the Church of England under which the power of a bishop to dispense with the reading of Morning and Evening Prayer in a parish church or parish centre of worship may not be used 'so as to cause any church to cease altogether to be used for public worship'. Where a proposal for closure is pending, a church should not therefore be closed: indeed, it is most desirable for statutory services to be maintained otherwise it could be successfully argued that there has been a degree of pre-judgement at odds with natural justice and amounting to procedural irregularity. This would weigh heavily with the Commissioners (and, in the event of an Appeal, with the Judicial Committee of the Privy Council) if there were representations on this point. There is the practical consideration also that a church seen to be out of regular use is likely to become an attraction to vandals and the risk of theft of the contents will be greater. Should the bishop feel it necessary to authorise a curtailment of services on grounds other than lack of pastoral need (e.g. that the building is structurally unsafe), he should do so only after the advice of his legal secretary has been sought, and make the archdeacon or some other appropriate person responsible for seeing that the building and its contents are kept properly protected. If a church is closed on safety or repair grounds it should be on the basis of professional advice.

Closure of part of a church

59(2)

15.6 Before deciding to make a recommendation under the Measure for a declaration of closure in respect of only part of a church, the DMPC should examine the project carefully in the light of expert advice. The views of the CBC on such a proposal may be especially valuable on the adaptation of the building. The feasibility of a proposal will depend very much on:

- a. whether the particular building lends itself to a satisfactory division both from a structural point of view and that of separate responsibilities for future maintenance;
- b. whether there is a prospect of dealing with the closed portion in a way which is compatible with the continuation of worship in the remainder of the building; and
- c. whether the whole scheme will take into account the significance of the building, in terms of design qualities, special features and its setting.

The Commissioners welcome an opportunity to consider 'part' closure cases at an early stage and it is their practice to seek the preliminary advice of the CBC's Statutory Advisory Committee as soon as possible. It is usually only satisfactory to proceed with a partial closure in the context of a [s.59](#) scheme also settling the future of that part closed at the same time (see below). The suitability or otherwise of proceeding with a lease under faculty of the part of the church under review, rather than proceeding with closure, should be considered at the initial stage (see [15.4](#)). Particular attention should be given to the practicalities and issues arising from dual ownership when considering partial closure.

15.7 Faculty vs. Mission and Pastoral Measure

58, 59 & 66

Where a parish wishes to adapt its church for mixed worship and wider purposes, early consultation with the DAC and, if appropriate, the DMPC is advisable in order to decide how this might best be achieved. The CBC report may advise on the scope for adaptation of the building to facilitate a wider use while the building, taken as a whole, remains primarily in use for worship.

Depending on the nature of the proposal this might be achieved under licence or by the granting of a lease of part of the church building under faculty, provided that, taken as a whole, the building continues to be used primarily as a place of worship. As previously indicated, this route will not be suitable for use for all churches or in all circumstances but, where appropriate, it may enable wider use for the benefit of the church and community while the church remains in use for worship. More guidance on this leasing provision can be found in the [Guide to Wider Use of Part or Parts of a Church Building](#). There should be consultation with the relevant bodies at an early stage where possible adaptations are under consideration to accommodate new uses. The extent to which these would be reversible may also be a relevant factor.

Where the option of a licence or lease under faculty is not appropriate then the possibility of partial closure of the building for a proposed alternative use might be explored. This would require a pastoral church buildings scheme under [s.59\(1\)](#).

Closures other than under s.42 of the Measure

- 15.8** More often than not a church is closed by a pastoral church buildings scheme under [s.42](#) and the future of the building is settled subsequently by a pastoral (church buildings disposal) scheme under [Part 6](#) of the Measure. However, in certain circumstances, under [s.58](#) or [s.59](#), the future of the building can be settled in the same pastoral church buildings scheme which provides for its closure. In such cases it is important to consult the Commissioners on the future of the building at a very early stage when the draft proposals are being formulated. The Commissioners have to be satisfied with the proposals for the future of the building, including the suitability of any proposed use, before they publish a draft scheme in such circumstances:

- a. [S.58](#): Provision by the pastoral church buildings scheme for the appropriation or demolition of a closed church to be replaced by a new church or other place of worship*

Where a replacement church or place of worship is to be provided the pastoral church buildings scheme may provide for the future of the closed church. This is covered in more detail in [18.28](#)).

- b. [S.59\(1\)](#): Provision by the pastoral church buildings scheme for the future use of a closed church*

Where at the stage when a closure is proposed and a suitable alternative use has been identified, the pastoral church buildings scheme may declare the church closed and go on to authorise its appropriation to an alternative use or uses. (See also [18.29](#)).

c. [S.59\(2\)](#): Provision by the pastoral church buildings scheme for direct transfer of a closed church to the Churches Conservation Trust

In a few exceptional cases, the Commissioners may, after consultation with the CBC's Statutory Advisory Committee and satisfying themselves that no suitable alternative use is likely to be forthcoming, decide that the church and its contents are of such outstanding interest and quality that they ought to be preserved in the interests of the nation and the Church of England. The Commissioners also have to be satisfied that the CCT will have the resources to meet the cost of repairing and maintaining the building. In such an event it will be possible for the pastoral church buildings scheme declaring the church closed also to provide for its direct transfer to the CCT for care and maintenance. (See also [18.29](#) and [20.6-20.18](#).)

d. [S.59\(4\)](#): Provision by the pastoral church buildings scheme for the demolition of all or part of a closed church building

It is possible, in the pastoral church buildings scheme closing a church, to provide for demolition of the building and disposal of the site where it is unlisted and is not in a conservation area and the Commissioners are satisfied with the proposals for the future of the building (see [18.29](#)).

NOTE: *It should be noted that if the powers of [s.58](#) or [s.59](#) are used, the provision for demolition, use or vesting in the CCT (being in a pastoral church buildings scheme) can be the subject of an appeal to the Privy Council. If instead the two stage procedure is used there is no right of appeal against the subsequent pastoral (church buildings disposal) scheme that settles the future of the closed church.*

e. Churches not used since 1964 or demolished other than under the Measure
Under [s.66\(1\)](#) of the Measure, where the bishop is able to certify to the Commissioners that a church (or part of one) has not been used for divine service since 1 April 1964 (5 years prior to the coming into operation of the 1968 Measure), the Commissioners may, subject to the consents of the incumbent, the patron and the PCC, forthwith make an order declaring the church (or part) to be closed. (See also [13.27](#))

**66(1) & (2)
Schedule 8
Para. 9(2)**

There is also power to make provision for the site of a church demolished either before the Measure came into being or other than under the Measure ([s.66\(2\)](#)).

NOTE: See [22.14-22.19](#) for disposal of sites.

f. Demolition of a consecrated church otherwise than under the Mission and Pastoral Measure

In certain circumstances it is possible to proceed with the demolition or partial demolition of a consecrated church under the authority of a faculty under [s.17 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991](#). A faculty may only be granted where "another church or part of a church will be erected on the site or curtilage of the church or part of a church in question or part thereof to take the place of that church or part of a church". A faculty for

the demolition of part of a church may only be granted if "the part of the church left standing will be used for the public worship of the Church of England for a substantial period after such demolition" or where "such demolition is necessary for the purpose of the repair or alteration of the church or the reconstruction of the part to be demolished." The views of the CBC, DAC and any interested person have to be duly considered. In the case of a church which is a listed building or in a conservation area, the views of the Secretary of State, the LPA concerned, English Heritage and the national amenity societies have also to be considered. The procedure for demolition under faculty is most appropriate in cases where a building has been badly damaged by accident and is to be replaced or rebuilt under insurance without any other development on the site being contemplated. It should, however, be noted that faculty jurisdiction contains no powers for an incumbent, DBF or PCC to dispose of all or part of a church and if the proposals involve disposing of any part of the church site (e.g. for redevelopment to help meet the cost of the new church), it would be necessary to proceed by a pastoral church buildings scheme under [s.58](#) of the Pastoral Measure (or a scheme under [s.66\(2\)](#) where demolition had already taken place).

If the church concerned is one for which proposals for a declaration of closure have already been made under the 2011 Measure, the Commissioners must be informed immediately of any proposal for demolition under a faculty.

There are also powers in [s.18 of the 1991 Measure](#) for a diocesan chancellor to authorise the carrying out of the whole or partial demolition of a church if such demolition is necessary in the interests of health or safety or for the preservation of the church and there is insufficient time to obtain a faculty.

It should be noted that the demolition of all or part of a listed church, or an unlisted church in a conservation area, requires listed building consent, or conservation area consent respectively, unless the demolition is pursuant to a scheme under the 2011 Measure or is in respect of part of a church which is still in use and which will continue in use immediately after the demolition.

Parish left without a parish church

43(1) - (3)

- 15.9** If the effect of a declaration of closure for regular public worship is to leave a parish without a parish church, there is an obligation upon the bishop to make provision for public worship by licensing one or more buildings or parts of buildings for such worship. It is possible for such a building to be outside the parish boundaries but this should normally only be considered as a short-term measure where the only temporary building is in a neighbouring parish (see [14.12](#)).

Parochial registers and records

41(8)

- 15.10** Where a church ceases to be a parish church either on becoming a chapel of ease or being declared closed, the pastoral church buildings scheme should make provision for the disposal of the parochial registers of baptism and burial and other parochial

records belonging to the church, either to the parish church of the new parish (where applicable) or in accordance with the directions of the bishop. (The disposal of the marriage registers is governed by [s.62 of the Marriage Act 1949](#)). There may be old registers and other parochial records of historical value and it is most important that in all cases the directions in the scheme are promptly complied with; it is suggested that the archdeacon is the proper person to have oversight of this. (See also [Appendix 2.6](#) para. 3.9).

Chapter 16

Settling the Future of Closed Church Buildings: Responsibilities of Diocesan Boards of Finance

This chapter outlines the responsibilities of the DBF during the use seeking period (see [s.61](#)) and provides details of possible sources of finance available. The period following a declaration of closure for regular public worship is described as the “use seeking period”. During this time the DBF is responsible for the building and the DMPC seeks a suitable alternative use (unless the future of the building has been settled at the time of closure by a pastoral church building scheme under [s.58](#) and [s.59](#) (see [Chapter 15](#))). In the event a closed church building is leased for a suitable alternative use, the DBF will be the lessor.

The TMA Rules and Application form (C8) is found on our website (Closed Churches Forms and Notices) [here](#).

- 16.1 - 16.3 [General](#)

- 16.4 [Care and maintenance](#)
 - (i) [Security](#)
 - (ii) [Routine maintenance](#)

- 16.5 - 16.7 [Safekeeping of contents insurance](#)

- 16.8 [Insurance of the building](#)

- 16.9 [Insurance of contents](#)

- 16.10 - 16.12 [Financial resources available to the Diocesan Board of Finance](#)
 - (i) [Diocesan Pastoral Account](#)
 - (ii) [Temporary Maintenance Account](#)
 - (iii) [Churches Conservation Trust](#)
 - (iv) [Charitable trusts](#)
 - (v) [English Heritage](#)
 - (vi) [Local Authority](#)
 - (vii) [Listed Places of Worship Grants Scheme](#)

- 16.13 [Time limit and extension of use seeking period](#)

- 16.14 - 16.17 [When a pastoral \(church buildings disposal\) scheme becomes effective](#)

General

61(1)

- 16.1** When the declaration of closure for regular public worship takes effect a closed church building and its contents vest automatically in the DBF for care and maintenance ([s.61](#)). However, ownership of, and responsibility for, the land annexed or belonging to the building are not affected by the closure of the building. In most cases this means the churchyard continues to vest in the incumbent and the PCC remains responsible for its upkeep. Where the parish ceases to exist this will become the responsibility of the parish in which the building is now situated and the PCC should be made aware of the need to arrange adequate insurance provision accordingly. Until a subsequent pastoral (church buildings disposal) scheme comes into effect the DBF is responsible for:
- care and maintenance of the building;
 - safekeeping of the contents whether within the building or elsewhere;
 - insurance of the building and its contents.
- 16.2** The DBF has a crucial role in maintaining the building in a reasonable condition so as to assist the use seeking process. Prompt action and often modest expenditure in dealing with urgent repairs can enhance the chances of securing a new use and a reasonable sale price.
- 16.3** The Commissioners make the final decision on what is to happen to a closed church building. It is important that the outcome is not prejudiced by neglect of the building during the use seeking period.

Care and maintenance

61(2)

- 16.4** The DBF should protect the closed church building and ensure that it is in a satisfactory condition for the market.

(i) Security

Immediately on closure the DBF should secure the building against vandalism and theft and ensure that the local police are notified of its changed status. The DBF should consult the DMPC on the appointment of a qualified agent to assume custody of the building whilst the search for an alternative use commences. The incumbent and churchwardens (while incurring no financial obligation) are required to give the DBF every assistance in providing for reasonable supervision of the building against damage ([s.61\(1\)\(d\)](#)), e.g. by enlisting "friends" of the church living nearby to keep an eye on the property and report any concerns.

As a protection against fire risk the DBF should clear the building of flammable loose materials such as hymn books, service sheets, obsolete notices and soft furnishings. The particularly vulnerable parts of a closed church are the doors and windows and the DBF should consider boarding up windows before damage occurs, especially in areas of high risk from vandalism, or if the stained glass is valuable. Boarding up techniques should

be as reversible as possible. The use of patent metal boxes with perforated fronts fixed to the outer surface are most effective at preventing entry, permitting ventilation and making the boarding up look professional rather than makeshift.

The DBF should make every effort to prevent the building acquiring a neglected appearance and arrange for it to be inspected regularly. If some limited use can continue or appear to continue this may deter vandals. The DBF may, with the consent of the bishop and the local incumbent or priest in charge, permit the building to be used for occasional worship.

(ii) *Routine maintenance*

The DBF should ensure the building is kept in a wind and waterproof condition. Keeping gutters and downpipes clear of obstructions is essential. Any vegetation growing at the foot of the walls or up the building should also be destroyed. The DBF should consider the desirability of continuing any maintenance agreements in existence before the church was declared closed.

Financial assistance with repairs can be provided by the Commissioners' Temporary Maintenance Account (TMA), details of which are provided in C8 found on the [Closed Churches Forms and Notices webpage](#).

Although the Inspection of Churches Measure 1955 ceases to apply on closure ([s.61\(3\)](#)), the building is still subject to faculty jurisdiction (and is now also subject to listed building control, if listed) during the use seeking period.

In the event of the local authority serving a Dangerous Structure Notice (or Urgent Work Notices or Repairs Notices under the listed building legislation) on the incumbent or DBF, the Commissioners should be informed immediately.

Where the building is already in a very poor state of repair the essentials are for the DBF to keep the building secure against unauthorised entry, undertake those repairs required by the insuring company, and keep the building watertight.

If the building is a strong potential candidate for 'last resort' vesting in the CCT, the CCT may be involved in site discussions and liaison with the Commissioners and the DBF (see also [16.12\(iii\)](#)). The CCT's regionally based staff could be asked to include the building on their list of routine inspections and their own maintenance contract. The CCT may of course seek reimbursement of the additional costs incurred. If the DBF undertakes repairs to such a church, prior consultation with the Commissioners and CCT is desirable.

Safekeeping of contents

- 16.5** The care and disposal of contents are dealt with in depth in [21.22 - 21.38](#) and the guidance note, found as [Appendix 2.6](#). The contents may be as important artistically or historically as the building itself and should be looked after and disposed of responsibly. The contents of a church going through the process of closure are particularly vulnerable, especially where the congregation has ceased to use the building regularly in anticipation of its closure. The DBF should, therefore, advise churchwardens on the need:
- (i) to consider how best to safeguard the contents;
 - (ii) to remove, temporarily for safe-keeping in a secure repository, vulnerable contents of particular value;
 - (iii) to ensure that all contents remaining in the building are kept secure and insured;
 - (iv) to avoid the permanent disposal of contents if a declaration of closure for regular public worship is proposed and especially in the period immediately preceding closure in order:
 - a. to avoid giving the impression that any objections to the closure of a church building have been pre-judged; and
 - b. to keep open all possible options for its future especially use by another worshipping community or possible vesting in the CCT;
 - (v) to obtain all necessary consents to the removal of contents, fixtures and fittings. [*Generally, temporary removal of contents for safekeeping would not require a faculty but the PCC should consult the DAC before moving them. Temporary or permanent removal of fixtures and fittings from a church in use are normally exempt from secular listed building controls but permanent removal would require a faculty (but see the caution in (iv) above). However, where a church has not been used for worship for some time, even if it has not been declared closed, the local planning authority may argue that it is caught by the listed building controls and the PCC is advised to seek listed building consent and, in the case of Grade I and II* buildings, the views of English Heritage, before removing any fixtures or fittings.*];
 - (vi) to ensure that the inventory is kept up to date and annotated to show that an item has been removed for safe-keeping, its original location, its new location and any damage incurred during removal; and
 - (vii) upon the declaration of closure for regular public worship taking effect to provide the DBF, or its representative, with a copy of the annotated inventory as described in (vi).

16.6 The key points during the use seeking period are summarised below:

- (i) The DBF is responsible for the safekeeping and insurance of the contents and should agree the inventory with the churchwardens when closure takes effect. This should be annotated to show any item removed either for safekeeping or permanently; its original and new location; and any damage caused by its removal. Two copies should be sent to the Commissioners (who will pass one to the CBC's Statutory Advisory Committee (SAC)).
- (ii) The DBF may, without applying for a faculty, transfer any of the contents on a temporary basis to a place of safekeeping for the duration of the use seeking period after consulting the DAC and the Chancellor (unless it considers this impracticable in view of the urgency of the situation). It should, though, serve notice on the Commissioners, the SAC, the CCT and the Diocesan Registrar ([s.61\(4\)](#)). A closed church is fully subject to listed building and conservation area controls, and the DBF should normally consult the local planning authority and English Heritage (in the case of Grade I or II* buildings) prior to the temporary removal of any fixtures or fittings. Removal should be avoided if it cannot be achieved without damaging the item or the fabric of the building.
- (iii) It is undesirable for contents to be removed permanently until the future of the building is clear, particularly if there is a possibility that the church will be found an alternative use where retention of the contents in situ is appropriate or vested in the CCT. If the DBF does dispose permanently of any contents, fixtures or fittings during the use seeking period, it must consult the DAC and obtain a faculty. The DBF should notify, inter alia, the Commissioners, the SAC, the CCT and the Registrar. Removal of any object or structure fixed to the building requires listed building consent - this covers, for example, windows, fixtures and perhaps some furnishings from listed buildings. Where in doubt consult the local planning authority. *Hasty alienation of contents by the diocese should be avoided as this can prejudice future decisions.*

16.7 The SAC's early advice will draw attention to any particularly important fixtures, fittings and other contents which merit special attention when considering any ultimate disposal.

Insurance

Insurance of the building

16.8 The DBF should insure the closed church building against risk from fire, lightning and explosion, and also public liability. The EIG may provide cover against a wider range of perils (e.g. storm and malicious damage), if specially requested, and will consider any proposal in the light of individual circumstances.

- (i) The EIG will issue a fire policy on the understanding that the building is adequately secured against intruders. In considering the amount of this

insurance the DBF should take into account not only the size of the building but also its likely future. In most cases a closed church building will be appropriated to a suitable use or vested in the CCT and the aim should be to ensure that its future is not prejudged by the lack of insurance compensation to repair fire damage to part of it.

For buildings of little or no architectural merit where the Commissioners are satisfied, after consulting the CBC, that there is no objection to demolition taking place, a minimum fire insurance cover may be appropriate, but should cover the increased costs of demolition which may arise following fire. Larger buildings and especially those in urban areas will probably require higher cover.

- (ii) For public liability insurance, the EIG recommends a minimum limit of cover of at least £2m for a closed church building vested in the DBF. (The PCC's insurance cover ceases when the building is closed). To avoid cover ceasing before new insurance instructions are issued, the Commissioners have arranged a block policy with the EIG to cover public liability up to £2 million for any one claim. The cover under this policy applies for a period not exceeding 60 days following the declaration of closure for regular public worship. The churchyard's ownership is unaffected and it is for the PCC to retain public liability cover in force for it.

The EIG policy requires that those insured take all reasonable steps to prevent accidents and maintain the premises. The EIG usually inspects each closed church and, if a building is dangerous, may well put forward risk improvement requirements as a condition of continuing cover. Generally cover is granted on the understanding that the closed church building is in fair order, adequately secured against intruders, and does not form a danger to the public (e.g. from loose tiles or rusty gutters and downpipes).

Insurance of contents

- 16.9** The EIG is prepared to cover the risk of fire damage to the contents of closed churches and to a more limited degree the risk of theft following forcible entry. Theft cover is usually only provided if there is excellent security. The sums insured are normally nominal, reinforcing the need for the DBF to ensure that the building is kept fully secured and, where there is particular danger of vandalism or theft, to consider whether more valuable contents ought to be moved to a place of greater security for safekeeping.

Financial resources available to the Diocesan Board of Finance

- 16.10** The DBF should make adequate budgetary provision to meet known or likely commitments in its role as custodian of closed church buildings during the use seeking period, not least so as to retain asset value. Failure to do so may well prove a false economy leading to reduced sale proceeds or costs arising from a non-statutory public inquiry in the event that demolition of a listed building is proposed.

16.11 Schedules of costs incurred in respect of each closed church building should be maintained by the DBF so that these can be taken into account by the Commissioners when dealing with any proceeds arising in due course from disposal of the building.

16.12 Financial assistance may be available from the following sources:-

(i) *Diocesan Pastoral Account*

DBFs now hold devolved DPA funds ([s.93](#)) to which monies due to a DBF under the 2011 Measure are credited and relevant costs paid.

Expenses incurred pursuant to the 2011 Measure by the Bishop, the DMPC, the DBF or the Church Commissioners (e.g. insurance premiums; repair costs; expenses incurred in obtaining planning permission; the requirements of s.106 Agreements or agents' fees) are paid out of the monies standing to the credit of the DPA. DPA funds are not allowed to be spent for any other purpose unless the DBF is satisfied that the funds in the DPA are not required, or likely to be required, for meeting expenses under the 2011 Measure.

Part of the process of devolving DPA funds to dioceses included setting up an account for each diocese, held by the Commissioners, containing a proportion of the DPA funds. The Diocesan Debtors Account (DDA) is used to meet the Commissioners' direct incidental expenses, such as newspaper notices and legal fees in connection with schemes under the 2011 Measure and any other expenditure in relation to the disposal of closed churches. DBFs should ensure that a small credit balance is maintained in the DDA to meet these costs.

When a closed church is disposed of, the monies due in reimbursement of costs, and the DPA's two-thirds share of any apportionment of the net proceeds, are reimbursed to the DDA, and drawn down to the Diocese on request. Details of the costs allowable against such proceeds may be found in [22.12](#)

In practice a number of dioceses have found it expedient to ring fence a sum in the DPA from the net proceeds arising from disposal of a closed church. These monies are then used for any further costs under the 2011 Measure as new cases come forward or costs are incurred, and the set aside sum is replenished when any further proceeds are received. This has merit in that it ensures that the DBF is maintaining monies in the DPA to fulfil its statutory requirement but allows for the release of funds exceeding this sum to other diocesan purposes.

(ii) *Temporary Maintenance Account (TMA)*

Under [s.95](#) of the 2011 Measure the Commissioners hold the TMA to assist DBFs with the repair, maintenance and insurance of closed church buildings during the use seeking period and pending the coming into operation of arrangements under a pastoral church buildings or pastoral (church buildings disposal) scheme. This effectively means that the TMA is potentially available

for all closed church buildings vesting in the Commissioners or the DBF whose future has not yet been settled.

The current rules governing the account and a copy of the standard application form to claim reimbursement of expenditure incurred are provided in C8 on the [Closed Churches Forms and Notices webpage](#). The Rules are usually reviewed annually.

The Commissioners currently make payments from the TMA on the understanding that where possible the TMA will be reimbursed from any capital proceeds arising from the sale or lease of the church.

(iii) Churches Conservation Trust

Under [s.57\(14\)](#) the CCT may contribute to the cost of the care and maintenance of a closed church pending the making or coming into operation of arrangements under a pastoral (church buildings disposal) scheme. In practice such assistance is only likely to be given in exceptional cases, when the church is a strong potential candidate for vesting (see [16.4\(ii\)](#)).

(iv) Charitable trusts

Under [s.77\(1\)](#) the income from a charitable trust which includes among its purposes the repair and maintenance of the closed church building and its contents can continue to be applied during the use seeking period.

(v) English Heritage

If the church is listed Grade I or II*, EH may in exceptional circumstances be prepared to grant-assist emergency repairs from funds provided for secular buildings (for example, if the church is likely to be vested in the CCT if a pre-vesting package can be agreed). EH will not offer grant aid if the present state of the building can be attributed to the failure of the DBF to maintain it since closure. The DBF should consult the Commissioners before making any such approach.

(vi) Local Authority

Local authorities may also be able to offer some financial assistance towards emergency repair costs (grants and loans may be available from both district and county councils).

(vii) Listed Places of Worship Grants Scheme

This is an interim grant scheme which returns, in grant aid, a portion of the amount of VAT paid on eligible repairs to listed places of worship (see www.lpwscheme.org.uk). Expenditure incurred by a DBF on repairs to a listed closed church during the use seeking period is eligible under the scheme.

Time limit and extension of use seeking period

- 16.13** A DMPC has up to 2 years from the date of closure in which to seek a suitable use for a listed closed church building or unlisted building in a conservation area (or to develop proposals for the future of any other closed church buildings). The Commissioners may, in exceptional circumstances only, extend this period, after consultation with the DBF and with the consent of the Bishop, for a further period (e.g. where a possible use is in the pipeline, or a renewed marketing initiative is under way - see also [20.1](#)).

When a pastoral (church buildings disposal) scheme becomes effective

- 16.14** When a pastoral (church buildings disposal) scheme comes into effect the DBF's responsibility ceases, except where the scheme provides for the building (and any annexed land) to be vested in the board and to be sold, given, leased, licensed or otherwise held. If the DBF is empowered to sell or lease the property, it is responsible for ensuring the Mission and Pastoral Measure requirements in respect of human remains, tombstones, monuments and memorials and contents are carried out prior to completion of the transfer or lease. These requirements are covered in [21.39-21.62](#).
- 16.15** Where the church vests in the CCT, the building and its contents should formally be "handed over" by the DBF to a representative of the CCT; any trust fund for the upkeep of the building or its contents should also be notified to the CCT and the necessary transfer of ownership carried out.
- 16.16** Where a building is to be given, sold or exchanged by the Commissioners they will normally only bring the scheme into effect when the parties are in a position to exchange contracts. Until then the DBF remains responsible for the building. The contents will be disposed of in accordance with the provisions in the scheme and bishop's directions and the procedures set out in the detailed guidelines outlined in [Appendix 2.6](#) and also [21.22 - 21.38](#) should be followed.
- 16.17** For details of the DBF's responsibilities where a building is to be demolished see [21.14 - 21.21](#).

Chapter 17

Settling the Future of Closed Church Buildings: Suitable Alternative Uses

This chapter outlines possible suitable alternative uses for closed churches. It is for the Commissioners to determine whether a proposed use is suitable for a particular building. When the DMPC has identified a prospective use, it makes its recommendation to the Commissioners in the form specified in C1 on the [Closed Churches Forms and Notices webpage](#). More details on the use seeking process itself are found in [Chapter 18](#).

- 17.1 - 17.3** [Suitable alternative uses](#)
17.3 [Ethical investment policy](#)
- 17.4 - 17.5** [Alternative uses found for closed church buildings](#)
- 17.6 - 17.7** [Use of closed church buildings for worship by bodies other than the Church of England](#)
- 17.8 - 17.10** [The Human Rights Act 1998](#)
- 17.11 - 17.13** [Transfer to either the Department of Media, Culture and Sport \(DCMS\) or English Heritage \(EH\)](#)

Suitable alternative uses

- 17.1** Central to the Christian faith is the unique revelation of God in Jesus Christ and the restoration of humankind's relationship with God through Christ. Any consideration of suitable alternative uses must be placed in this context. Moreover, ecclesiastical buildings and consecrated places bear enduring public witness to the faith and values of the Christian community.
- 17.2** Since 1969 alternative uses have been found for over half of all closed church buildings, with a large number appropriated for worship by other Christian bodies. This is generally the best use but there are many other suitable uses, including a number offering direct community benefits, for example use as a concert hall or museum, or for other cultural or educational purposes, or for a variety of suitable commercial uses such as offices, light industrial or residential use. The main uses to which closed church buildings have been appropriated are set out below. This is not an exhaustive list, nor does it imply that uses not included are to be regarded as unsuitable in principle; if in doubt consult the Commissioners at an early stage. Not every use on the list will be suitable for every closed church building.

Statement of ethical investment policy

- 17.3** The Church of England Ethical Investment Advisory Group's Statement of Ethical Investment Policy is used by the Commissioners as a guide in assessing the suitability of potential uses for closed church buildings and their sites. The statement can be found at <http://www.churchofengland.org/about-us/structure/eiag.aspx>.

Alternative uses found for closed church buildings

- 17.4** The most common alternative uses include:
- *Worship by other Christian bodies*
 - *Civic, cultural or community purposes*
(includes community centre; lecture or concert hall; conference hall and exhibition centre; art gallery or heritage or tourist centre; county record office; urban study and architectural interpretation centre; youth work and night shelter; library; Scout and Guide headquarters; children's nursery)
 - *Monument* (for preservation)
 - *Residential*
 - *Storage*
(includes university book store; scenery and props; warehouse; diocesan furnishings store)
 - *Arts and crafts, music or drama centre*
(includes arts centre; theatre and restaurant; orchestral or operatic rehearsal hall; Fine Art auctions; craft workshop)

- *Light industrial / office / retail*
(includes: pottery manufacture; studios and offices; antiques market; retail shops)
- *Private and school chapels*
- *Educational purposes*
- *Museums*
(includes: natural history; archaeological; regimental)
- *Adjuncts to adjoining estates*
- *Sports use*
(includes: squash courts; gymnasium; indoor climbing centre)

The Commissioners have records of all uses found for closed churches and can provide DMPCs with details of specific examples on request. A DMPC representative and the prospective user may wish to visit a successful conversion elsewhere if a particular use is under consideration.

- 17.5** When closure is initially under consideration the Commissioners consult the SAC for early advice on the building and this will provide guidance on the scope for structural adaptation, which may impinge on the sorts of alternative use which might be suitable. The 2011 Measure gives the diocese and Commissioners full discretion to find the most suitable alternative uses for closed church buildings and land without an obligation to secure the best price in each instance (but see also [Chapter 18](#)).

Use of closed church buildings for worship by bodies other than the Church of England

Use by other Christian groups

- 17.6** As discussed in [17.2](#) use for worship by other Christian Groups is usually the best use. The following guidelines apply where another Christian religious body is interested in acquiring a church and using it for worship.
- (i) Use as a place for worship by Christian bodies which are members or associate members of, or official observers at the Churches Together in England (CTE), or the Council of Churches for Britain and Ireland (CCBI), or the World Council of Churches (WCC) would ordinarily be regarded as suitable;
 - (ii) Equally, there a prima facie case for accepting as suitable use as a place of worship by a Christian body which, though qualified to be a member of the CTE, CCBI or WCC, is not a member;
 - (iii) Use for worship by any other Christian group not so qualifying should be considered on its merits. The DMPC is recommended to make enquiries into

the beliefs and practices of the body concerned, and have due regard to the particular local circumstances.

Disposal to other faith communities

- 17.7** Proposals for the use of church buildings by other faith communities for worship can be controversial and need to be treated with sensitivity. Consideration is set within the context of [17.1](#) and use for worship by adherents of a non-Christian faith would not tend to be preferred to other types of use. If, nevertheless, the DMPC with the clear support of the Bishop recommends that the Commissioners publish a draft pastoral (church buildings disposal) scheme with a view to authorising a disposal of the property for such a use, the DMPC should have taken account of all the relevant circumstances as well as the principles referred to in [17.8](#).

The relevant circumstances will include:-

- The views of formally constituted Anglican and Christian bodies in the locality. (The views of PCCs and the deanery synod should be ascertained following debates on clearly expressed motions with votes being taken);
- The effect upon the life and mission of the church locally and more widely;
- The beliefs and practices of the community in question which should be considered carefully, particularly where it is not from one of the main world faiths or is of a particular tradition whose practices might not find wider acceptance within society;
- The effect upon relationships between Christian communities and between them and other world faiths locally and more widely in other countries;
- The historic and architectural nature and importance of the closed building and its contents; the effect of any structural alterations needed to facilitate the proposed use; and the general significance of the building in the local and wider Christian community;
- The views of the local Member of Parliament, the local authorities and other representative figures, and the views of the local residents so far as these have been made known;
- The availability or prospect of other alternative uses for the closed building, including use by another Christian denomination;
- The availability of other suitable buildings to the proposed user.

The Human Rights Act 1998

- 17.8** (i) Counsel has advised that, when carrying out their functions under the 2011 Measure, the Commissioners and other Church bodies (such as DMPCs) are public authorities for the purposes of the [Human Rights Act 1998](#). A refusal to

dispose of a closed church for use for worship by members of another denomination or faith by reason of their beliefs would, *prima facie*, be incompatible with the [European Convention on Human Rights](#) and so, if made by a public authority for the purposes of the 1998 Act, unlawful under [s.6\(1\) of the 1998 Act](#).

- (ii) However, Counsel advised that any such breach of the 1998 Act could be successfully defended in the courts if, as the case may be, the Commissioners or other Church body were able to show objective and reasonable justification for the decision (for example, any opposition on theological grounds of those who wished the future use of the building to take account of its distinctively Christian history or on aesthetic grounds for maintaining Christian artefacts or symbols) provided it could be demonstrated that a fair and proportionate balance had been struck between the aspirations of the would-be users of the property and the legitimate aims of any opponents of the use.
- (iii) It may be more difficult to show a fair balance if another (non-worship) use has been preferred over a use for worship by another denomination or faith but objective and reasonable justification in writing for such a decision should suffice.
- (iv) Refusal to dispose of a closed church building to members of another faith could be held to be a breach of the [Equality Act 2010](#), which prohibits discrimination on grounds of religion in the disposal or letting of premises. However, as in the case of the Human Rights Act, a claim of discrimination could be successfully defended if there is objective and reasonable justification for the decision. Everyone exercising functions under the Measure is required by section 1 to have “due regard to the furtherance of the mission of the Church of England”, and this is an important factor to weigh in the scales against the Equality Act requirements.
- (v) There can be no “blanket policy”. Each case must be looked at on its own merits.

The above guidelines must be interpreted in the light of the considerations set out above. Dioceses should seek advice from the Commissioners as necessary.

Objective and reasonable justification in writing for decisions is the key to the avoidance of risk.

17.9 When the Commissioners have before them all the relevant information concerning a specific proposal, they will be able to decide whether to publish a draft pastoral (church buildings disposal) scheme providing for the new use. If they do so decide, their final decision on whether or not to make the scheme cannot be taken until they have considered, after consultation with the Bishop, any representations received during the statutory notice period.

17.10 Where the Commissioners have sold a closed church building for a non-worship purpose and there is a request to vary the use covenant to permit worship by a body other than the Church of England, the Commissioners will have regard to the

guidance above. This will equally apply when there is a request to vary a covenant to allow a worship use other than that originally authorised.

Notes:

- (1) DMPCs should also have regard to [GS 1185 Communities and Buildings - Church of England Premises and other Faiths](#) (a report prepared for the General Synod by the then Board of Mission's Inter-Faith Consultative Group). In 1996 the General Synod passed a motion indicating its belief that the report provided "the proper framework for policy-making about the use of Church buildings by people of other faiths, and the disposal of Church buildings to people of other faiths", and commended it to dioceses for study and appropriate action.
- (2) In connection with Note (1) above, other faith communities are sometimes interested in acquiring closed church buildings for non-worship use (e.g. community, social or educational use). Discrimination against such a community for such a use is not recommended and could be in breach of the Race Relations Act 1976 (see [17.8 \(iv\)](#) above).

Transfer to either the Department for Culture, Media and Sport (DCMS) or English Heritage (EH)

- 17.11** Under [s.79](#) of the Measure closed church buildings of outstanding historic or architectural interest vested in a DBF may be transferred to the DCMS or, with the Secretary of State's agreement, to EH. The consent of the Commissioners and the Bishop is required to such a transfer but it does not need a further scheme under the Measure. In practice, the initiative in any arrangements of this nature would be taken by the Commissioners after consultation with the CBC.
- 17.12** This power of transfer has only ever been used in very exceptional circumstances and is unlikely to be used again, certainly while present constraints on national Government expenditure continue. The normal method of arranging for the preservation of closed church buildings of outstanding historic or architectural interest is by vesting in the CCT - see [20.6 to 20.18](#).
- 17.13** A closed church building transferred under [s.79](#) may, subject to the consent of the Secretary of State or (as the case may be) EH, be restored to use as a church by a pastoral church buildings scheme under [s.70](#).

Chapter 18

Settling the Future of Closed Church Buildings

The Search for a Suitable Alternative Use

This chapter deals with the search for suitable alternative uses for closed church buildings. Individual case circumstances will always be relevant when seeking alternative uses, but adopting a strategic approach, as set out below, will facilitate a successful outcome. Developing an action plan for each case is strongly recommended. In most cases efforts to find new uses follow closure. Sections [58](#) and [59](#) of the Measure provide for a church to be declared closed for regular public worship and its future settled within the same pastoral church buildings scheme, rather than via the normal two stage procedure. However representations against [s.58](#) and [s.59](#) schemes may result in objectors seeking Leave to Appeal to the Judicial Committee of the Privy Council. Each of the possible statutory routes are explored in the chapter.

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18.29

[Section 59 Cases](#)

- (i) [Section 59\(1\) cases](#)
- (ii) [Section 59\(2\) cases](#)
- (iii) [Section 59\(4\) cases](#)

Use seeking strategy

- 18.1** Closed churches are a unique building type. Most are listed, have some historical significance and are surrounded by a churchyard. Consequently, it can be difficult to find new uses for them and to secure disposals which remove the ongoing financial liability of a disused building and generate income for investment in the mission of the Church. The Commissioners' professionally qualified staff can 'add value' to this process and assist DMPCs in moving cases forward and resolving the delicate and often conflicting issues securing the most suitable and sustainable use while maximising revenue and - all within the 2 year 'use seeking' period. The general thrust of the strategy outlined in this Chapter applies also in cases where closure and settling the future of the church building concerned are dealt with in the same scheme (without prejudice to consideration of any representations).
- 18.2** It is beneficial for the Commissioners' professional case officer to be involved at the outset of the use seeking process (and before through their attendance at DMPC meetings) and, in appropriate cases, to take the lead in seeking new uses for closed church buildings. The extent of this involvement may vary but to ensure the DMPC and Commissioners work in 'partnership' the case officer should be invited to attend all DMPC, or equivalent sub-committee, meetings to enable both parties to monitor progress and provide input into the strategy for taking cases forward. The Commissioners' case officer should be expected to report regularly to those meetings.

First steps

- 18.3** Unless a suitable use is already available at the date of closure the DMPC, jointly with the Church Commissioners, should appoint an agent to advise on uses, marketing, and values which will inform a strategy for disposal of the building. The appointment of a commercially aware agent is critical to the successful achievement of value. A joint agency appointment may be worth considering, as are the benefits of appointing a national firm with regional offices and a separate planning department. The latter may provide a broader overview and greater experience in dealing with difficult planning situations. Firms tendering should be asked to outline their strategy for marketing closed church buildings. The Commissioners will require progress reports during the marketing period and a report from the agent detailing all bids received together with the DMPC's and agent's recommendation (and justification) of 'preferred' bidder.
- 18.4** Agents' fees can be paid at an agreed hourly rate or a percentage of the sale price. Experience with closed church cases shows that the appointment of agents based on work being done up front, at risk, with the agent obtaining his or her fee from a percentage of eventual sale proceeds does not result in cases being driven forward with any determination and belief. Such appointments are not recommended even though the alternative of hourly rates can initially involve a greater financial outlay to the DMPC. However, it should be noted that these fees are usually reimbursable to the DPA from the eventual sale proceeds. Agents' contracts should be kept under regular review with the facility to terminate an appointment if it can be demonstrated the agent is not working in a professional and timely manner or in the best interests of the diocese or Commissioners. The DMPC will need to ensure that appointed agents attain a working understanding of procedures under the 2011 Measure.

First site meeting

- 18.5** The first site meeting should be held as soon as possible after formal closure of the church building, or before closure if pastorally appropriate. The meeting should generally only involve the Commissioners' case officer, the DMPC representative and the appointed agent. The purpose of the meeting is to understand the context of the site, look at the building and its potential and the range of values that might be created by different but suitable new uses. Opportunities and constraints should be identified including access, rights of way, parking, scope to extend or demolish, services provision and impact of, and on, adjoining churchyard, graves and neighbouring properties.
- 18.6** A valuation or market appraisal report (see also [18.17](#)) should be produced by the agent to help in the development of a strategy for taking forward the future of the building. The report should also indicate the differences in value between an offer for freehold or leasehold disposal, with or without planning permission and, if appropriate, a valuation allowing for the demolition of the church and redevelopment of the site.
- 18.7** The strategy will also be informed by the advice from the SAC on the extent to which the building might be adapted and accommodate change, but always in the context that the SAC's view is advice, to be weighed in the totality of the issues. It does not necessarily have to be determinative.
- 18.8** It should be noted that approval of the Commissioners' Church Buildings (Uses and Disposals) Committee will be required (using a 'deemed approval' process) prior to marketing where a freehold sale is being considered as an alternative to leasehold. For evaluation of the respective merits of freehold or leasehold disposal see [18.18](#).

Next steps

- 18.9** The next steps involve opening a dialogue with the local planning authority (LPA). The Commissioners' case officer should research the development plan status of the building and other relevant policy considerations prior to the meeting which should also include a representative from the DMPC. The initial contact, with development control and conservation, is normally held in the local authority's offices although this will be a matter of judgement and also be determined by the local authority's practices. This might be followed up by a second meeting on site, if required. The planning officer should be able to advise on other statutory consultees and stakeholders who may influence the outcome and the type of information and planning fees required to secure relevant approvals.
- 18.10** The LPA may have a preference for a closed church to remain in community use and will require evidence that there is no viable demand for such a use before considering alternative options such as residential. It has been known for the LPA to insist the building is marketed for a defined period (usually 6 months) for community uses only, before allowing marketing for other uses. With such cases it is preferable (to save time) to obtain the agreement of the LPA to allow 'open marketing,' perhaps stating that a preference will be given to community uses, or to invite 'expressions of interest' to ascertain market demand.

- 18.11** By this point a strategy for the building should be emerging. It should not be solely determined by the LPA's views but by the totality of the opportunities including the constraints of planning policy. The next stage is to seek support from interested parties. This might be achieved through meetings held in the locality or on site where the various interested parties are invited. These might include representatives of EH, any relevant amenity societies, local incumbent, PCC and parish and, importantly, local authority councillors. Local residents who may have expressed concerns over the future of the building should also be consulted. Often a series of smaller meetings rather than one large meeting will be more useful. The aim is to build on the identified options, and to inform and achieve agreement with those with an interest in the future of the building.

Seeking planning permission

- 18.12** In many cases it can be financially beneficial to the value achieved in a building to obtain planning permission for a use or uses before marketing. Planning applications for a change of use will always be for "full planning permission", not outline planning permission. They will often necessitate detailed plans although the level of detail necessary will vary according to the proposal, the alterations necessary to effect it and whether the building is listed or not. In the case of listed buildings there is no requirement in law to submit an application for listed building consent at the same time as the application for planning permission but it may be appropriate to do so depending on the circumstances. It will be a matter of judgement as to whether to pursue it at the time (removing uncertainty) or leave it for a purchaser to obtain subsequently. A key factor to consider is the scope for widening the pool of potential purchasers. Any design proposals should be prepared by a registered architect.
- 18.13** Where the proposal involves the alteration and conversion of a building, the architect chosen should have experience in the adaptation of buildings and be able to demonstrate flair and imagination in achieving solutions. An outline planning application is only relevant in establishing a 'permission in principle' for a new use of a site after demolition of a building; it cannot be used for a change of use for an existing building. Always seek the advice of a local authority planning officer on the type of planning application required and level of information (drawings, design statements, details etc.) to be submitted.
- 18.14** Offering a building for sale with the benefit of planning permission removes uncertainty, attracts a wider pool of interest and generally achieves a higher price. Clearly, a decision needs to be taken in the early stages based on valuation advice as to whether to invest in the planning process up front. For the DMPC such upfront expenditure will be money at risk but the return will often justify it. This is the approach commercial organisations would take and the Church should seek, where appropriate, to realise a proper return on its assets for reinvestment in mission. The Commissioners can advise further and should be consulted.
- 18.15** Where planning permission is not to be sought prior to marketing, consideration should be given to the preparation of a site specific 'development brief' for agreement with the LPA. The Commissioners' case officer can assist with the preparation of this document. This will usually set out the local authority's commitment to helping secure a new use within the context of its Development Plan, and provide advice on

those uses likely to find favour; the nature and extent of alterations likely to be permitted; the position on access and parking; possible sources of funding assistance; and contact names within the LPA. Such a steer is clearly beneficial to targeting a marketing campaign and to potential users where planning permission is not sought.

Inclusion of churchyard or annexed land

- 18.16** The DMPC needs to take an early view on what land, if any, is likely to be disposed of with the building (bearing in mind that the procedure is simpler where land containing burials is excluded).

(i) Consultation with the local church

It is important from the outset that the incumbent and PCC understand the process for settling the future of closed church buildings and any misconceptions regarding their own role should be addressed. It can be useful for the DMPC secretary and Commissioners' case officer to attend a local meeting when the church has been declared closed (or earlier) to explain the next steps and statutory procedures involved. Establishing the right local climate in which an alternative use is sought and accepted is important.

While the churchyard is not affected by the closure itself, early consultation is needed between the DMPC, the Commissioners' case officer and the PCC on disposal of part of or the entire churchyard. Such land can prove crucial in securing an alternative use, for example by providing necessary amenity or parking space, but there may be pastoral sensitivities which need to be handled carefully. Agreement locally is highly desirable even though the PCC does not have an absolute veto over the area of land to be included by the Commissioners in a draft scheme.

(ii) Where burials are involved

The 2011 Measure contains a presumption that all human remains and tombstones, monuments and memorials should be removed from a closed church building or land covered by a pastoral (church buildings disposal) scheme prior to disposal. In practice this would make most disposals uneconomic and there are provisions whereby this requirement may be dispensed with if it can be shown that no disturbance of human remains will be caused (see [21.45](#)). Such matters have to be resolved before the property can pass out of the Church's ownership.

Where a closed churchyard is included in any disposal continued public access can be reserved for the tending of graves etc. Where the churchyard remains open for burials, it is usual for part of the churchyard to be retained in use, and for the area disposed of preferably to be that part which contains no or no recent burials. If necessary, rights of way can be granted or reserved in respect of land disposed of or retained.

The DMPC should arrange the early production of a plan marking the location and date of burials and tombstones. Where land has been used for recent

burials, the views of the relatives of deceased persons to a proposed alternative use should also be taken into consideration, not least since, in certain circumstances, their objections could nullify the scheme. Any building (even of a small extension or a garage) on land containing burials which have taken place within 50 years preceding the making of the scheme may not proceed if there are sustained objections from relatives or next of kin. This 50 years period is significant because the [Disused Burial Grounds Act 1884](#), which prevents the erection of buildings on disused burial grounds, is overridden by [s.63\(11\)](#) of the 2011 Measure only where a) there have been no burials during the last 50 years, or b) if there have been burials during that period, the relatives or personal representatives of the deceased make no sustained objections to the scheme.

(iii) *Provision of new service lines*

A site plan detailing existing drives, paths, concrete areas, service lines etc will assist the use seeking process. As this may be attached to the eventual Deed of Transfer, the plan must comply with the Land Registry Plan requirements of the [Land Registration Act 2002](#) as set out in form P10 (found on the [Pastoral Matters – procedural and administrative webpage](#)). Where services are not already connected to the building it may be necessary to dig trenches to carry water, sewage, gas, electricity and telephone services. If there are paths it may be possible to site the services under these with less risk of disturbing human remains. Providing additional services to the building can have archaeological implications and the SAC's preliminary advice may highlight any particular archaeological interest. The local planning authority or County Archaeologist can also advise.

Where the disturbance or removal of some human remains is unavoidable (e.g. to provide a septic tank) the responsibility for ensuring this is carried out as required will rest with the Commissioners (for sales) or the DBF (for leases) prior to disposal of the property. See [21.39 to 21.62](#) on the disposal of human remains.

(iv) *Closed churchyards and Open Spaces Act agreements*

When it is no longer possible for further burials to take place in a churchyard, the PCC may seek a formal closing order under the Burial Acts and apply to the local authority for the latter to assume responsibility for future maintenance. This sometimes leads to an agreement under the [Open Spaces Act 1906](#), between the incumbent, PCC and local authority to permit the future use of the churchyard as an open space. Further details on Open Spaces Act Agreements may be found in Volume 1, [9.22-9.25](#). Such an agreement does not affect ownership of the churchyard but, depending on the form it takes, it can cause difficulties in the event of closure and where disposal of the building and the land in question is intended. Particular problems may arise where the agreement is expressed to be of a perpetual nature, or its duration is not specified and there is no provision for termination. The title investigation should reveal the existence of any such agreement and the DMPC should liaise closely with the Commissioners on how to proceed in such circumstances.

Marketing the property

18.17 Marketing arrangements should be considered on the merits of each case (see [18.1 - 18.15](#)) but the following factors will be relevant:

(i) Advertising campaign

The DMPC should instruct the agents on behalf of themselves and the Church Commissioners as joint clients. As part of their terms of business the agents should produce a market appraisal of the property supported by comparable evidence. This appraisal of the property's value should be used by the DMPC to assess offers from potential users before a firm recommendation is put to the Church Commissioners. For proposed freehold disposals the Commissioners will act as vendors.

The DMPC should seek the agents' advice on how best to time, target and run any advertising campaign. The Agent should draft sale particulars which include an appropriate legal note, along the lines of that included in the specimen sales particulars found as C13 on the [Closed Churches Forms and Notices webpage](#). The Commissioners' case officer should agree the draft particulars before they are finalised.

Within the context of the requirement in the 2011 Measure to secure a suitable alternative use, the maximum sale price should normally be sought where there are few constraints against the use of the building (e.g. an unlisted building, no burials in attached land).

The Commissioners have produced a short leaflet for prospective users of closed church buildings which can be used in conjunction with the advertising campaign.

Marketing should incorporate the following elements where relevant:

- (a) **Sales particulars** - sufficiently comprehensive to cover key considerations, including likely scope (or lack of it) for alteration – see early advice of the SAC.
- (b) **Advertising** - this can be expensive and should be strategically aimed to gain maximum benefit. The agents should be asked to recommend a suitable advertising schedule and marketing budget. This is likely to include at least one major website to ensure wide coverage.
- (c) **Targeted marketing** – e.g. approaching specific bodies, taking into account the planning situation and any prior consultations. Include mail shots to relevant parties on the agents' local or regional registers.
- (d) **Sales boards** - should be used judiciously as they can exacerbate problems of vandalism. Effective mainly where properties are located on main roads.

The agents should maintain a record of the full marketing schedule for future reference. A comprehensive marketing report is often needed, for example, to demonstrate to planning authorities and others the range of, or lack of, expressions of interest.

The agents should provide regular progress updates and refer all offers to the DMPC by an agreed deadline. When reviewing offers for the building the DMPC should take into account, inter alia, the suitability of the proposed use and the planning and financial position, the likely sustainability of the proposals, and monetary value of the offer. The DMPC should also consider whether a feasibility study is necessary to demonstrate how a potential purchaser proposes to finance the purchase, conversion and future maintenance of the building.

(ii) *Marketing of sites*

A pastoral (church buildings disposal) scheme may authorise the demolition of a closed church building and provide for the disposal of the cleared site together with all or part of any attached land, or provide for the disposal of a previously demolished building.

The agent should advise the DMPC on marketing strategy as suggested in (i) (a)-(d) above taking into account whether the property contains human remains, its proximity to any other church-owned property, and, following consultation with the planners, any limitations on possible development. Generally, however, it should be possible to market such land without limitation of use from the Church's perspective as "suitability" of use is not usually a prime consideration in site disposals (but see [22.7 - 22.8](#) for covenants on site disposals). Unless there are exceptional circumstances, e.g. the proximity of the site to other property in church ownership, the DMPC should aim to achieve "best price" for the land. The presence of burials in the land (unless they are under fifty years) need not automatically inhibit development as the Measure contains provisions for the removal of human remains and tombstones, monuments and memorials – see [21.54 - 21.62](#).

Unless the DMPC has already achieved planning permission it would be for the purchaser to apply for any necessary secular consents but this need not be a pre-requisite to completion of the transfer.

See [22.14 - 22.19](#) for further details about the procedures for disposing of sites.

(iii) *DMPC pre-marketing check list summary*

Before marketing the property the DMPC should, in consultation with the Commissioners' case officer:

1. Ensure any title problems (e.g. regarding access) have been resolved.
2. Identify the area of land to be included in the disposal.

3. Ascertain the planning situation and, in appropriate circumstances, obtain planning permission.
4. Agree a formal advertising schedule and timetable aimed at maximising interest in the property.

(iv) ***Church Commissioners' website***

Details of closed church buildings available for disposal will also appear on the Closed Churches Division website '[Closed Church Buildings Available for Disposal](#)' page.

Method of disposal: freehold or leasehold

18.18 A closed church building can be disposed of by way of sale or gift (normally by the Commissioners) or lease or licence (by the DBF). Early consideration needs to be given to a possible preferred method of disposal before any marketing is undertaken. The DMPC should consult the Commissioners regarding an 'in principle' agreement to freehold disposal (unless this has already been given) where this is the preferred option. This is usually dealt with in the context of the CBUDC's deemed approval procedure.

The following factors are likely to be relevant:

- whether there is likely to be any significant development or regeneration in the area which is likely to affect the shape of the community or land values in the medium term (20 to 30 years);
- the possibility that the building might be needed again for worship in the future; and
- the surveyor's report and valuation.

Where leasehold is preferred

18.19 The method of disposal in each case is to be considered on its merits but there are certain circumstances where leasehold disposal will normally be preferred, where:

1. The building is of such architectural quality or historic interest that it would be a strong candidate for vesting in the CCT if a suitable use were not found. Leasing keeps the building within the ambit of the 2011 Measure, reserving the vesting option in the event of an authorised use coming to an end. (The CCT can now acquire a building where the freehold has previously been disposed of, but this power is only likely to be used in exceptional circumstances).
2. The closed church is being divested from the CCT and appropriated to alternative use (although there might be exceptions, for example if a residential use was proposed).

3. There is any possibility of the closed church building being required in future for worship again. This should include having regard to the prospects for redevelopment or regeneration in the surrounding area in the medium term.
4. A sale would not realise full value or, in the event the use did not prosper, the cleared site would have particular developmental potential. A lease might then be on the basis that, if the building became dilapidated or was no longer required for the authorised use, the DBF would resume possession. An amending church buildings disposal scheme could provide for demolition of the building and sale of the site so that its full value might be realised by the Church.
5. Strict control over the use and upkeep of the building is necessary (e.g. the adjacent property continues in church ownership, or part of the churchyard remains in use).
6. There may be a question mark over the long term viability of the use.

18.20 In certain circumstances e.g. where the potential user is a body or institution of substance, such as a local authority, well-endowed educational establishment, or a trust already successfully involved in managing historic properties, sale or gift of the building may nevertheless be preferred.

In appropriate cases dioceses may invite offers for either freehold or leasehold disposal in order to maximise potential interest in the property. Consideration of the terms of disposal should take account of the capacity of and resources available to the prospective user, including any previous experience in the care or conversion of historic properties.

Where the prospective user requires long term security of tenure (e.g. to secure finance or to meet the cost of repairs or conversion) but leasehold is the preferred option, then offering a long lease may be the appropriate solution (but see below for where the possibility of enfranchisement arises). A lease should normally be on a fully repairing and insuring basis, with provision for the DBF to resume possession if the lessee fails to maintain the building to a satisfactory standard.

Enfranchisement of leases

18.21 Where leasing is to be pursued the DMPC and Commissioners will need to liaise closely with the DBF as the prospective lessor. Some leases can be subject to enfranchisement procedures and care is needed over the length of lease when leasing for worship or for residential use (see below). In such circumstances, if a long lease is proposed, freehold disposal at the outset may be more appropriate. The Commissioners can advise further on request.

- i. The [Places of Worship \(Enfranchisement\) Act 1920](#) enables trustees holding a lease of a place of worship for a period of not less than 21 years to acquire the freehold.
- ii. Leasehold Reform legislation also gives residential tenants the right, subject to certain qualifying conditions, to acquire the freehold.

- a. The [Leasehold Reform Act 1967](#) gives the tenant of a leasehold "house" (the word being very widely defined) who fulfils certain conditions and qualifications, the right to acquire the freehold. Long tenancies are those exceeding 21 years or if the house has mixed business and residential use (e.g. a ground floor shop with flat above) the lease must exceed 35 years. The tenant must have owned the property for at least 2 years (N.B. there is no longer the requirement to have resided in the property save in the mixed use case where the tenant must have resided in the property for at least 2 years in the last 10). This Act could therefore apply to a closed church building redeveloped as a residential unit.
- b. The [Leasehold Reform, Housing and Urban Development Act 1993](#) gives the right, subject to certain qualifying conditions, to tenants of flats where the original lease was for more than 21 years acting together to purchase the freehold of the whole building. This could therefore apply to a closed church building which has been redeveloped into flats. The flat owners could have the right collectively to acquire the freehold of the whole building.

Disposal of contents

- 18.22** The disposal of contents is dealt with in detail in [21.22 to 21.38](#). In some cases where the freehold is disposed of, contents may remain in situ by direction of the bishop (e.g. where use is for worship or as a monument). It may be preferable, particularly where contents are of high value and/or quality, to exclude these from the sale. Such contents can remain in the building under a separate loan agreement between the bishop and the purchaser of the building.

Use of covenants

- 18.23** Whatever form disposal takes, covenants will be included to uphold the permitted use and prevent unauthorised alterations to the building. Arguably such covenants can best be enforced where the building is leased rather than sold, but this is only likely to be fully effective if a programme for monitoring the lease and covenants is in place. Where a property is sold the Commissioners, under [s.75](#), are able to enforce covenants as if they own the adjacent land and the covenants are for the benefit of that land, and also as if covenants of a positive character are negative. The Commissioners rely on local assistance to alert them to any potential problems. A copy of the covenants included in the conveyance is sent to the local incumbent or priest in charge for information (see [22.1 - 22.8](#)).

Sale by tender

- 18.24** Sale by tender within a predetermined timescale for inviting expressions of interests may be the most advantageous method of sale. The Commissioners can advise on tender documents in respect of the 2011 Measure's requirements. Such requirements would rule out sale by auction in all but exceptional cases (until a pastoral (church buildings disposal) scheme is in place no one is in a position to act as vendor/lessor or offer a contract – see [Chapter 19](#)).

Provisional negotiations with prospective users

- 18.25** Before a closed church building can be disposed of the requirements of the 2011 Measure have to be fulfilled. Negotiations prior to completion of a pastoral (church buildings disposal) scheme can only be of a provisional nature. Prospective purchasers or lessees should be aware that an accepted offer is conditional on:
- (i) publication and making of a draft pastoral (church buildings disposal) scheme (with the possibility of objections which may at worst frustrate the scheme if upheld);
 - (ii) approval of detailed plans for any architectural or structural changes to the building;
 - (iii) compliance (where appropriate) with the procedure with regard to human remains and/or tombstones, monuments and memorials;
 - (iv) inclusion in a conveyance or lease of various standard and any special covenants;
 - (v) receipt of any necessary planning and listed building consents.

It may be appropriate to summarise these requirements under a “Heads of Terms” Agreement which can be given to the prospective purchasers upon acceptance of their offer.

- 18.26** Other aspects may arise in particular cases. For example, there may be rights of way or drainage for the benefit of adjoining landowners over the churchyard which must similarly be reserved. Such matters should be brought to the attention of prospective purchasers or lessees at an appropriate stage in the negotiations.
- 18.27** The role of the DMPC is to consider the agent’s report and offers received and make a recommendation to the Commissioners. It follows that DMPCs are not in a position to accept offers as the decision on the future of the building is for the Commissioners to determine.

Settling the future of the building at the time of closure - section 58 cases

- 18.28** [Section 58](#) provides for a church (or part of one) to be declared closed for regular public worship because it is unsuitable for present needs, and for its replacement by a new church or place of worship in the area of the same benefice.

(i) General

In [s.58](#) cases the cost of providing the new building can be a first charge on the net proceeds of any disposal of the 'old' church or of its site. Any remaining proceeds are then apportioned in the usual manner in accordance with [s.63\(5\)](#) and [s.64](#). A [s.58](#) scheme can provide either for demolition of all or part of the old building, or appropriation of all or part to an alternative use,

provided the Commissioners are satisfied that a new church or place of worship is to be provided in the benefice and, following consultation with the SAC, are also satisfied with the proposals for the future of the church building to be closed.

NOTE:

The new church or place of worship may be a shared building owned by the Church of England only or jointly by the Church of England and another Church. If the church to be declared closed is shared, a capital contribution (or part thereof) repayable to another church on termination of the Sharing Agreement may be repaid from the proceeds of disposal.

A new place of worship may include one provided by adapting, improving or repairing an existing building, but it must be demonstrably different to the existing building. It may also include a leasehold interest but that interest should be one of 21 years or more. This is to protect the Church's position in terms of (a) protection under the [Landlord and Tenant Act](#); and (b) being able to enfranchise the leasehold interest in the future.

(ii) Need for early consultation

DMPCs should consult the Commissioners as early as possible when a parish is concerned that its existing church building is no longer pastorally suitable and an alternative place of worship envisaged. The Commissioners can then seek the advice of the SAC and take a view in principle on the future of the existing building before detailed proposals are drawn up.

Proposals for replacing churches normally originate at parish level, but should be discussed with the DMPC at the earliest opportunity. It is particularly unhelpful if the DMPC and Commissioners are not brought into the picture until local negotiations have reached a relatively advanced stage. Ideally the following procedure should be adopted:

- (a) The DMPC should request a report from the CBC (stressing any special urgency or confidentiality) and ask the Commissioners at the earliest possible opportunity thereafter to seek advice from the SAC, enclosing the usual papers required for a proposed declaration of closure for regular public worship or, as a minimum, photographs, the CBC report and a site plan. In a case of exceptional urgency, the officers may be able to offer an informal early indication (not binding on the SAC) of the SAC's likely view.
- (b) The Commissioners will instruct the diocesan registrar to examine title to the church and annexed land in case there are any reverter or other complications, such as an Open Spaces Act Agreement, which might render any proposals inoperative.

When a proposal involves the demolition of the existing church, if it is a listed building or in a conservation area the possibility of a non-statutory public inquiry may arise - see [20.34](#). The case for pursuing such a course of action

will need to be presented carefully and the Commissioners will need to be satisfied with any such proposals after obtaining the SAC's advice.

Any proposals for replacement based on the need for "extensive structural repair" should be supported by convincing professional evidence commissioned from an independent architect and normally including advice from a structural engineer. Any proposed incorporation of "features of historic interest or architectural quality" should be supervised by an architect experienced in conservation issues.

There are two other aspects of a [s.58](#) scheme (apart from the Commissioners consulting the SAC) which require early consideration and, preferably, resolution before a draft scheme is published, and certainly before the scheme is made by the Commissioners. These are:

- *Planning*

While neither listed building consent nor conservation area consent are required for demolition pursuant to a 2011 Measure scheme (although in qualifying circumstances this may lead to a non-statutory public inquiry), planning permission will be needed for the new church or place of worship either on the same site (on its own or as part of a mixed development) or elsewhere, and the Commissioners will need to know it is forthcoming. Occasionally, the new building will be shared with another denomination but under [s.58\(6\)](#) it must be wholly or partly in Church of England ownership; in all cases it must be within the area of the same benefice as the church building to be declared closed. Where demolition is not envisaged and the closed church building is to be appropriated to a new use or uses, planning permission for change of use and, if appropriate, listed building consent for any alterations, will be required.

- *Finance*

The financial feasibility of the proposals needs to be established at an early stage. Before publishing a draft scheme the Commissioners have to be satisfied that a new place of worship is to be provided. The DMPC should set out details showing the total cost of the new building and the expected sources of finance (including how any shortfall is to be managed). It may be appropriate to commission a feasibility study to examine the viability of the proposals. Before bringing a scheme into effect the Commissioners may, if finance is still in doubt, ask the DBF if it is prepared to underwrite any cash shortfall or indemnify them against any claims arising.

Any part of the site of a demolished church that is not required for the replacement building should normally be disposed of at full value; there should be prior consultation with the Commissioners about disposal on any other basis.

(iii) The Role of the Commissioners

The Commissioners are statutorily involved in the following way:

- (a) Obtaining and considering the advice of the SAC on the existing building and being satisfied with the proposals for its future.
- (b) Needing to satisfy themselves that a new church or place of worship will be provided (with the implication that sufficient funds will be available) so that they can properly so recite in the draft scheme and also being satisfied with the proposals for the future of the old building.
- (c) Preparing and publishing a draft pastoral church buildings scheme based on the DMPC's proposals, and considering any representations in favour or against, making a scheme. There is a right to seek Leave to Appeal to the Judicial Committee of the Privy Council if the Commissioners decide to proceed notwithstanding objections against a scheme.
- (d) Being satisfied that a suitable building will be available for worship during the interim period where closure of the old building precedes provision of the new building.
- (e) Being responsible in some cases for the demolition of the old church and disposal of the site (although in s.58 schemes the DBF is usually responsible).
- (f) Acting in some cases as vendors where the old church or part of it is to be sold.

Where it is proposed that all or part of the old church is to be sold or leased the DMPC should make its recommendation to the Commissioners in the format provided for in C1 on the [Closed Churches Forms and Notices](#) webpage. Summary details of all offers received should be provided and the DMPC should explain why if the best financial offer is not recommended. C2, also on the [Closed Churches Forms and Notices](#) webpage, should be used for site disposals.

The 2011 Measure provides for the Commissioners to hold the net proceeds of any disposal of the old church or site (even if the DBF has acted as vendor) and to apply these first to defray the cost of the new building and then to apportion any surplus in accordance with [s.64](#). The Commissioners usually arrange for the proceeds to be held in a separate trust account and these may be called down on application by the parish or DBF as required. On completion of the project the DBF should provide the Commissioners with a statement of income and expenditure for the replacement scheme. The Commissioners will then apportion the surplus in accordance with the 2011 Measure. Additionally, the DBF's own annual accounts should provide a statement in respect of expenditure on closed church buildings. **58(1)(c)**

The DBF should carefully monitor expenditure on the new place of worship and, in particular, should not take the view that all the proceeds must necessarily be spent on the new building. This is particularly the case when substantial proceeds are received on sale of the original building or site.

(iv) *Coming into effect dates*

The declaration of closure for regular public worship, the future of the old church and any attendant/consequent pastoral reorganisation are dealt with in separate parts of the draft scheme. Provision can be made for each part to come into effect on a date or dates to be determined by the Commissioners after consultation with the Bishop. Such flexibility assists where, for example, a closure is to be delayed until the replacement place of worship has been completed and the new building is ready for occupation.

(v) *New church or place of worship*

The Commissioners should be given an early opportunity to examine plans of the proposed new building so that, where it is intended to provide a dual-purpose building, or a multi-purpose complex, they can agree with the diocese what part can be regarded as coming within the definitions of "church" or "place of worship" in sections [106\(1\)](#) and [58\(6\)](#) respectively of the 2011 Measure, since only that part can be financed as a first charge against the net proceeds of any disposal of the old church and/or surplus land.

(vi) *"Deferred" Section 58 situations*

63(9)

- (a) The 'benefits' of [s.58](#) - i.e. the use of the whole of the net proceeds of disposal (so far as they are required) for the new church or place of worship - may be available in the circumstances referred to in [s.63\(9\)](#) of the Measure. This allows for a situation where at the time of closure a DMPC intends to provide a replacement building, but where the future of the existing building is yet to be resolved. In such circumstances the DMPC may proceed with proposals for a straightforward declaration of closure for regular public worship under [s.42](#); a subsequent pastoral (church buildings disposal) scheme will provide for the future of the building. If at that stage a new church or place of worship is still required to take the place of the closed one, then as much of the net proceeds as is required from the disposal of the old church may be applied towards the cost of the new building. The requirement on finding a suitable alternative use for the closed church building (unless unlisted and outside a conservation area), may impact on the availability of sufficient finance for a new church building from that source.
- b) These benefits may also be available if, at the time proposals are prepared, the DMPC is unable to demonstrate to the Commissioners' satisfaction that all the necessary practical requirements are in place to

enable the scheme to proceed under the provisions of [s.58](#) without some delay.

Such requirements include the granting of any necessary secular consents, without which the replacement scheme could not be achieved, and evidence of the financial feasibility of the proposals - see [\(ii\)](#) above. In such cases it is open to the DMPC to consider proceeding with a straightforward declaration of closure for regular public worship under [s.42](#) followed by a pastoral (church buildings disposal) scheme providing for the future of the building. If a new place of worship is still to be provided it will be for the DMPC/DBF to assure themselves that finance is available to cover the cost of the replacement project, and this may include as much of the net proceeds as is required from the disposal of the old church or its site towards the cost of the new building or the radical re-ordering of an existing building.

[Section 63\(9\)](#) can normally only be applied if the intention to provide a new church or place of worship is known at the time of the declaration of closure for regular public worship. In the final analysis, it cannot be applied if the intention to provide a new building is not known by the time the future of the old church is settled by a pastoral (church buildings disposal) scheme and the proceeds are dispersed. In the event of objections to the closure of the existing church in such a case the Bishop and DMPC will need to be able to justify this in its own right. It will therefore need to demonstrate to the Commissioners' Pastoral Committee why the existing church is not required even if a church or place of worship is needed in the locality. This will usually mean that the church to be closed is no longer suitable in some significant respect such as being too large for the needs of the parish or too expensive to maintain or repair. The diocesan representatives may also need to show how provision for public worship will be made if the expected replacement project does not prove viable.

- (vii) ***Where a church is demolished otherwise than under a pastoral or pastoral (church buildings disposal) scheme*** **66(3)**

In certain circumstances demolition may take place other than in accordance with the 2011 Measure, e.g. either as a result of a Dangerous Structure Notice or a fire. Unless there were already proposals under the 2011 Measure to declare the church closed without replacing it, there is often a presumption that a replacement will be sought. [Section 66\(3\)](#) provides for the cost of the new church to be a first charge on the net proceeds of disposal of the site of the demolished church.

Settling the future of the building at the time of closure - section 59 cases

- 18.29** A [s.59](#) pastoral church buildings scheme provides for a declaration of closure for regular public worship and, at the same time, settles the future of the building. It can either appropriate the closed church building to a specified use and empower its disposal under [s.59\(1\)](#); or, if the church is of sufficient quality, vest it directly in the

CCT for care and maintenance under [s.59\(2\)](#); or, if the building is unlisted and outside a conservation area, provide for its demolition and disposal of the site under [s.59\(4\)](#). Without prejudice to consideration of any representations against either the closure or the proposals for the future of the building, this route removes any uncertainty on closure as to what is to happen to the building. However, a [s.59](#) scheme can be the subject of Leave to Appeal to the Judicial Committee of the Privy Council if the Commissioners decide to proceed notwithstanding objections.

(i) Section 59(1) cases – alternative use at closure

59(1)

Where a suitable alternative use is already available at the time of closure, the pastoral church buildings scheme itself may authorise such use. The DMPC should consult the Commissioners at an early stage about any such proposals and secure their agreement in principle (including on freehold disposal if proposed) before carrying out local consultations. Discreet marketing is permissible prior to closure in support of identifying a suitable alternative use, but this is without prejudice to consideration of any representations received either for or against the proposed closure or alternative use.

After considering all offers received, the DMPC should report and make its recommendation to the Commissioners in the format provided for in C1 on the [Closed Churches Forms and Notices](#) webpage. Summary details of valuation, any marketing and all offers received should be provided and the DMPC should explain why if the best financial offer is not recommended. The DMPC should also provide details of any feasibility study or other documents in support of a prospective purchaser or lessee.

When [s.59\(1\)](#) proposals are under consideration by the DMPC, early consultation with the Commissioners is also important so that the latter can seek and consider the advice of the SAC on any proposed structural alterations.

The procedures for implementing the provisions made in a pastoral church buildings scheme for the future of the property are the same as those for a pastoral (church buildings disposal) scheme and are outlined in [21.6 to 21.13](#).

(ii) Section 59(2) cases – direct vesting in the CCT on closure

59(2)

[S.59\(2\)](#) provides for vesting churches in the CCT directly on closure. This provision is used only in exceptional cases: see [20.9 to 20.12](#). Before agreeing in principle to direct vesting, the Commissioners will need to be satisfied that no suitable alternative use would be available for the building on closure. There should be no local consultations on the possibility of vesting in the CCT unless and until the Commissioners have approved such vesting in principle.

(iii) Section 59(4) cases – demolition on closure

59(4)

This relatively new provision, initially included in the [Dioceses, Pastoral and Mission Measure 2007](#), allows for the demolition of a church building at the

time of closure under the one stage procedure. This only applies where the building is neither listed nor within a conservation area: there is no longer a statutory duty to seek a suitable alternative use for such buildings and instead proposals can be developed involving the demolition of such buildings and disposal of the site.

Where the DMPC intends to explore such an option it should consult the Commissioners at a preliminary stage so that they in turn can seek the views of the SAC. There should, in appropriate circumstances, also be early consultation with English Heritage and the local planning authority. The possibility of ‘spot listing’ may arise and if such a course is adopted then proposals will not be able to proceed under [s.59\(4\)](#).

Note: Proposals in the Heritage Protection White Paper (2007) provided both for the merger of conservation area control with planning permission, and for added protection for locally listed buildings by making demolition of these ‘development’ and granting permitted development rights for demolition, but leaving local authorities with the option of making an Article 4(1) Direction to remove such rights. Legislation to provide for this has not proceeded to date but have partially re-emerged under the 2011 Penfold Review; in the event of this becoming law it could impact on any proposals involving demolition of unlisted buildings and those within conservation areas.

Chapter 19

Deciding the Future of the Building: Where a Suitable Use is Found

This chapter considers what happens when the DMPC has identified a new use for a closed church building. When a suitable use has been found, or where the DMPC is of the view that it has exhausted all reasonable efforts to secure such a use, it should make a report to the Commissioners who are responsible for determining the suitability of a proposed use and deciding the future of the building.

19.1 - 19.4 [DMPC recommendation on alternative use](#)

19.1 [Completing form C1](#)

19.2 – 19.4 [Consideration by the Commissioners](#)

19.5 – 19.8 [Consulting the Church Buildings Council \(Statutory Advisory Committee\)](#)

19.6 – 19.8 [Plans and drawings](#)

DMPC recommendation on alternative use

Completing form C1

- 19.1** After considering all offers received, the DMPC should report to the Commissioners in the format provided in C1 on the [Closed Churches Forms and Notices](#) webpage. Details of all offers received should be included together with a copy of the marketing details, the agent's report and valuation. An explanation should be provided if acceptance of the best financial offer is not recommended. The prospective user can only be informed at this stage that conditional acceptance of his or her offer has been recommended to the Commissioners.
- 19.2** Any recommendation including proposals to demolish an unlisted closed church building outside a conservation area and dispose of the site should similarly be referred to the Commissioners in the format provided in C1 on the [Closed Churches Forms and Notices](#) webpage – see also [18.28](#) and [20.30 - 20.44](#).

Consideration by the Commissioners

- 19.3** The Commissioners' decision to publish a draft scheme providing for a proposed new use is subject to their (subsequent) approval of any proposed structural alterations; completion of the statutory procedures (including consideration of any representations); and the granting of planning permission and listed building consent where required.
- 19.4** In certain circumstances it may be necessary to refer the use proposal to the CBUDC before the Commissioners agree to publish a draft scheme, for example if the proposed use might be deemed potentially controversial in principle. The Commissioners will advise if this arises.

The publication of a draft pastoral (church buildings disposal) scheme is dealt with in [21.1 to 21.4](#).

Consulting the Church Buildings Council (Statutory Advisory Committee)

- 19.5** If the proposed new use involves any architectural or structural alterations, detailed plans should be submitted as soon as possible to enable the Commissioners to consult the SAC. However, the prospective user may not wish to go to the expense of preparing detailed plans before the Commissioners agree in principle to go ahead with the proposed use. In general the submission of 'sketch' or 'outline' proposals at an early stage is welcomed. Subsequently more detailed plans should be referred to the Commissioners, if possible prior to their submission to the local planning authority.

Plans and drawings

- 19.6** As a general rule plans and drawings should be of a quality required for planning permission and, where appropriate, listed building consent, not least to enable a full understanding of the impact of a proposal on the character of the building.

19.7 Normally drawings should include:

- (a) a set of survey drawings of the building as existing;
- (b) floor plans showing proposed alterations, of the building or relevant parts after the proposed alterations together with an indication of the materials and finishes;
- (c) sections showing the levels at which proposed floors will be inserted, the means of support, and the effect that proposed floors will have on windows, doorways, arches and arcades, materials and finishes;
- (d) site plans showing proposals for new access and parking arrangements, and any revision of the landscaping (particularly in conservation areas); and
- (e) further plans showing the provision of mains services where their introduction will have a substantial effect on the fabric or archaeology of the building or site.

All buildings should be to scale and the position of north shown.

19.8 Details, such as windows, doors, screens, gallery and stair balustrading, should be drawn at a larger scale. Plans and drawings may be supported by written comment. Supporting photographs of the parts of the building affected by the proposals are helpful.

Chapter 19

Deciding the Future of the Building: Where a Suitable Use is Found

This chapter considers what happens when the DMPC has identified a new use for a closed church building. When a suitable use has been found, or where the DMPC is of the view that it has exhausted all reasonable efforts to secure such a use, it should make a report to the Commissioners who are responsible for determining the suitability of a proposed use and deciding the future of the building.

19.1 - 19.4 [DMPC recommendation on alternative use](#)

19.1 [Completing form C1](#)

19.2 – 19.4 [Consideration by the Commissioners](#)

19.5 – 19.8 [Consulting the Church Buildings Council \(Statutory Advisory Committee\)](#)

19.6 – 19.8 [Plans and drawings](#)

DMPC recommendation on alternative use

Completing form C1

- 19.1** After considering all offers received, the DMPC should report to the Commissioners in the format provided in C1 on the [Closed Churches Forms and Notices](#) webpage. Details of all offers received should be included together with a copy of the marketing details, the agent's report and valuation. An explanation should be provided if acceptance of the best financial offer is not recommended. The prospective user can only be informed at this stage that conditional acceptance of his or her offer has been recommended to the Commissioners.
- 19.2** Any recommendation including proposals to demolish an unlisted closed church building outside a conservation area and dispose of the site should similarly be referred to the Commissioners in the format provided in C1 on the [Closed Churches Forms and Notices](#) webpage – see also [18.28](#) and [20.30 - 20.44](#).

Consideration by the Commissioners

- 19.3** The Commissioners' decision to publish a draft scheme providing for a proposed new use is subject to their (subsequent) approval of any proposed structural alterations; completion of the statutory procedures (including consideration of any representations); and the granting of planning permission and listed building consent where required.
- 19.4** In certain circumstances it may be necessary to refer the use proposal to the CBUDC before the Commissioners agree to publish a draft scheme, for example if the proposed use might be deemed potentially controversial in principle. The Commissioners will advise if this arises.

The publication of a draft pastoral (church buildings disposal) scheme is dealt with in [21.1 to 21.4](#).

Consulting the Church Buildings Council (Statutory Advisory Committee)

- 19.5** If the proposed new use involves any architectural or structural alterations, detailed plans should be submitted as soon as possible to enable the Commissioners to consult the SAC. However, the prospective user may not wish to go to the expense of preparing detailed plans before the Commissioners agree in principle to go ahead with the proposed use. In general the submission of 'sketch' or 'outline' proposals at an early stage is welcomed. Subsequently more detailed plans should be referred to the Commissioners, if possible prior to their submission to the local planning authority.

Plans and drawings

- 19.6** As a general rule plans and drawings should be of a quality required for planning permission and, where appropriate, listed building consent, not least to enable a full understanding of the impact of a proposal on the character of the building.

19.7 Normally drawings should include:

- (a) a set of survey drawings of the building as existing;
- (b) floor plans showing proposed alterations, of the building or relevant parts after the proposed alterations together with an indication of the materials and finishes;
- (c) sections showing the levels at which proposed floors will be inserted, the means of support, and the effect that proposed floors will have on windows, doorways, arches and arcades, materials and finishes;
- (d) site plans showing proposals for new access and parking arrangements, and any revision of the landscaping (particularly in conservation areas); and
- (e) further plans showing the provision of mains services where their introduction will have a substantial effect on the fabric or archaeology of the building or site.

All buildings should be to scale and the position of north shown.

19.8 Details, such as windows, doors, screens, gallery and stair balustrading, should be drawn at a larger scale. Plans and drawings may be supported by written comment. Supporting photographs of the parts of the building affected by the proposals are helpful.

Chapter 20

Deciding the Future of the Building: Where No Suitable Use Is Found

This chapter considers what happens in the event that the DMPC is unable to find a suitable alternative use for a closed church. When no suitable alternative use can be found, the remaining alternatives for the Commissioners are to decide between preservation by the Churches Conservation Trust and demolition. There are also details of the Churches Conservation Trust's role and its powers in respect of the churches in its care.

- 20.1 [End of use seeking period](#)

- 20.2 - 20.5 [Referral to the Commissioners](#)

- 20.6 - 20.18 [Preservation by the Churches Conservation Trust](#)
- 20.6 - 20.8 [Vesting decisions](#)
- 20.9 - 20.12 [Direct vesting](#)
- 20.13 [Vesting by pastoral \(church buildings disposal\) scheme](#)
- 20.14 [What happens to the contents on vesting](#)
- 20.15 - 20.18 [CCT's powers in respect of buildings in its care](#)

- 20.19 - 20.27 [Devesting from the Churches Conservation Trust](#)
- 20.20 [Alternative use](#)
- 20.21-20.26 [Devest or lease by the CCT?](#)
- 20.27 [Restoration to use as a parish church](#)

- 20.28 [Acquisition by the CCT of churches outside the ambit of the Measure](#)

- 20.29 [Provision of advice & assistance regarding churches in use](#)

- 20.30 - 20.44 [Demolition](#)
- 20.30 - 20.31 [At the time of closure or within six months following closure](#)
- 20.32 - 20.33 [Where no alternative use can be found](#)
- 20.34 [Non-Statutory Public Inquiries](#)
- 20.35 - 20.37 [Special arrangements on publishing a draft demolition scheme](#)
- 20.38 - 20.39 [Referral to the Secretary of State](#)
- 20.40 [The inquiry process](#)
- 20.41 [Arrangements for an informal hearing](#)
- 20.42 - 20.44 [The Secretary of State's decision](#)

End of use seeking period

62(1)

- 20.1** The Commissioners are required under [s.62\(1\)](#) to prepare a draft scheme settling the future of a closed church building not later than 2 years after closure takes effect. The DMPC may report that it is unable to find a suitable alternative use, or to develop proposals for the future of an unlisted church outside a conservation area, within that period. The Commissioners will only extend the use seeking period in special circumstances when they are convinced there is reason for doing so, e.g. where a use proposal is in the pipeline, or further marking is actively being undertaken. When an extension is proposed the Commissioners will consult the DBF and will require the consent of the Bishop.

Referral to the Commissioners

- 20.2** If the DMPC concludes it is unable to find a suitable use and is of the view that such a use is unlikely to be forthcoming, it should so report to the Commissioners either during or at the end of the use seeking period. The Commissioners may themselves under [s.55\(5\)](#) require the DMPC to refer the case to them and they may then take over the use seeking function in consultation with the DMPC.
- 20.3** Where it cannot identify a suitable alternative use, the DMPC is not required to take a view as between the remaining options of preservation by the Churches Conservation Trust or demolition; determining the future of the building is a matter for decision by the Commissioners after consultation with the CBC's Statutory Advisory Committee (SAC). The DMPC should report full details of the search for a new use, including discussions with planners, the agent's report, the length and nature of the marketing campaign, any expressions of interest, and how these were pursued, and any information on the current state of the building.
- 20.4** The Commissioners' Church Buildings (Uses and Disposals) Committee (CBUDC) is responsible for deciding the future of the building, subject to the advice of the SAC. While recognising the need to settle the building's future without undue delay, the Commissioners may consider it necessary to undertake further efforts to secure an alternative use. Such a course may be appropriate where, for example, the CBUDC is concerned that the evidence on marketing is not wholly conclusive and publication of a draft scheme providing for demolition of a listed church or an unlisted church in a conservation area could result in a possible non-statutory public inquiry.
- 20.5** Where no alternative use can be found and the CBUDC, in the light of the SAC's advice, does not consider the building is suitable for vesting in the CCT, its remaining course of action is to authorise publication of a draft scheme providing for demolition.

(There is provision in [s.63\(1\)\(c\)](#) of the 2011 Measure whereby a scheme may provide, with the consent of the DBF, for a closed church building to remain vested in the DBF and to be held on such terms as specified in the scheme. However, this provision has been used only very rarely, and not always successfully, primarily as a means of providing for controlled ruination of a church building).

Preservation by the Churches Conservation Trust

Vesting decisions

- 20.6** The decision whether or not to vest a church in the Churches Conservation Trust for preservation rests with the CBUDC, following consultation with the SAC and consideration of repair estimates prepared by the CCT. Each vesting case is considered on its merits. The SAC's advice on the quality of the building carries compelling weight while the CBUDC also has to take into account the likely cost of preservation and the need to be satisfied, inter alia, that the CCT will have the resources to meet the cost of repairing and maintaining a building. There may also be pastoral and practical considerations which are relevant in arriving at a decision in each case, as well as the claims of other closed churches for possible vesting. The CCT will be invited to attend a site meeting before consideration of the case by the CBUDC and to be present at the CBUDC's meeting when possible vesting is considered.
- 20.7** The CBUDC keeps under close review all potential vesting candidates. At times of particular pressure on the CCT's new vestings budget, the CBUDC may wish to consider the competing claims of churches in periodic batches. It will also wish to assess the scope for match funding to reduce the residual repair liability on the CCT in the event of vesting. Match funding can make the new vestings budget go further and allow the CBUDC to vest more churches in the CCT.
- 20.8** The CBUDC will seek to relate the dates of any new vestings to the CCT's financial and operating timetable so that the CCT can optimise use of its resources on timely expenditure on the churches in its care. There is regular liaison between the Commissioners and the CCT on the likely dates of new vestings. These normally need to be assured by July each year to be included in the CCT's repairs programme for the following financial year.

Direct vesting

- 20.9** [Section 59\(2\)](#) contains provision for declaring a church closed for regular public worship and transferring it directly to the CCT for care and maintenance within the same pastoral church buildings scheme. This option will normally only be considered in exceptional circumstances for churches of outstanding interest and quality, where the CBUDC is satisfied that no suitable alternative use will be forthcoming for the building when closure takes effect, and that the closure itself is unlikely to be contested.
- 20.10** It is important that dioceses and parishes do not become committed to the idea of direct vesting at the outset and the possibility of securing a suitable alternative use needs to be considered first. The DMPC should not, therefore, consult the 'interested parties' on the basis of the church vesting directly in the CCT unless, and until, the CBUDC has reached such a decision, in principle, in favour of vesting, after consultation with the SAC and also with the CCT on repair costs. The Commissioners should be approached as early as possible to take a prima facie view on any potential case for direct vesting. The minimum information needed from the diocese at this

stage is the CBC report, photographs, and copies of the site plan, the inventory and the latest Quinquennial report.

- 20.11** The DMPC will need to demonstrate that reasonable efforts have been made in investigating the prospects for finding a suitable alternative use. If the church is of high quality a use involving more than very minor structural alterations or architectural changes may be unlikely to be acceptable. However, other suitable options should be fully explored, e.g. religious use by another denomination; preservation as a monument in the care of an adjacent landowner, local trust or local authority; or use as a museum or exhibition centre. The DMPC should normally seek the views of the LPA on possible alternative uses and the likely limits on alterations to the building. If, in the circumstances, the DMPC considers that a suitable use will not be forthcoming, it may approach the Commissioners with a request for the church to be formally considered for direct vesting under [s.59\(2\)](#). The Commissioners will then seek the views of the SAC and, subject to its advice, also seek repair estimates from the CCT and arrange a site visit/meeting.

The Commissioners have issued guidelines on the factors likely to apply where possible cases for direct vesting are under consideration. The latest version is included as [Appendix 2.5](#).

- 20.12** If the CBUDC approves direct vesting in principle (subject to consideration of any representations against the draft pastoral church buildings scheme) the DMPC can then carry out the statutory local consultations with the interested parties, upon completion of which the bishop's proposals should be forwarded to the Commissioners' Pastoral Division in the normal way. Once a vesting decision has been approved in principle by the CBUDC it is helpful if the DMPC carries out these consultations expeditiously. The CCT will provisionally include the church in its forward budgeting and needs to know if and when, following such consultation and publication of a draft scheme, a declaration of closure for regular public worship and vesting in the CCT is likely to occur.

Vesting by pastoral (church buildings disposal) scheme

63(1)(b)

- 20.13** The more usual route to vesting in the CCT is taken after all reasonable efforts to secure a suitable use have been exhausted following the declaration of closure. There is no minimum use seeking period, but the DMPC will need to address the search for a suitable alternative use before it reports to the Commissioners that none is, or is likely to be, forthcoming. The SAC's advice will be sought by the Commissioners (if not already provided) and, where appropriate, repair estimates prepared by the CCT. The CCT will be involved in a local site meeting and its views will be reported to the CBUDC which will decide, in principle, whether the church should be vested, taking into account, inter alia, the quality of the building and the financial costs of vesting. If the CBUDC decides in favour of vesting in the CCT the Commissioners will publish a draft pastoral (church buildings disposal) scheme accordingly.

What happens to the contents on vesting

- 20.14** When a church is to vest in the CCT it is customary for the scheme to provide for the contents also to vest in the CCT, and, if necessary, provide rights for the CCT to

recover any former contents removed from the building without proper authority. Where a church is a potential candidate for vesting, the DBF should take particular care to avoid the premature and permanent removal of contents. The prospects for vesting a church in the CCT may be diminished if the contents are not intact or cannot be recovered.

CCT's powers in respect of buildings in its care

57

- 20.15** The CCT was established in 1969 to preserve, in the interests of the nation and the Church of England, closed churches vested in it by the Commissioners because of their historic and archaeological interest or their architectural quality and because no suitable alternative use could be found. For fuller details see www.visitchurches.org.uk. The CCT's main source of core funding is grant aid provided jointly by the DCMS (approximately 70%) and the Commissioners (approximately 30%).
- 20.16** The CCT's aim is initially to make the building structurally sound, wind and weather proof, clean and tidy; to protect it from vandalism; and, funds permitting, to conserve its fittings, wall paintings, monuments and furnishings in such a way that their original significance in the church can be appreciated. It has in its care some of the finest examples of English parish churches of all the important styles and types, spanning 1,000 years of history. Its mission is to showcase this collection to the world, offering the very highest standard of welcome to growing numbers of local and international visitors.
- 20.17** Closed churches vested in the CCT remain consecrated. The CCT is authorised under [s.57\(5\)\(c\)](#) of the Mission and Pastoral Measure 2011 to permit the occasional use of churches in its care, or to grant a licence permitting their temporary use for the purposes considered by it to be suitable, either without charge or on payment of a fee. Occasional church services (provided the bishop agrees) concerts, art and history exhibitions and flower festivals are permitted and encouraged. The CCT is also able to replace, renew and provide or improve such services or facilities as are required to facilitate greater access and use of its churches.
- 20.18** The [Pastoral \(Amendment\) Measure 1994](#) gave the CCT powers to lease the buildings in its care on terms approved by the Commissioners, after consultation with the bishop and the SAC. If necessary, the legal effects of consecration can be removed for the currency of such a lease. Any enquiries involving a possible lease should be directed initially to the CCT and then to the Commissioners (see also below).

Devesting from the Churches Conservation Trust

- 20.19** Sections [69](#) and [70](#) contain provisions to enable a church that is vested in the CCT to be divested and either:
- (i) sold or leased for a suitable alternative use; or
 - (ii) restored to use as a parish church or chapel of ease.

Alternative use

20.20 [Section 69\(3\)](#) makes provision for divesting a church and appropriating it to a suitable alternative use, and for its lease by the DBF or for sale by the Commissioners. Divesting requires an amending pastoral (church buildings disposal) scheme and the agreement of the Secretary of State. Planning permission would normally be required for any change of use (unless, for example, worship use by another Christian body) and listed building consent for any proposed alterations (unless the prospective user was another Christian denomination covered by the Ecclesiastical Exemption arrangements). Initial enquiries regarding a possible alternative use should be directed either to the Commissioners or the CCT, who will liaise closely on the best way to proceed, in consultation with the DMPC and DBF as appropriate. In some circumstances it may be preferable for the CCT itself to grant a lease rather than for the church to be divested.

Divest or lease by CCT?

20.21 The preferred method of disposal of closed churches of vestable quality is usually by leasehold. Most churches vested in the CCT are highly listed and any discussions with prospective users should initially explore this option (unless there are compelling reasons to the contrary). An alternative use may be accommodated by a lease either by the CCT or, following divesting, by the DBF; subject to the willingness of either of those bodies to take on such responsibility. In any event regard should be had to circumstances in which the possibility of enfranchisement of a lease might arise – see [18.21](#).

20.22 Various factors will need to be addressed by any prospective user and a feasibility study (or business plan) should be provided to ensure adequate financial provision to cover:

- (i) the cost of acquisition (which may include reimbursement of the CCT's expenditure on the church);
- (ii) the costs of conversion; and
- (iii) the costs of maintaining the building and its contents (if retained) in the long term.

20.23 If alterations are needed to facilitate the proposed use the usual requirements for submitting plans for approval would apply and the Commissioners or the CCT would refer these to the SAC for advice. Alterations should be kept to a minimum and, ideally, would be reversible. An early site meeting may be desirable to explore the proposals before they are too far advanced and there should also be consultation with the local planning authority, EH and the SAC, as appropriate.

If matters progress, the prospective user should then submit formal proposals, together with supporting papers, plans etc usually to the CCT (as owner of the building) who will consult the Commissioners; other parties will be drawn in as necessary.

20.24 In cases where the CCT is the lessor it is likely to require future maintenance to be carried out under its supervision but at the lessee's expense. The terms of such a lease are subject to the Commissioners' approval, following consultation with the SAC and the bishop. A lease by the CCT may be inappropriate where a prospective user is considering making any other than the most minor alterations (albeit reversible) and where the nature of the proposed use does not sit well with the requirement for free public access.

20.25 Where divesting (either for sale or lease) is the preferred option this cannot proceed until an amending pastoral (church buildings disposal) scheme is in place. The CBUDC will obtain the views of:-

1. the CCT, the DMPC and the DBF (if leasehold disposal by the latter is proposed);
2. the SAC with respect to any proposed alterations; and
3. the DCMS, which, as the CCT's co-sponsor, will have to agree the terms of any repayment to the CCT in the event of divesting for alternative use. In this connection the presumption so far as the DCMS is concerned is that usually there should be full reimbursement of the CCT's expenditure to date from any sale proceeds (in the case of freehold disposal) or lease premiums (in the case of leasehold disposal) where a lease premium is paid.

20.26 If divesting is approved in principle the Commissioners will publish a draft amending pastoral (church buildings disposal) scheme and the normal arrangements will apply for dealing with any objections and for fulfilling the remaining requirements under the 2011 Measure. Any lease by the DBF (or freehold transfer by the Commissioners) would include covenants to safeguard the building.

Restoration to use as a parish church

20.27 Under [s.70](#) a closed church vested in the CCT can be restored to parochial use as a church if the need arises. Provision for this can be made in a pastoral church buildings scheme. Depending on where the proposal originates, the DMPC will wish to consider the parish's ability to fund future maintenance and other costs (e.g. insurance) should the church be restored to use.

If restoration to parochial use is to proceed it will be for the DMPC to carry out the necessary local consultations and, if appropriate, submit proposals to the bishop. The Commissioners will then prepare a pastoral church buildings scheme accordingly. Any adverse representations following the publication of a draft scheme will be considered by the Commissioners' Pastoral Committee.

Acquisition by the CCT of churches outside the ambit of the Measure

20.28 An amendment to the Pastoral Measure 1983, which became effective in June 2005, gave the CCT power, with the Commissioners' approval, to acquire the freehold of a closed church building, the freehold of which was previously transferred by a scheme

under the Measure. Any such building would have to meet the same stringent criteria as any other church recommended for vesting in the CCT. The terms of acquisition would generally be by way of a gift, possibly with an appropriate endowment to cover immediate repairs and longer term maintenance. The Commissioners must consult the bishop and the SAC before agreeing to such an acquisition.

Provision of advice and assistance regarding churches in use

- 20.29** The Dioceses, Pastoral and Mission Measure 2007 introduced a new power for the CCT where the future of a church is under consideration and where the CBC has prepared a report under [s.6](#) and [s.21](#) of the Mission and Pastoral Measure 2011. This power can apply in cases where the Commissioners consider, after consulting the SAC, that in the event of closure and no suitable alternative use being found, the church is likely to be of such interest or quality as to merit vesting in the CCT. In such circumstances the Commissioners may, with the consent of the DMPC, ask the CCT to give advice to them and, if specified, advice and assistance to others, in identifying and developing proposals for any use of the church, or part of it, which would be consistent with the primary use of the church as a whole as a place of worship, and which would have the object of avoiding the need to close the church. Any queries on the use of this power will need sensitive handling and should be directed to the Commissioners in the first instance.

Demolition

At the time of closure or within six months following closure

61(1)(i)

- 20.30** There is no statutory requirement under the 2011 Measure to seek a new use for an unlisted church outside a conservation area. Demolition may be provided for either in the scheme declaring the church building closed for regular public worship, or at any subsequent stage in a pastoral (church buildings disposal) scheme. If the DMPC is developing proposals for closure, demolition and disposal of the site of such a building under [s.59\(4\)](#) it should consult the Commissioners at an early stage, before undertaking formal local consultations – see [18.29\(iii\)](#). The possibility that the building might be ‘spot-listing’ should also be ascertained; such listing would preclude proceeding under [s.59\(4\)](#). Demolition of a listed church building or an unlisted church building in a conservation area cannot be provided for in the same scheme as closure unless in the context of a [s.58](#) replacement scheme – see [18.28](#).

Following a declaration of closure a minimum period of six months usually has to elapse before the Commissioners can prepare a draft pastoral (church buildings disposal) scheme providing for demolition of a listed closed church building or an unlisted building in a conservation area. The only permitted exception is if the Commissioners are satisfied, after consulting the SAC, that a suitable alternative use will not be forthcoming and that there is no objection to such demolition taking place. Their decision is subject to consideration of any representations for or against the draft scheme and the possibility of a non-statutory public inquiry in the event qualifying objections are received (see [20.34-20.44](#)).

- 20.31** Any prospect of possible demolition in the future should not be raised with the 'interested parties' or be referred to in draft proposals for a pastoral church buildings scheme which simply declares the church closed; to do so might be seen to prejudice the search for an alternative use.

Where no alternative use can be found

63(1)(d)

- 20.32** Normally a pastoral (church buildings disposal) scheme is prepared no later than 2 years following the declaration of closure for regular public worship. If the DMPC reports that it has been unable to find a suitable alternative use, the Commissioners have to decide the future of the building, having first sought the further views (if required) of the SAC. (Further consultation with the SAC is not needed where the latter has already advised that demolition would not in its opinion be objectionable). If the Commissioners are satisfied that there is no special case to extend the use seeking period and they decide that the building should not be vested in the CCT for preservation, they will publish a draft scheme providing for its demolition. This could, in the circumstances described below, result in a Non-Statutory Public Inquiry or informal hearing.
- 20.33** NSPIs can be both time-consuming and expensive and the Commissioners will need to prepare carefully any case for potential referral to the Secretary of State. This may involve re-evaluation of the use seeking strategy and renewed efforts at marketing the property, even at a late stage. The Commissioners have to demonstrate, if no suitable use emerges, that all reasonable attempts to secure such a use have been made. They seek, through regular contact with diocesan officials, local meetings, and contact with EH and local planning authorities, to achieve suitable uses, if possible, or acceptance that such a use cannot be secured. Inevitably there will be some cases where uses cannot be found for listed buildings, and those unlisted but within conservation areas, and the futures of such buildings are resolved as provided for in the 2011 Measure but subject to the NSPI arrangements set out below.

Non-Statutory Public Inquiries

- 20.34** As part of the general agreed package involving the ecclesiastical exemption and State Aid for churches in use, the Commissioners and the Department of Communities and Local Government have agreed a procedure under which, in certain circumstances, the Secretary of State will be asked by the Commissioners whether he wishes to hold a non-statutory local public inquiry or hearing into contested proposals to demolish, wholly or partly, a listed closed church building, or to demolish an unlisted closed church building in a conservation area. The circumstances in which the Commissioners will consult the DCLG are where they are minded to proceed with a draft demolition scheme notwithstanding reasoned and sustained objections from a qualifying body i.e. either the local planning authority, EH, the SAC or one of the national amenity societies.

Special arrangements on publishing a draft demolition scheme

- 20.35** When publishing a draft demolition scheme (including a draft pastoral church buildings scheme under [s.58](#)) the Commissioners provide a memorandum explaining their reasons for doing so (as they do for other church buildings (disposal) schemes).

They aim to provide sufficient information to enable the qualifying bodies to make a reasoned judgement about the proposals (and therefore, if they think fit, a reasoned objection). The memorandum is also sent to all other parties consulted at the statutory notice stage and the Commissioners arrange for a copy of the draft scheme to be displayed on the notice board of the building or some other such permanent structure within the curtilage or nearby. A notice affixed to or near the principal door of the building draws attention to the draft scheme.

20.36 In the event that qualifying objections are received and, after due consideration, the Commissioners decide that the draft scheme should proceed notwithstanding these objections, they will then ask the objectors if they wish to maintain their objections in the face of a possible inquiry or hearing before referring the case to the Secretary of State.

20.37 If during the statutory notice period the Commissioners receive notice from EH that the Secretary of State is giving active consideration to the listing of an unlisted church, and a qualifying body objects to the draft scheme, the Commissioners will defer taking any further action on the scheme for up to a further 12 weeks. If by the end of that period they have not received notice of listing they reserve the right to take the next appropriate step - which could mean the scheme providing for demolition being made by the Commissioners.

Referral to the Secretary of State

20.38 The Secretary of State will consider requests for cases being dealt with by informal hearing (where all parties agree) rather than inquiry. The former may present the better option and a less costly and time-consuming process, not least in cases where the economic arguments regarding repair costs and the structural condition of the building are not in dispute. A decision on this can only be made when all relevant facts of the case are known and have been properly assessed.

20.39 When referring a case the Commissioners provide, inter alia, a memorandum of their reasons for proposing demolition. The DCLG will inform the Commissioners, normally within 3 months, of the Secretary of State's decision on whether or not a local inquiry or hearing should be held. If the Secretary of State does not wish to hold an inquiry or hearing the Commissioners are able to proceed with the demolition scheme.

The inquiry process

20.40 Where an inquiry is to be held an Inspector is appointed with specific terms of reference, incorporating those matters about which the Secretary of State particularly wishes to be informed. The Commissioners are consulted on the terms of reference which may include, for example, the financial implications of placing the building in the care of the CCT or the significance of any particular outcome on the work of the Church of England. An inquiry is held locally, and the procedure is similar to a planning inquiry, with the Commissioners being invited to put the case for demolition (they may, in some circumstances, instruct Counsel to act for them). The Commissioners are likely to face cross examination and will need to be able to demonstrate clearly that reasonable efforts to secure an alternative use have been

exhausted. The Commissioners prepare their case in close consultation with the DMPC and will, where necessary, commission reports on the structure and condition of the building.

Arrangements for an informal hearing

- 20.41** An informal hearing is essentially non-adversarial. It takes place at a local venue and is in the form of a structured formal discussion with all parties present and the Inspector as Chairman. It gives all parties the opportunity to put their case in an informal atmosphere and the Inspector is able to seek further information through direct questioning of the participants. There is no right for participants to cross examine each other and it is, therefore, unlikely that Counsel would be involved.

The Secretary of State's decision

- 20.42** Following an inquiry or informal hearing the Inspector's report will be referred to the Secretary of State for a decision. The Commissioners have agreed that if, after considering the Inspector's Report, the Secretary of State takes the view that the church should be vested in the CCT, they will publish a scheme providing for vesting. If the Secretary of State's view is that the church, though not to be vested, should nevertheless be preserved if at all possible, the Commissioners will, within a specified period, make further efforts to secure an alternative use, and, if this fails, will consult the Secretary of State before taking a final decision about the fate of the church.
- 20.43** The Government, for its part has recognised that the vesting of churches in the CCT at the Secretary of State's behest has financial implications. In considering his recommendation the Secretary of State will take into account the financial implications of retaining a church building as well as the architectural and historic interest of the church and other planning and social factors.
- 20.44** If the Secretary of State's view is that the building need not be preserved by vesting in the CCT and there is no suitable alternative use, the Commissioners are able to proceed with the demolition scheme. The actual demolition of the building is dealt with in [21.14 to 21.21](#).

Chapter 21

Pastoral (Church Buildings Disposal) Schemes

This chapter explains the process once a decision in principle has been taken on the future of a closed church building. It outlines the procedure for publishing draft schemes and considering any representations. It also deals with the implementation of a scheme once made and the necessary procedures prior to any transfer of the property. A pastoral (church buildings disposal) scheme is the legal instrument providing for the future of a closed church building. It can also deal with part or all of the surrounding land and provides for the disposal of the building's contents and any tombstones, monuments or memorials. These matters are primarily covered by [Part 6](#) of the 2011 Measure.

- 21.1 - 21.4 [Publication and contents of draft schemes](#)**

- 21.5 [Consideration of representations](#)**

- 21.6 - 21.13 [Implementation of a scheme](#)**
 - [Coming into effect clause](#)
 - [Access prior to completion](#)

- 21.14 - 21.21 [Demolition](#)**
 - [General](#)
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- 21.22 - 21.38 [Disposal of contents](#)**
 - [Care of contents during the use seeking period](#)
 - [Provision for contents in pastoral \(church buildings disposal\) schemes](#)
 - [Appointment of furnishings officers](#)
 - [Methods of disposal of contents](#)
 - [Windows](#)
 - [Organs](#)
 - [Choir books, sheet music etc](#)
 - [Disposal of proceeds from the sale of contents](#)
 - [Diocesan furnishings store](#)

- 21.39 - 21.62 [Human remains, tombstones, monuments and memorials](#)**
 - [General](#)
 - [Exempt uses](#)
 - [Dispensing orders enabling the retention of human remains in situ](#)
 - [Applying for a dispensing order](#)
 - [Operation of a dispensing order](#)
 - [Registration of a dispensing order](#)

21.51 - 21.52	<i>Retention in situ of tombstones, monuments and memorials commemorating deceased persons buried in the property</i>
21.53	<i>Procedures for the removal of human remains</i> <ul style="list-style-type: none">(i) <i>Obtaining directions</i>(ii) <i>Practical arrangements</i>(iii) <i>"Short" newspaper notice</i>(iv) <i>"Detailed" notice</i>(v) <i>Commonwealth War Graves Commission</i>(vi) <i>Certification</i>
21.54 - 21.56	<i>Procedure for removal of tombstones, monuments and memorials</i>
21.57 - 21.60	<i>Disposal of monuments and memorials commemorating deceased persons buried elsewhere</i>
21.61	<i>Removal of ashes</i>
21.62	<i>Removal of human remains after disposal of the property</i>

Publication and contents of draft schemes

- 21.1** Under [s.62\(1\)](#), a draft pastoral (church buildings disposal) scheme can be prepared by the Commissioners at any time following closure, unless it involves a proposal to demolish either a listed building or an unlisted building in a conservation area. In such cases a period of at least 6 months must be allowed to elapse after the declaration of closure before a draft scheme is prepared (unless the Commissioners are satisfied, after consulting the CBC, that there is no objection to such demolition taking place). A draft scheme should normally be prepared to settle the building's future within 2 years of closure, unless the use seeking period is formally extended by the Commissioners.
- 21.2** The draft scheme is prepared and published by the Commissioners after consultation with the bishop ([s.62\(3\)](#)). A draft scheme providing for a new use will appropriate the closed church building and perhaps part or all of the annexed land to the specified use(s). It will also set out the method of disposal, by either the Commissioners (sale or gift) or the DBF (sale, gift, lease or licence) and indicate the arrangements for the communion plate and the disposal of contents and any tombstones, monuments and memorials. If only part of the churchyard is to be disposed of, or rights of access are to be granted or retained, a plan will usually be attached. A plan will usually be attached to the draft scheme indicating the extent of the area it affects. The Commissioners will also issue an explanatory memorandum outlining their reasons for publishing the scheme. This may, in addition, refer to other adjoining church property or land where this forms part of a wider proposal. This will enable interested parties to make a reasoned judgement about the provisions in the draft scheme (and, therefore, if they think fit, a reasoned objection).
- In order to progress the publication of the draft scheme the DMPC should provide all the necessary information set out in C1 on the [Closed Churches Forms and Notices](#) webpage when making its recommendation on an alternative use.
- 21.3** The 2011 Measure requires notice of a draft scheme to be published in a local newspaper, for it to be made available for inspection locally, and to be served on a number of statutory bodies namely the DBF, local planning authority, parish council or meeting, Commonwealth War Graves Commission, English Heritage, the Joint Committee of National Amenity Societies, and the Church Buildings Council. Notices are also sent to the local incumbent and PCC. In cases where the church was the recipient of a grant from one of National Lottery grant making bodies, a notice will be served on the relevant grant-making body.
- 21.4** If no contrary representations are received within the statutory 28 day notice period, the scheme is made by the Commissioners when any secular consents required for its implementation are in place. The Commissioners will send copies of completed schemes to the interested parties. Under [s.62\(6\)](#) the Commissioners shall not make the scheme unless they have consulted the SAC on any proposals for architectural or structural alterations in respect of a proposed new use.

Consideration of representations

- 21.5** If any written objections are received these will be considered by the CBUDC (together with any representations in favour) after consultation with the bishop (unless the objections are withdrawn). The Commissioners share the representations with the bishop and seek his views. Anyone making a representation in respect of a draft scheme is sent the exchange of correspondence with the bishop and may comment further. He or she also has the right to attend and (potentially) speak at the meeting of the CBUDC considering the case. Occasionally a sub-committee visit may be arranged. If the draft scheme is not allowed to proceed in light of the objections a new draft scheme will be needed to make alternative provision for the closed church building; where the draft scheme is allowed to proceed it will be made by the Commissioners. The Measure provides no general appeal process beyond the Commissioners in respect of pastoral (church buildings disposal) schemes, but see 'Non-Statutory Public Inquiries' under Demolition ([20.34](#)) for details of what is, in effect, an important exception regarding proposals to demolish a listed building or an unlisted building in a conservation area contested by certain qualifying bodies.

Implementation of a scheme

- 21.6** Once a scheme is made, the Commissioners circulate copies of the scheme to interested parties. The way is then open to put into effect the provisions of the scheme, including the legal disposal of the property.

Coming into effect clause

- 21.7** The Commissioners usually only bring into effect a scheme empowering sale of the property when contracts are about to be exchanged. This is a precaution against the occasional case where a prospective purchaser withdraws at a late stage and it may then be some time before the future of the building is settled. Until a scheme becomes effective the property continues to vest in the DBF for care and maintenance. Where the church is to vest in the CCT the scheme will usually be brought into effect by the Commissioners on a date agreed with the CCT. If the church is to be leased by the DBF, the scheme may take effect on the date it is made or specify that the coming into effect date will be determined by the Commissioners by Instrument.
- 21.8** Before a lease or transfer can be completed the requirements of the Measure as they apply to the case must be fulfilled:
- (i) compliance with [s.78](#), [Schedule 6](#) and any Ministry of Justice Order or Instructions with regard to the disposal of any human remains - see [21.39 to 21.62](#).
 - (ii) compliance with the bishop's directions for the disposal of any tombstones, monuments and memorials – see [21.39 to 21.62](#).
 - (iii) publication of 'tombstone' notices notifying next of kin of their rights – see [21.39 to 21.62](#).

(iv) obtaining the bishop's directions for the disposal of the contents under [s.76](#) (and the removal of such contents as directed).

(v) the purchaser carrying out any agreed works before completion.

21.9 The conveyance or lease should not normally be completed until any secular consents required (planning permission and listed building consent) are also in place. Where the scheme provides for demolition of all or part of the building and disposal of the site, such demolition must be carried out before the transfer of property can be completed (see [21.14 – 21.21](#)). The DBF should send a copy of any completed lease to the Church Commissioners.

21.10 Where the closed church vests in the CCT there should be a formal hand over to the CCT by the DBF.

Access prior to completion

21.11 A purchaser may be allowed access to the property between exchange of contracts and completion for the purposes of carrying out:

- any necessary excavations to verify that there are no human remains buried in areas excluded from the Ministry of Justice 'dispensing' order.
- certain urgent works required to the property (details of which have been approved, including (partial) demolition where authorised by the pastoral (church buildings disposal) scheme).

21.12 Such access will be granted by means of a licence under the terms of the Contract of Sale, subject to any conditions of approval e.g. the purchasers securing any necessary secular consents and arranging appropriate insurance cover and also indemnifying the Commissioners or the DBF against any claims arising from the works. Access will be at the purchaser's or lessee's risk and cost.

21.13 In very exceptional cases early occupation of the building by licence may be permitted prior to completion, subject to the Commissioners' agreement. If that were to happen the Standard Conditions of Sale (to which the Commissioners' contracts are made subject) would automatically render the purchaser liable to pay interest on the balance of the purchase money, keep the property in as good repair and condition as when (s)he went into occupation, and to pay all outgoings and expenses.

Demolition

General

21.14 Demolition schemes will generally provide for the DBF to demolish the closed church building and dispose of the materials. In certain circumstances the scheme may authorise the Commissioners to deal with the demolition and disposal of materials but that will be the exception rather than the rule. Where there is already a prospective purchaser for the cleared site, the contract of sale will usually require the purchaser to

carry out the demolition between exchange and completion. In such cases, the legal documentation will include a demolition agreement and should take account of the matters outlined below. Otherwise the DBF should appoint agents to take the building into their custody, obtain tenders for demolition from reputable contractors and make a recommendation accordingly.

- 21.15** The DBF is not bound to accept the lowest tender; special care will be needed if the demolition is complicated (e.g. if architectural features have to be salvaged, or extra safety precautions are needed because of proximity to a residential estate or adjacent properties). The costs of demolition can be met from the DPA but are recoverable from any subsequent sale proceeds on disposal of the site.

Contractual and insurance arrangements

- 21.16** The following factors are relevant:

(i) Payment of consideration

When a consideration is to be paid by the contractor, or specified items or materials are to be reserved for use elsewhere, the successful contractor should normally be required to enter into a specific performance bond or to pay over the consideration before works begin by way of a guaranteed payment.

(ii) Contract

The agent will provide the appropriate form of demolition contract which (s)he signs on behalf of the DBF (or the Commissioners) once a tender has been approved. The contract may include special provisions to take into account the bishop's directions as to the disposal of the contents. It should make clear which items (if any) remaining in the building are to be removed by the diocese. This is important if it is a condition of the contract that all materials arising from the demolition and items left in the building, unless specifically reserved, become the property of the contractor and may be sold by him. The agent should liaise with the Diocesan Furnishings Officer as appropriate. Particular care is also needed in respect of any monuments or memorials, which are to be disposed of in accordance with the bishop's directions.

(iii) Insurance

The DBF (or the Commissioners) will arrange insurance cover for the building against fire and public liability risk for the period before demolition begins. The agent should ensure that the contractor takes out adequate insurance (so that the DBF (or the Commissioners) are indemnified as regards public liability) while demolition is under way.

(iv) Security

Depending on the likely timing of demolition, any need to board windows or fence off the site should be considered by the agent.

(v) *Where burials have taken place*

Specific instructions from the Environmental Health Officer will be needed in line with the general procedures for dealing with human remains.

(vi) *On completion*

Care should be taken by the agents to ensure that demolition contractors leave the site in a satisfactory state and hand over items excluded from the demolition contract on completion of the work.

Construction (Design and Management) Regulations 2007

21.17 The [Construction \(Design and Management\) Regulations 2007](#) help to ensure the effective planning and management of construction work, incorporating health and safety issues arising from a project's inception through the design process and construction and also cover repairs, maintenance and any demolition. They apply to all construction projects (which includes demolition) where people are at work and revoke previous regulations. Part 3 contains additional duties that only apply to projects that:

- last more than 30 days or involve more than 500 person days of work;
- involve 5 or more people on site at any one time.

For these projects, clients must appoint a Construction Design and Management (CDM) co-ordinator and a principal contractor. The Health and Safety Executive must be notified as soon as practicable by the CDM co-ordinator, see the HSE [website](#).

21.18 The Regulations identify key parties and establish their respective duties. Where demolitions of closed church buildings are concerned, the most significant role for the DBF (or the Commissioners) is as a "client". The 2007 Regulations impose legal duties on the client, breach of which can give rise to criminal liabilities. A client may, and in cases where the project is notifiable must, appoint a CDM co-ordinator. After the CDM co-ordinator has been appointed the client must appoint a principal contractor. Until such appointments are made the client shall be deemed to be the CDM co-ordinator and/or the principal contractor. The client must take reasonable steps to ensure that anyone they appoint as CDM co-ordinator and principal contractor is competent as described in paragraph 4 of the 2007 Regulations.

Where there is more than one client (see [21.14](#)) (i.e. the DBF or Commissioners and a purchaser after exchange of contracts) one of them may elect in writing to be treated as the client for the purpose of the regulations, but both will wish to ensure that the requirements of the Regulations and the detailed points regarding contents ([21.16\(ii\)](#)) are provided for in the contractual relationship. This should also contain the requirement for the contractor to forward a copy of written arrangements for the demolition (as per paragraph 29 of the 2007 Regulations) to the client and CDM co-ordinator before work is commenced. In respect of a notifiable project the client must

not permit work to commence unless paragraph 16 of the Regulations has been complied with.

The CDM co-ordinator is responsible in conjunction with the contractor for preparing the Health and Safety file and this file must be passed to the DBF (or Commissioners) on completion ([21.22](#)).

- 21.19** Notwithstanding the appointment of a CDM co-ordinator the client retains duties under paragraph 10 and (in the case of a notifiable project) under paragraphs 15, 16 and 17 of the Regulations

All duty-holders under the Regulations must co-operate and co-ordinate their activities to enable one another to perform their duties and ensure, so far as is reasonably practicable, the health and safety of persons carrying out or affected by the construction work. Work may not commence until the contractor has been provided with the names of the CDM co-ordinator and principal contractor and a satisfactory health and safety plan has been sufficiently developed.

- 21.20** The CDM co-ordinator must have all the health and safety information in the client's possession and is tasked with giving suitable and sufficient advice and assistance to the client to ensure the 2007 Regulations are complied with. The CDM coordinator's duties are detailed in paragraphs 20 and 21 of the 2007 Regulations. The Principal Contractor is tasked with planning, managing and monitoring the construction phase in a way that ensures that, so far as is reasonably practicable, it is carried out without risks to health or safety. This is detailed in paragraphs 22 to 24 in the 2007 Regulations. All interested parties, not just the building contractor, are required to take reasonable care to ensure safety on site.
- 21.21** The DBF or the Commissioners should ensure they receive a copy of the Health and Safety file on completion of the demolition.

Further information is available on the HSE website at
<http://www.hse.gov.uk/construction/cdm.htm>

Disposal of contents

- 21.22** The Church has a particular duty to ensure that important artistic and historic items entrusted to its care are looked after and disposed of responsibly. In many cases contents may be as important artistically or historically as the church building itself. The disposal of contents is provided for in [s.76](#) of the 2011 Measure. The Commissioners' guidance note on the 'Contents of Closed Church Buildings' offers more detailed guidance on the care and disposal of contents of closed churches and may be found in [Appendix 2.6](#).

For the purpose of this section contents are taken to be all the moveable items within closed church buildings which would normally be recorded in the inventory.

Care of contents during the use seeking period

61(4)

- 21.23** The responsibility of DBFs for contents of closed churches in the use seeking period is outlined in [Chapter 16](#). This stresses the need to avoid removing contents permanently by faculty before the future of the building is settled; hasty alienation may well prejudice future decisions and can reduce the options for the future of the building. The inventory should be annotated whenever contents are removed to indicate their new location. Copies of the annotated inventory should be sent to the Commissioners, the SAC, the CCT and the diocesan registrar (see also Specimen Report in [Appendix 2.6](#) for use on the disposal of contents once a scheme has settled the future of the building).
- 21.24** On closure the building becomes fully subject to listed building and conservation area controls. The removal of fixtures from listed closed church buildings requires listed building consent. Consult the local planning authority if in doubt as to how far this extends; generally it will cover the majority of furnishings. During the use seeking period faculty jurisdiction also applies, so the building is effectively subject to dual jurisdiction during this period.

Provision for contents in pastoral (church buildings disposal) schemes

76

- 21.25** When a pastoral (church buildings disposal) scheme or [s.58](#) or [s.59](#) pastoral church buildings scheme settling the future of a closed church takes effect, faculty jurisdiction ceases (unless specifically retained by the scheme), but, unless the scheme authorises demolition, secular listed building controls continue to apply to the building and its contents (see [24.1](#)). The font, communion table and plate used for Holy Communion will be dealt with in accordance with bishop's directions unless the scheme directs otherwise, but if the bishop has not yet given directions, or they have not been fully implemented by the time the church is appropriated to another use or demolished, the DBF is responsible for their care, maintenance and safeguarding. Tombstones, monuments and memorials are subject to separate bishop's directions; otherwise, a scheme will provide for the disposal of any other contents. (see [21.44](#)). Where a church is to vest in the CCT, the scheme will usually provide for the contents also to vest in the CCT for care and maintenance.
- 21.26** The DMPC is responsible for obtaining the bishop's directions. A specimen proforma is found as C7 on the [Closed Churches Forms and Notices](#) webpage. These can be obtained before the scheme is made provided they are initially undated and not acted on until the scheme has been made. The bishop's directions can provide for retention in situ of some or all of the contents, or for their disposal.

Appointment of furnishing officers

- 21.27** Dioceses are advised to appoint Diocesan Furnishings Officers (DFOs) with relevant qualifications and experience and sympathy for the subject. As a matter of good practice the DFO should attend DMPC meetings (or the meetings of a sub-committee dealing with closed churches) and be familiar with the relevant legislation. During the use seeking period the DFO should liaise closely with the DBF which is responsible for the safekeeping of the contents.

- 21.28** When dealing with the disposal of contents the DFO should consult the DAC and take account of the SAC's advice on the contents (as reported by the Commissioners). The DFO should take care to ensure that valuable items are not lost through negligence or indiscriminate dispersal.

Methods of disposal of contents of closed church buildings

- 21.29** The disposal of contents under the authority of a scheme should be carried out by the diocese as quickly as possible after completion of the scheme. This requires careful planning, including obtaining expert advice on the importance and value of individual items. Consideration might be given to the recording of important fixtures or fittings, including tombs, memorials and screens, whether they are to remain in situ or be relocated.

- 21.30** Contents may be disposed of by a variety of methods:-

(i) Retention in situ

As part of the agreed terms of disposal, the DMPC may recommend that certain contents should be left in the building and included as part of the property conveyed to the new owner (e.g. where the building is to continue in use for Christian worship). Alternatively, the bishop may agree to allow the contents to remain in the building on loan. In such circumstances, a formal Loan Agreement between the bishop and the purchaser should be completed which lists the items involved and the terms of the loan. The DMPC should forward two copies of the Agreement to the Commissioners and one to the SAC and annotate the contents list accordingly.

Contents which are left in the building inadvertently or otherwise, and for which no alternative provision or arrangement has been made, automatically become the property of the new owner upon completion of the sale or gift. Fixtures etc on the property are legally included in the sale unless the contract makes a specific reservation of the right to remove them before completion.

(ii) Transfer to other churches in the locality

A faculty is not required for disposal of contents subject to a scheme under the 2011 Measure, but should normally be sought to authorise the introduction of such items into another church. In that connection there is a distinction between such a transfer in accordance with the bishop's directions and the purchase of an item by the recipient church, where the bishop's directions provided only for its sale. In any event, the DAC's advice should be sought on the transfer.

Subject to aesthetic considerations, it might seem fitting that some other church in the area of the benefice in which a closed church building is situated should have the first opportunity of acquiring items from the building; where any items are not required for such churches, they should then be available to other churches in the diocese. Items transferred in this way should be valued by someone with the necessary specialised knowledge and experience in order

that the PCC of the receiving church may be aware of their value and may make appropriate arrangements for safe custody and insurance. Any valuation fee should be paid by the recipient parish.

(iii) *Transfer to a diocesan treasury or local museum*

The preservation of items of artistic or historic interest is a priority. Where retention in the building or use in another church is unfeasible or inappropriate, deposit in the diocesan treasury or a local museum is advised. The diocese should make every effort to ensure such contents do not find their way onto the open market through irregular channels or because they have been left for disposal by a demolition contractor.

(iv) *National Contents Register*

This Register published by the Commissioners details items from closed churches which are available for disposal, and also contains requests received by the Commissioners for such items; it is circulated at regular intervals to DFOs and others. DFOs are encouraged to use the register both as a means of disposing of surplus items from closed churches in their dioceses and also to assist parishes in obtaining furnishings which are not available locally.

(v) *Sale for secular use*

Expert advice should be obtained on the most appropriate means of selling on the open market those items not required for use in other churches or unsuitable for preservation in a diocesan registry or museum.

Windows

21.31 Windows are part of the fabric of the closed church building, not its contents, and any proposals for the disposal of the building, therefore, also cover their future (see [Appendix 2.6](#) – Paragraph 5.15). Stained glass (even in an undistinguished building) may be by a notable artist/designer and so of particular importance.

21.32 If the building is listed, the windows are covered by the listing and proposals for their removal, even temporarily, (or alteration) will require listed building consent, except where removal is consequent upon demolition pursuant to a Pastoral Measure scheme. Prior to any removal of good quality stained glass, colour slides and photographs should be taken on behalf of the diocese for reference and record purposes. The Commissioners should be notified at an early stage of any proposals for installing glass in another church or for sale.

21.33 Possible alternative venues for good quality stained glass are:

- (i) The Stained Glass Museum at Ely Cathedral. This national museum and archive of stained glass preserves finest examples of all periods. Contact: Curator, Stained Glass Museum, The South Triforium, Ely Cathedral, Ely, Cambs CB7 4DL.
E-mail: info@stainedglassmuseum.com

Website: <http://www.stainedglassmuseum.com>

- (ii) The London Stained Glass Repository (LSGR) salvages glass of good quality for reuse in other, appropriate, public buildings. The Commissioners are represented on the LSGR Management Committee and keep them informed of closure cases. Where the LSGR wish to register an interest should the glass become available the Commissioners will inform the DMPC Secretary who should bear this in mind when the future of the building is under consideration, particularly if demolition arises or a use which involves removal of the glass. The LSGR will negotiate for its release to the Repository as a donation, removing it to safe storage, photographing and cataloguing it and promoting interest in its reuse in a suitable location. The LSGR has resolved it would be prepared to consider, based on the merits of particular cases, contributing towards (or paying in full) the costs of removal and transfer of stained glass to the repository, in the interests of preservation of stained glass of merit.

Correspondence should be addressed to: The Hon. Secretary, The London Stained Glass Repository, Glaziers Hall, 9 Montague Close, London Bridge London, SE1 9DD (Tel: 020 7403 3300).

Email: info@worshipfulglaziers.com

Website: <http://www.worshipfulglaziers.com>

Organs

- 21.34** Expert advice on the quality of an organ and its suitability for re-use elsewhere should be sought by the DFO either from the DAC's organs adviser or the CBC's organs Sub-Committee. The British Institute of Organ Studies (BIOS) also offers assessments and advice and contact details may be found on their website – <http://www.bios.org.uk>. A website offering organs for relocation is now maintained by the Institute of British Organ Building (see <http://www.ibo.co.uk>). Dismantling an organ and re-erecting it in another church is a costly operation and should only be undertaken by qualified, established organ builders.

Choir books, sheet music etc

- 21.35** The diocesan church music adviser should be consulted about the disposal of items not needed elsewhere. If necessary contact the Royal School of Church Music, 19 The Close, Salisbury, Wiltshire, SP1 2EB and their website may be found at <http://www.rscm.com>.

- 21.36** For details on:

- Font, altar and communion plate see [Appendix 2.6](#) Paras 5.7-8
- Parochial registers and records see [Appendix 2.6](#) Para 3.9
- Bells see [Appendix 2.6](#) Paras 5.9 - 5.10

- Tombstones, monuments and memorials see [21.39 to 21.62](#) and [Appendix 2.6](#)
Paras 5.11 - 5.15

Disposal of proceeds from the sale of contents

- 21.37** Under [s.76\(4\)](#) the proceeds of any sale of contents are dealt with in accordance with the bishop's directions. The parish in which the closed church building is situated may merit special consideration for a share of the proceeds but there is also a case for directing some part to a diocesan fund meeting the expenses of the disposal of contents or maintaining a diocesan furnishings store (see below).

Diocesan furnishings store

- 21.38** Where possible dioceses should provide suitable storage space to accommodate those items which cannot be transferred immediately to a new home but where a use can be reasonably foreseen. Suitable access and security arrangements will be needed and diocesan authorities may wish to explore the scope for providing suitable space in conjunction with neighbouring dioceses.

Human remains, tombstones, monuments and memorials

- 21.39** [Section 78](#) and [Schedule 6](#) to the 2011 Measure outline the procedures both for dealing with human remains interred within a closed church building or land to which a scheme applies, and for the disposal of tombstones, monuments and memorials. These procedures must be completed prior to disposal of the property. In some cases this will involve consulting the Ministry of Justice and publishing further newspaper notices. This responsibility falls to the Commissioners in the case of sales, gifts and exchanges of property, and to the DBF primarily in the case of leases and licences.

General

78(1)

- 21.40** The DMPC should arrange for burial records to be checked at an early stage to ascertain the location and details of any human remains in that part of the property which is to be disposed of. Particular care is needed where burials have taken place in the last 50 years as this may inhibit any development of the land - see [18.16\(ii\)](#) for details.
- 21.41** [Section 78](#) and [Schedule 6](#) provide that where a pastoral church buildings or pastoral (church buildings disposal) scheme entails the disposal of property containing human remains, then either (a) if no disturbance of the human remains is required by the new use, the Secretary of State for Justice may grant what is known as a 'Dispensing Order' enabling human remains to be left undisturbed in situ, or (b) the human remains must be removed and re-interred elsewhere or cremated, before the property is demolished, sold, leased or otherwise disposed of, or any of the land is developed. This requirement does not apply in respect of "exempt" uses - see [21.43](#). In practice implementing most uses would be uneconomic if there had to be large scale exhumations; wherever possible any removal of human remains should be avoided or kept to a minimum.

- 21.42** The 2011 Measure similarly requires that prior to disposal of the property, other than for “exempt” uses, any tombstones, monuments or memorials commemorating deceased persons buried within the property should also be disposed of (although this can include the bishop directing that they remain in situ).

"Exempt" uses

78(2)

- 21.43** There is no need to seek a dispensing order or remove human remains, tombstones, monuments and memorials where the whole of the property is to be used, without any structural alterations involving the disturbance of the human remains, as:

- a place of religious worship for a university, college, school or other institution;
- a private chapel;
- a monument;
- a place of religious worship by another Church;
- part of a churchyard or burial ground.

This exemption also applies to closed churches which will vest in the CCT.

"Dispensing" orders enabling the retention of human remains in situ

78(3)

- 21.44** Under [s.78\(3\)](#), where the use proposal or demolition will not require any disturbance of human remains, the Ministry of Justice (MoJ) may, after consultation with the bishop and the Commonwealth War Graves Commission (CWGC) make an order dispensing with the requirement to remove the human remains, subject to such conditions as the order may prescribe. (The statutory requirements and bishop's directions regarding the disposal of tombstones, monuments and memorials nevertheless still apply; see [21.51 to 21.52](#) and [21.54 to 21.56](#) below for details.)

- 21.45** In these circumstances the MoJ will need to be assured that:-

- the burials will not be disturbed in any way;
- any service pipes required will be laid at the minimum depth permissible (preferably under established footpaths or beside boundary walls) and that the local authority is in agreement with the siting of the main services; and
- the standard restrictive covenant prohibiting the disturbance of human remains will be included in the eventual conveyance or lease.

- 21.46** Prospective owners should be encouraged to site any new buildings on parts of the churchyard where there are no burials or arrange construction in such a way that there is no disturbance of human remains. Where there are existing service lines the pipes and cables will usually be placed under well established paths where there have been no burials. New services should follow the same lines wherever possible. Where human remains are likely to be affected by the laying of services, the MoJ's normal practice is to require their prior removal - see [10.53](#). This usually involves excavation carried out between exchange and completion.

Applying for a dispensing order

- 21.47** Applications by the Commissioners or the DBF should be along the lines set out in the form of application provided in C3 on the [Closed Churches Forms and Notices](#) webpage addressed to the Coroner's Unit, Ministry of Justice, 2nd Floor, 102 Petty France, London SW1H 9AJ. In addition to the above assurances, 3 sets of plans on a scale of 1:200 must be provided, indicating clearly the property to be included in the disposal, the existence and route of current service lines, and any proposals to introduce new services lines (4 further plans will be required at a later stage). The exact position and dimensions for the provision of any septic tank should also be included (the septic tank should be located as near as possible to the boundary of the churchyard in an area where no obvious burials have taken place).
- 21.48** If it is possible that some human remains may be disturbed, e.g. by new service lines or excavations for a septic tank, such areas should be clearly indicated on the plan. Where trenches have to be dug, the dispensing order will exclude the service lines and septic tank area. It will then be necessary for the purchaser to excavate these areas carefully between exchange and completion, subject to any necessary consultations and consents, to ascertain whether there are any burials.

Operation of a dispensing order

- 21.49** Dispensing orders operate only so long as the property is used for the specific purpose authorised by the pastoral (church buildings disposal) scheme. Any subsequent change of authorised use or alteration of areas needing exhumation will require the landowner to apply to the MoJ for an amending order providing for the new use or area of land. Dispensing orders do not apply to tombstones, monuments and memorials which are dealt with separately by bishop's directions and the publication of notices (see below).

Registration of a dispensing order

- 21.50** So that any new owner of land affected by a dispensing order shall be aware of its existence, the MoJ deposits a certified copy with the clerk or chief executive officer of the council of the district, unitary authority or London borough in which the property is situated, and this copy is registered in the local land charges register.

Retention in situ of tombstones, monuments and memorials commemorating deceased persons buried in the property

- 21.51** Where a dispensing order is made it will usually also be desirable for any tombstones, monuments and memorials commemorating the deceased persons to remain in situ. The bishop may, after consultation with the DAC, so direct; a proforma example of such directions is provided in C4 on the [Closed Churches Forms and Notices](#) webpage. A non-statutory "short" newspaper notice should then be published once in a local newspaper. There will be no need to list details of the tombstones etc as they will not be disturbed, but this gives an opportunity to next of kin or personal representatives to remove tombstones etc but not human remains if they so desire. Such removal is subject to the grant of listed building consent, if applicable - see [21.52](#) - but does not require the grant of a faculty. Proforma examples for such

newspaper notices, and for the more detailed "long" notice for local inspection are also given in C9 and C10 on the [Closed Churches Forms and Notices](#) webpage. Relatives will be entitled to the reimbursement by the Commissioners or DBF of reasonable costs incurred in such removal.

- 21.52** Occasionally it may be appropriate, whilst retaining human remains in situ, for tombstones etc to be re-sited elsewhere; if so, the Bishop's directions to this effect should be sought - see proforma example in C5 on the [Closed Churches Forms and Notices](#) webpage. Under the [Ecclesiastical Exemption \(Listed Buildings and Conservation Areas\) Order 2010](#), the movement of tombstones does not require listed building consent unless they are listed in their own right. Tombstones erected before 1 January 1925 will need conservation area consent before they are removed if they are in churchyards within a conservation area (where the church is not listed).

Procedures for the removal of human remains

- 21.53** Sometimes it will be impossible to avoid the removal of some human remains and tombstones, monuments or memorials. Where this is likely a detailed plan indicating the location and date of all affected burials and a list of tombstones inscriptions should be organised by the diocese at an early stage. Before removing any human remains, a consultative process has to be followed involving the issue of public notices (and service of personal notices on the personal representatives or next of kin where the burials took place within the preceding 25 years). The procedures involved are set out in Schedule 6 and are summarised below:

(i) Obtaining directions

The removal of human remains and their cremation or reinterment elsewhere has to be done in accordance with the MoJ's directions. An application should be made by either the Commissioners (for sales) or the DBF (for leases) to the Coroners Unit (at the address in [21.47](#) above) as soon as possible after the scheme has been made by the Commissioners. More detailed directions should be sought from the local Chief Environmental Health Officer who will also advise on a cemetery where reinterment may take place or a crematorium where cremation may be carried out. The bishop may impose conditions as to the manner of removal and reinterment or cremation (e.g. by requiring a short service to be held) and should be consulted at this stage.

The bishop's directions as to the future of any tombstones, monuments or memorials will be required (see [21.54](#) below).

(ii) Practical arrangements

The actual work of exhumation and reinterment is normally carried out by a local undertaker. If the job is a large one a tendering exercise is recommended and it may be worth inviting a nationally known firm to tender.

(iii) "Short" newspaper notice

Once the various directions on the removal of the burials and the bishop's directions are received, a short notice setting out what is proposed must be published by the Commissioners or the DBF in the Public Notices column of a local newspaper on two occasions a week apart.

A proforma example for such a notice is included in C11 on the [Closed Churches Forms and Notices](#) webpage. It must contain the following information:-

- (a) An address where full particulars of the deceased persons and tombstones etc. may be inspected.
- (b) Details of the cemetery or crematorium where it is proposed to re-inter or cremate the remains, what is to happen to any tombstones etc, and a note of the MoJ's directions and the bishop's requirements.
- (c) A statement of the right of personal representatives or relatives of deceased persons to give notice in writing within 28 days of the date of the newspaper notice that they will themselves, within 2 months from the date of the notice, arrange the removal, reinterment or cremation of a deceased person and the disposal of any tombstone etc. This should include the information that they are entitled to the reimbursement of the reasonable costs of such removal/disposal.

Note: Where any question arises as to what are 'reasonable' costs for the purposes of reimbursement the decision of the Commissioners shall be conclusive. All expenses incurred in the disposal of human remains, tombstones etc are payable from the proceeds of the disposal of the property; where there are no proceeds they may be paid from the DPA.

(iv) "Detailed" notice

A copy of a more detailed notice (a proforma example for which is given in C12 on the [Closed Churches Forms and Notices](#) webpage) should be displayed in a conspicuous place on the church door, or the gates of the churchyard, or on the notice board outside the church if there is one. A further copy should be sent to the bishop and the CWGC; where any of the human remains being dealt with were buried within 25 years before the notice was published, a copy should also be sent to the next of kin or personal representatives of the deceased person. Where next of kin are untraceable any known relative should be given a copy of the full notice (the incumbent should be asked to assist in tracing relatives). Where it is known that there have been recent burials which will have to be disturbed, this work of tracing next of kin etc. should be put in hand by the DPMC at as early a date as possible.

(v) *Commonwealth War Graves Commission (CWGC)*

The CWGC, located at 2 Marlow Road, Maidenhead, Berks, SL6 7DX, receives copies of all relevant pastoral church buildings schemes and pastoral (church buildings disposal) schemes. It notifies the Commissioners of cases where CWGC memorials may be affected. The CWGC should be consulted before any decisions are taken regarding graves, headstones or memorials which are their responsibility, even where there is no intention of disturbance. The MoJ will also write to the CWGC seeking confirmation of its views.

Where the CWGC has indicated that it does not intend to take any independent action, its consent should nonetheless be sought to any proposed action which affects its interests. There may be cases where personal representatives or relatives of deceased persons have expressed an interest in the future of a headstone or memorial which was provided by the CWGC. The CWGC should, however, be allowed to remove such headstones or memorials unless it agrees to any other arrangement. When the CWGC removes human remains or headstones it is entitled to reimbursement of reasonable costs as detailed above.

(vi) *Certification*

Following the removal of human remains a certificate must be sent by the Commissioners/DBF for deposit to the Registrar General at the Office for National Statistics, Room 1.015, Government Buildings, Cardiff Road, Newport, NP9 1XG, giving details of the removal of human remains as follows:-

- (a) The dates of each removal and reinterment or cremation; and
- (b) The place from which remains were removed and the place where they were reinterred or cremated.

Procedure for removal of tombstones, monuments and memorials commemorating deceased persons buried in the property

- 21.54** The usual practice when human remains are removed and reinterred elsewhere will be to re-erect over the new graves any commemorative tombstones, monuments or memorials. The bishop's directions will be required following consultation with the DAC (see C5 on the [Closed Churches Forms and Notices](#) webpage); such removal is subject to the grant of listed building consent if applicable - check with the local planning authority if in doubt - but it does not require the grant of a faculty (see also [21.51](#)). The cost of removal is a proper charge against the proceeds of disposal of the closed church building, and in the absence of proceeds should be charged to the DPA.
- 21.55** When consulting the DAC full details of the tombstones, monuments and memorials should be provided. The work on securing inscription details should be put in hand at an early stage as this can be time consuming. In most localities there are historical or genealogical societies who may offer assistance in correct recording of monumental inscriptions. If there is any difficulty in finding someone suitable, the Society of

Genealogists at 14 Charterhouse Buildings, Goswell Road, London, EC1M 7BA (www.sog.org.uk) may be able to offer suggestions.

- (i) If tombstones, monuments or memorials are not to be re-erected with the remains elsewhere, then the bishop may direct that they should be broken up and disposed of. However, any tombstones which might be of public interest should be carefully relocated. Where monuments and memorials of aesthetic value are to be preserved, the best location is likely to be in another church in the locality, or alternatively the family home of the family commemorated, or a local museum. If the DAC is unable to help, the advice of the CBC or any specialist agency should be sought.
- (ii) Where tombstones etc are to be moved the procedure for publishing newspaper notices and informing personal representatives and relatives of their rights as set out in [21.53](#) above must be followed.

21.56 Within 2 months of removing any tombstone etc, a record of the removal (including the date and manner of removal and an accurate copy of the inscription and of any heraldic devices) should be prepared. This should also indicate the manner of disposal and the place (if any) to which it has been moved. A copy of this record must be deposited with the council of the district, unitary authority or London borough concerned and with the Registrar General as in [21.53\(vi\)](#) above. It is recommended that further copies are deposited in the County Record Office, a local public library or museum. Finally, a copy should be sent to the Commissioners for deposit with the CBC.

Disposal of monuments and memorials commemorating deceased persons buried elsewhere

- 21.57** Where there are monuments or memorials commemorating deceased persons whose remains are not buried in the building or land, the property may not be transferred until the monuments or memorials have been disposed of in such manner as the bishop may decide after consultation with the DAC. The bishop may direct that the monuments and memorials should remain in situ; an example proforma for such directions is attached in C6 of the [Closed Churches Forms and Notices](#).
- 21.58** War memorials placed in churches or churchyards may come into this category. In considering their disposal it is suggested that the DMPC secretary might consult the General Secretary of the Royal British Legion at 199 Borough High Street, London SE1 1AA (www.britishlegion.org.uk). The General Secretary can arrange for the matter to be considered by the branch or branches concerned. Another useful source of information is the UK National Inventory of War Memorials (see [24.29](#) for details).
- 21.59** Fittings, fixtures and items of furniture and furnishings are often presented to a church in memory of a deceased person. In dealing with the future of these items the procedure will normally be to regard them as contents, except in the case of stained glass windows which are part of the fabric. They should be dealt with in accordance with [21.22 to 21.38](#) after consultation with any surviving relatives or personal representatives. The brass plates or other indication of the commemoration should

usually be removed before disposal unless the item is to be transferred to another church or public building or museum.

- 21.60** Where possible the bishop may direct that the monuments and memorials falling into this category should remain where they are, but if this is not appropriate the action suggested in [21.56](#) above for recording inscriptions etc should be followed.

Removal of ashes

- 21.61** Where the ashes of a cremated deceased person have been deposited (not scattered) in the closed church or churchyard they should be treated as if they are interred human remains for the purposes of [s.78](#) and [Schedule 6](#) to the Measure. Where the proposed development (or demolition) will inevitably result in their disturbance, efforts should be made to contact relatives or personal representatives of the deceased persons and their views sought as to the relocation of the ashes; if such relatives etc are untraceable the bishop's views should be sought. Any commemorative memorial should be dealt with in the same manner as when dealing with tombstones etc.

Removal of human remains after disposal of the property

- 21.62** Where a closed church building and churchyard have been sold or leased and human remains have been left in place under the authority of a dispensing order, the new owner may in due course wish to carry out works which will potentially involve the disturbance of human remains and also, possibly, the tombstones, monuments or memorials. In the first place he will need the authority of the Commissioners (as vendors) or the DBF (primarily as lessor) for the modification or temporary relaxation of the covenant(s) in the conveyance or lease which prohibits such disturbance. If such permission is forthcoming (the Commissioners or DBF should consult the bishop before agreeing to such modification) the owner will also need to apply for an amendment or revocation of the MoJ dispensing order and then carry out the notification procedures outlined above.

Chapter 22

The Transfer of the Property

This chapter outlines the procedure for dealing with the disposal of a closed church building and/or site, highlighting in particular the inclusion of covenants under [s.75](#) in any conveyance or lease as a means of protecting the Church's continuing interest in the property.

22.1 - 22.8	<u>Covenants</u>
22.2 - 22.3	<i>Purpose of covenants</i>
22.4	<i>Enforcement</i>
22.5 - 22.6	<i>Covenants applicable on disposal of a closed church building</i>
22.7 - 22.8	<i>Covenants applicable to the cleared site of a demolished closed church building</i>
22.9 - 22.13	<u>Sale proceeds and lease premiums</u>
22.10 - 22.11	<i>Under Section 64</i>
22.12	<i>Costs allowable against sale proceeds</i>
22.13	<i>Under Section 58</i>
22.14 - 22.19	<u>Disposal of sites</u>
22.14 - 22.15	<i>General</i>
22.16 - 22.17	<i>Disposal of sites of churches demolished otherwise than under Part 6 of the Measure</i>
22.18 - 22.19	<i>Application of sale proceeds</i>

Covenants

- 22.1** In disposing of a closed church building for a suitable alternative use the Commissioners/DBF include a covenant in the transfer/lease outlining the authorised use for the property. Other covenants protect against, inter alia, unauthorised structural alterations or disturbance of human remains or tombstones, monuments and memorials. Such covenants remain in force irrespective of changes in ownership of the property.

Purpose of covenants

- 22.2** Most closed church buildings will still look like churches and be associated by the public with their past, even when they are used for other purposes. Covenants are included in any conveyance or lease to:
- uphold and support the authorised use (and prevent undesirable uses)
 - protect the church building/site
 - reassure local people and provide for access to tend graves at agreed time
 - prevent unauthorised demolition or alterations to the fabric
 - retain potential interest, in certain circumstances, where a more commercial future use than that originally authorised is subsequently proposed.

The imposition of covenants is in both the Church's and the public's interest.

- 22.3** In any provisional negotiations for sale or lease the DMPC, its agents or the Commissioners' case officer should, at a suitable early stage, explain to a prospective user the extent and nature of the covenants likely to be imposed. Failure to do so adequately could lead the prospective user to reconsider his or her intentions at an advanced stage in proceedings, or significantly delay bringing a sale or lease to completion.

Enforcement

- 22.4** The 2011 Measure gives the covenants special force. [S.75](#) provides that these covenants are enforceable as though the Commissioners or the DBF are the owners of adjacent land and the covenants are for the benefit of that land, and also as if covenants of a positive character are negative. Accordingly, covenants imposed on a freehold disposal under the Measure will be shown in the Charges Register relating to the title and will bind successive future owners of the property concerned. Under [s.75\(3\)](#), unlike other restrictive covenants relating to land, they cannot (under express provision in the Measure) be varied or released on an application to the Lands Tribunal: this gives them unusual effectiveness.

Covenants applicable on disposal of a closed church building

- 22.5** The recommended wording for standard covenants is provided in summary in [Appendix 2.9](#) and is also set out in the Commissioners' Standard draft Transfer (TR1) for the disposal of closed churches. A brief explanatory note including where each is applicable is provided below:

(a) *The user covenant*

The scheme provides for appropriation to a use which is specified or generally described. A restrictive covenant to ensure compliance with this provision and for ancillary matters must be included in leases and conveyances of church buildings closed for regular public worship. It should follow precisely the user clause in the scheme but, where the clause is capable of wide interpretation (e.g. "civic, cultural or community purposes"), it may be appropriate to include additional provision, either by prohibiting the use of the building for specified purposes falling within this definition, or by providing for any particular use to be previously agreed by the bishop.

(b) *No illegal, immoral or offensive use*

This prevents the property being used for any use that may be illegal, immoral or offensive to the principles and practice of the Christian faith. In light of the implications of the Human Rights Act 1998, Counsel advised that, in order to provide an acceptable level of objectivity, a group of people should be given the role of forming an opinion on whether uses were offensive to the Christian faith. The Commissioners have determined that the group should comprise the diocesan bishop, the dean of the Cathedral and the Archdeacon of the area in which the property is situated. A majority of two to one will be decisive.

(c) *The non-demolition covenant*

This prevents the owner, once s/he has acquired the building, from nullifying the use by demolition. (Where architectural alterations have been approved by the Commissioners, such approval will usually be regarded as permitting demolition to the extent necessary to carry out the alterations, provided that these are carried out in accordance with the approved plans). Approval is additional to listed building consent where required. Part of the purpose of the covenant is that it also gives the Church an opportunity in return for lifting the covenant in appropriate circumstances to seek a share of any increased value a cleared site may have over the sale price for the building.

(d) *Non-disturbance of human remains*

This covenant is essential where there are burials within the property to be disposed of and the MoJ has made an order dispensing with the requirement to remove the human remains.

(e) *Erection of a notice board*

This draws the attention of members of the public to the change of use and the fact that the building is no longer a public place of worship. In view of the characteristic appearance of most church buildings, the new use should be clearly and conspicuously indicated. The notice should be of a size and in a position appropriate to the building. The wording provided on the board should include details of the new and former use together with any

arrangements agreed for public access to the building and/or former churchyard.

(f) *The repair covenant*

This seeks to ensure the preservation of the building in a reasonable state of repair. The period of 6 months is a suggested maximum although this can be increased as appropriate. More detailed clauses may be included in a lease to ensure the future upkeep of the building to whatever standard is judged appropriate, but stringent covenants are only likely to be of value if effective arrangements can be made to police them.

(g) *Completion of conversion work within a specified period*

Where alterations are required this covenant should be included to ensure that the approved changes necessary to facilitate the new use are undertaken within a reasonable period of time. It is suggested that the maximum time given for completion of any conversion works be 2 years, although extra time may be allowed if requested.

(h) *Architectural or structural changes*

Where a building is proposed to be altered to facilitate the new use, the SAC will be consulted under [s.62\(6\)](#). In such cases approval of the plans identified by reference number and date should usually be given by the Commissioners (or DBF) before the conveyance (or lease) is completed. Such consent is additional to securing planning permission and listed building consent if appropriate. If no alterations are planned, an absolute covenant prohibiting any alterations should be included.

(i) *Non-disturbance of tombstones etc*

This covenant is applicable where there are tombstones, monuments or memorials situated within the property to be disposed of and where the bishop has directed that all or some of them should remain undisturbed.

(j) *Public access to the building/churchyard*

This covenant should be included where the building is listed Grade A or I or is otherwise highly listed because of some special feature(s). The form of such access, whether at specified times or by prior written application, should be agreed before completion and the details should be displayed on the notice board. Public access should also be included if EH (or HLF) have grant aided the church over the past 10 years. This covenant is also usually applicable where there are graves or memorials in the former churchyard which relatives or others wish to continue to tend or visit and also where there may be the grave of some well-known person.

(k) *Boundaries*

This covenant is included where part only of the churchyard is being disposed of and the new owner is to put up a boundary structure between the property and the retained churchyard.

(kk) *No solemnisation of marriages*

This covenant prohibits a civil registration of marriage by prohibiting marriage in “approved premises” and the building’s equivalent use for the registration of a civil partnership.

(l) *Inappropriate planting schemes*

This covenant protects against the risk of structural damage caused by inappropriate planting schemes in former churchyard land, e.g. the planting of strong growing trees and shrubs too close to buildings or churchyard walls. The height and distance measurements may be varied to meet a particular need.

(m) *Access of Commissioners’ surveyor*

Where covenants relating to works are included in the transfer, this covenant needs to be included too, to ensure that the Commissioners can have access to check compliance.

(n) *Other special covenants*

The DMPC should ascertain at an early stage whether circumstances necessitate the inclusion of any special covenants to protect particular rights or amenities. In lease cases the lessee should assume repairing and insuring liabilities not only to ensure that the building is properly maintained but to absolve the DBF, as lessor, from any residual liability. For buildings of special architectural or historic interest this should amount to a full repairing covenant and a covenant to insure the full cost of reinstating the building. It may also be desirable, particularly where the use is unusual, to prohibit assignment of the lease without the lessor's consent.

Where only part of the churchyard is to be disposed of, access over, and services to, retained land will usually be dealt with by exceptions and reservations, rather than by covenants.

- 22.6** Such covenants will also be applicable for inclusion in a lease of the closed church building by the DBF.

Covenants applicable to the cleared site of a demolished closed church building

- 22.7** When dealing with site disposals the Commissioners and the DBF will need to consider the application of any covenants protecting the future use of the site. If a specific use has been identified at the stage at which a draft scheme is being prepared

for demolition of a closed church building and disposal of the site, or for the disposal of a site of a church building which has already been demolished, this should usually be provided for in the draft scheme, and thereafter by covenant. In all instances it will usually be appropriate to include the standard covenant prohibiting illegal, immoral or offensive use. Over time the disposal of a site does not retain the same connection with the Church as the disposal of a building, but the inclusion of covenants will be particularly relevant if, for example, the site adjoins a parsonage or other church property, where some control over its future use is desirable.

- 22.8** The recommended wording for any standard covenants, where applicable, on the disposal of a site is provided in summary in [Appendix 2.9](#).

Sale proceeds and lease premiums

- 22.9** The proceeds of sales and lease premiums arising from the disposal of closed church buildings are paid to the Commissioners under [s.63\(5\)](#). This also provides that the Commissioners will pay two-thirds of net proceeds/premiums to the DPA (the payments are made via the Diocesan Debtors Account - see 16.12(i)). The application of the remaining one-third by the Commissioners is provided for in accordance with [s.64](#) of the Measure (see below). Separate provision is made for the application of proceeds arising from cases pursued under [s.58](#) where a replacement church or place of worship is to be provided (see [18.28](#)); the balance of any proceeds not required for the new church or place of worship are dealt with as set out above. Rents arising from leases or licences of closed church buildings are credited direct to the DPA and are not apportioned.

Under section 64

64

- 22.10** [Section 63\(5\)](#) and [s.64](#) of the 2011 Measure provide for the application of the net proceeds arising from the disposal of closed church buildings and/or sites which remain following deductions to reimburse the costs incurred. Deductions which can be made from gross proceeds include monies expended by the Commissioners, the DBF and the DMPC on the property or for the purpose of furthering its disposal or demolition (see 22.12). Under [s.106\(2\)](#) it is for the Commissioners to determine what constitutes net proceeds and, if any question arises on this, their decision is conclusive. As indicated the relevant DPA receives two-thirds of the net proceeds of sales and lease premiums, while under [s.64](#) the remaining one-third is allocated by the Commissioners primarily towards meeting their agreed contribution to financing the CCT under the terms of any funding order they have made under section 65. The Commissioners are also empowered to allocate monies from time to time from this one-third share to the TMA, and to some or all of the DPAs, in such amounts as they may determine.
- 22.11** Under [s.64](#) any sale proceeds or lease premiums received on the disposal of a closed church or site are payable to the Commissioners on completion (whether the Commissioners or the DBF are the Transferor/Lessor). The Commissioners will prepare a final statement of account and, having first reimbursed the DPA (via the DDA) for costs incurred by the diocese in the disposal of the property, and the TMA for any payments made towards the diocese's expenditure on the building, they will

then apportion the net proceeds in accordance with the Measure. The DBF will be asked to provide the Commissioners with a full statement of DPA expenditure on the closed church building. Any costs charged by the Commissioners to the funds held in the DDA will also need to be taken into account prior to apportionment.

Costs allowable against sale proceeds

106(2)

22.12 [Section 94](#) of the 2011 Measure allows for the reimbursement from the proceeds arising from the disposal of a closed church building or its site of any costs incurred by the DBF, DMPC and the Commissioners (excluding salaries) on the property or in furthering its disposal or on its demolition. The Commissioners have determined that, in addition to the repayment of grants from the TMA, the following costs may be reimbursed from sale proceeds or a lease premium:

- newspaper notices
- agents' fees
- minor repairs
- routine maintenance (replacing slipped tiles, clearing rainwater goods, vegetation etc)
- security
- insurance
- architect's fees in connection with repairs/maintenance
- Land Registry charges and other costs incurred in securing title to property
- cost of demolition/site clearance.

In certain circumstances, costs arising from a Section 106 Agreement relating to a conditional planning permission to enable the alternative use of a closed church may be reimbursed from sale proceeds, if there are sufficient funds. The Commissioners should be consulted about this as soon as possible if such a situation potentially arises. The Commissioners have also agreed, in principle, funds permitting, to reimburse grants made by the Wolfson Foundation for the repair of churches after 1 July 2003 although they would not normally expect this to apply if closure for regular public worship occurs more than 10 years after payment of such a grant. Grants made under the Repair Grants for Places of Worship Scheme by EH or the HLF may also be subject to repayment from sale proceeds if closure occurs during the economic life of the grant.

When a building is leased or licensed the DBF may look to reimburse the costs of disposal directly from the rents payable to the DPA.

Rent arrears on a failed lease, and interest thereon, will not be allowed as a charge on sales proceeds. Dioceses should consult the Commissioners if in doubt as to whether particular items of expenditure may be recouped from sale proceeds.

Under section 58

22.13 The arrangements for dealing with the proceeds arising from a disposal pursued under [s.58](#) (where a replacement church or place of worship is to be provided) are set out in [18.28](#). Where the Commissioners are satisfied of the intention to provide a new church or place of worship within the benefice of a church which is being, or has

been, declared closed for regular public worship, then the cost of providing the new building can be a first call upon the net proceeds or premiums arising from the disposal of the closed church building.

Disposal of sites

General

- 22.14** Where a closed church building is to be demolished under the Measure (other than under [s.58](#)) the pastoral (church buildings disposal) scheme will generally provide for the DBF to carry out the demolition and dispose of the site. Alternatively the Commissioners may be authorised to deal with the demolition and disposal, but that will be the exception rather than the rule. Where the site of a demolished church building is to be incorporated into the churchyard the Commissioners will prepare the necessary instrument to achieve this. Otherwise, where the scheme provides for the disposal of the site, the DBF should, in consultation with the Commissioners' case officer, obtain a valuation or market appraisal and instruct agents to market the site (and any land annexed or belonging thereto, if appropriate). Following marketing the DBF should report on all offers received in the format provided for in C2 on the [Closed Churches Forms and Notices](#) webpage and seek the Commissioners' agreement to the proposed terms of disposal. This should include the agents' report on marketing and a summary of all offers received, together with an explanation if acceptance of the highest offer is not proposed.
- 22.15** Where there are any human remains, tombstones, monuments or memorials the DBF will need to deal with these in accordance with [s.78](#) and [Schedule 6](#) before disposal can proceed - see [21.39 to 21.62](#). If the Commissioners are dealing with the disposal they will consult the diocese on the inclusion of any special covenants in the conveyance or lease, particularly where the site adjoins a parsonage or other church property - see [22.9 to 22.13](#).

Disposal of sites of churches demolished otherwise than under Part 6 of the Measure

66(2)

- 22.16** Under [s.66\(2\)](#) the Commissioners can prepare a pastoral (church buildings disposal) scheme to deal with the disposal of the site of a church demolished otherwise than under Part 6 of the Measure. This includes churches demolished under authority of a faculty or under superseded legislation which provided for demolition but not disposal of the site. The scheme may provide for the incorporation of the site within the surrounding churchyard or for its disposal (including, if specified, any land annexed or belonging thereto). It will usually authorise the DBF to deal with such disposal but the Commissioners' agreement should be sought to any proposed terms of disposal.
- 22.17** The views of the incumbent, in whom such a site will normally vest prior to any disposal, should be ascertained. Guidance on marketing sites is provided in [18.17\(ii\)](#). Following completion of the pastoral (church buildings disposal) scheme, the arrangements for the disposal of the site as set out in this Chapter should be followed.

Application of sale proceeds

- 22.18** The Commissioners apply the net proceeds of any sale of a site (or net premium on any lease) authorised by a scheme made under [s.66\(2\)](#) in accordance with [s.63\(5\)](#) and [s.64](#), that is two-thirds to the DPA and one-third available initially towards the cost of funding the CCT – see [22.9 to 22.13](#).
- 22.19** However, if the Commissioners are satisfied, under [s.63\(9\)](#), that a replacement church or place of worship is to be provided within the benefice in which the demolished church was situated, then the whole of the net proceeds or net premium can be applied towards the cost of the new building, so far as such monies are required, leaving any balance to be apportioned in accordance with [s.63\(5\)](#) and [s.64](#).

Chapter 23

Maintaining a Continuing Interest in Closed Church Buildings

This chapter outlines the Church's continuing interest in church buildings closed for regular public worship, even after their future is settled, and looks at the circumstances in which completed cases can be re-opened. When a closed church building is sold or leased the Church maintains continuing interest through covenants which, inter alia, restrict the authorised purposes for which the property might be used. From time to time possible breaches of covenants occur or requests for variations of covenant are received. Where closed church buildings are leased a proposed change of use will usually necessitate an amending pastoral (church buildings disposal) scheme.

- 23.1 - 23.4 [Monitoring the covenants](#)
- 23.1 - 23.2 [General](#)
- 23.3 [Breaches of covenants](#)
- 23.4 [Involvement of civil authorities](#)
- 23.5 - 23.9 [Release or variation of covenants after disposal of the freehold](#)
- 23.6 - 23.8 ["User" covenant](#)
- 23.9 [Other covenants and exchange of letters](#)
- 23.10 - 23.12 [Where buildings are vested in the DBF](#)
- 23.13 - 23.15 [Amending pastoral \(church buildings disposal\) schemes](#)

Monitoring the covenants

General

- 23.1** An outline of the reasons for the inclusion of covenants in the disposal of closed church buildings is provided in [22.1–22.8](#). Such covenants can be difficult to police regularly and a systematic inspection programme cannot usually be arranged. However, church members and the general public will often contact Church authorities if a closed church building is obviously neglected or is apparently being used for unauthorised purposes. Additionally, when disposing of the freehold of a closed church building the Commissioners send a copy of the covenants included to the DMPC and the incumbent or priest-in-charge for information. While the local parish is not expected to take any direct action, it is helpful if they report any apparent breaches of covenants to the Commissioners for follow up.
- 23.2** Similarly, although the DMPC has no statutory role once a church building has been disposed of, it is often in a good position locally to monitor the implementation of an authorised use. Recommended practices include:
- (1) providing DMPC or sub-committee members with brief details of closed church buildings dealt with in the diocese and notebooks which enable them to record on their travels details of the state of repair and any signs of unauthorised use;
 - (2) arranging an occasional DMPC tour which includes "old" cases.

The DBF is responsible for monitoring covenants included in leases and it may be helpful to link this role to any diocesan arrangements for monitoring property issues generally.

Breaches of covenants

- 23.3** Any apparent breaches of covenant should be reported to the Commissioners (in cases of freehold disposal) or the DBF (in lease cases). Minor infringements can often be dealt with through an exchange of correspondence or resolved following a site visit. A serious breach - for example unauthorised disturbance of human remains - may involve legal action. Such action is expensive and is usually undertaken only in exceptional circumstances and as a last resort, after consultation between the Commissioners and the DBF. In the event of an apparent serious breach of covenant, which may result in adverse publicity, early liaison with the Commissioners and the diocesan communications team can be helpful.

Involvement of civil authorities

- 23.4** Where the user fails to maintain the building in a wind and watertight condition, liaison with EH and the local planning authority can be useful in providing "parallel" powers of enforcement, particularly if the local authority is considering serving enforcement or dangerous structure notices (or, if the building is listed, a Repairs Notice or Urgent Works Notice). The local planning authority's conservation officer

can also provide useful practical advice to new owners who have difficulties in completing repair or conversion work.

Release or variation of covenants after disposal of the freehold

- 23.5** Sometimes an alternative use for a closed church building which has been sold is not sustained over time. Requests to vary the user covenant, to carry out alterations other than those already permitted, or to otherwise vary or release some of the covenants usually merit sympathetic consideration provided any revised proposals continue to fit in with the character and setting of the property and provide for a suitable alternative use.

"User" covenant

- 23.6** Where the property has been sold, the Commissioners will consult the DMPC if they receive a request from the purchaser of the property (or a subsequent owner) to vary the authorised use. Some form of consideration may be appropriate (e.g. where the price obtained for the property would have been significantly higher if it had been sold for the use now proposed). This is a matter on which the Commissioners and the DMPC should seek professional advice in terms of valuation. Provided the Commissioners agree to vary the authorised use the owner will also be expected to pay the fees or legal costs incurred by the Church authorities in the transaction. Agreement to vary the user covenant will also usually be subject to receipt of any necessary planning permission or listed building consent. A variation of covenants to change the authorised use, or to provide for additional uses, will be dealt with by way of a formal deed and the Commissioners will instruct solicitors accordingly. They will apportion any net proceeds in accordance with [s.63\(5\)](#) and [s.64](#) of the Measure, i.e. two-thirds to the DPA and the remaining one-third available primarily towards the financing of the CCT.
- 23.7** Where the proposed new use involves structural alterations the Commissioners will need to approve plans and drawings (see [19.5 - 19.8](#)).
- 23.8** Where there are human remains within the property the owner will also need, in the event of a change of authorised use, to apply to the Ministry of Justice for an amending Order relating to the treatment or disposal of the human remains. (This is necessary because the original Order was conditional upon the previous use.) If the proposed new use involves potential disturbance of human remains, in addition to MoJ instructions for handling this the Commissioners will need to consult the bishop and approve a temporary relaxation or variation of the relevant covenant. The owner will be responsible for issuing newspaper notices of what is intended.

Other covenants and exchange of letters

- 23.9** It is not always necessary for variations of covenants (excluding the user covenant) to be dealt with by a formal deed of variation. An exchange of letters may be appropriate in certain circumstances such as:

- (i) a temporary relaxation or variation of covenant governing the non-removal of tombstones, monuments or memorials (this will however require revised bishop's directions);
- (ii) a temporary relaxation or variation of the 'alterations' covenant following the Commissioners' approval of revised plans for architectural or structural works;
- (iii) an extension of the period for carrying out agreed alterations.

Where buildings are vested in the DBF

- 23.10** Where the property is held or leased by the DBF it remains within the ambit of the 2011 Measure. Any subsequent proposal for a change to the authorised use or other disposal of the property (e.g. vesting in the CCT, demolition or sale) can only be effected by an amending pastoral (church buildings disposal) scheme (see below).
- 23.11** If a new lease of the property for the existing authorised use is proposed this will not usually require further consultation or an amending scheme. However any resulting net lease premium should be forwarded to the Commissioners who will apportion it in the usual manner under [s.63\(5\)](#). The DBF should also provide the Commissioners with a copy of any new lease.
- 23.12** Where the DBF applies to the Land Registry to become the registered proprietor of a property that vests in it to be held for a particular use or uses, it must at the same time apply for a restriction in standard form L in relation to the freehold title, in the following form:

“No disposition of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed on behalf of the Church Commissioners of Church House, Great Smith Street, London SW1P 3AZ by their Secretary or their Official Solicitor that the provisions of the Mission and Pastoral Measure 2011 have been complied with.”

Amending pastoral (church buildings disposal) schemes

- 23.13** Amending pastoral (church buildings disposal) schemes may be needed under [s.69](#) to make new provision for the future of a closed church building vested in either the DBF, the Commissioners or the CCT, for example where:
- (i) a change of authorised use is proposed where the property is leased by the DBF; or
 - (ii) the use authorised by the previous scheme was not implemented; or
 - (iii) the closed church building is to be vested in the CCT or demolished; or
 - (iv) the closed church building is to be divested from the CCT and appropriated to an alternative use; or

- (v) the closed church building is to be sold instead of leased for the authorised use.

- 23.14** There is also power to make further provision by way of a pastoral (church buildings disposal) scheme in relation to closed church whose future was previously dealt with under superceded legislation, provided it remains within the ambit of the Measure.
- 23.15** In the event that a closed church building vested in the CCT is to be restored to use as a church under [s.70](#) this will require a pastoral church buildings scheme (see [14.7](#)).
- 23.16** The procedural requirements for issuing a draft amending scheme are the same as those for other draft pastoral (church buildings disposal) schemes. The diocese should provide full details of any updated recommendation on alternative use (see C1 on the [Closed Churches Forms and Notices](#) webpage) to enable the Commissioners to consider the proposals and carry out the requisite consultations if they decide to publish a draft scheme. Any representations will need to be considered in due course.

Chapter 24

Secular Legislation, Bodies and Related Matters

This chapter considers in more detail the role of secular legislation when settling the future of church buildings closed for regular public worship and outlines the main external bodies with a statutory role. A number of secular bodies, both national and local, are involved in this process and, where relevant, should be consulted at an early stage in the use seeking process.

- 24.1 - 24.4 [Ecclesiastical exemption](#)
- 24.5 - 24.13 [Planning considerations and secular consents](#)
- 24.5 - 24.9 [Planning permission and listed building consent](#)
- 24.10 [Scheduled monument consent](#)
- 24.11 [Archaeological considerations](#)
- 24.12 - 24.13 [Archaeological conditions attached to secular consents](#)
- 24.14 - 24.28 [Role and responsibilities of the main bodies concerned with built heritage](#)
- 24.14 [Department for Culture, Media and Sport](#)
- 24.15 - 24.16 [Department for Communities and Local Government](#)
- 24.17 [Ministry of Justice](#)
- 24.18 - 24.20 [Local Government](#)
- 24.21 - 24.23 [English Heritage](#)
- 24.24 [Commonwealth War Graves Commission](#)
- 24.25 [The National Amenity Societies](#)
- 24.26 - 24.29 [National Lottery Grant Making Bodies](#)
- 24.30 [Other organisations](#)

Ecclesiastical exemption

- 24.1** Exemption from listed building and conservation area control ceases on a declaration of closure for regular public worship taking effect. During the "use seeking period" faculty jurisdiction continues to apply, so that the church is subject to dual jurisdiction until such time as its future is settled. The exemption can only come into play again if either a subsequent use for the building is as a place of worship (and subject to the internal controls of an exempted denomination), or in respect of a scheme under the 2011 Measure providing for demolition of the building. Secular interests in respect of such demolitions are protected by the Non-Statutory Public Inquiry system (see [20.30 - 20.44](#) for more details).
- 24.2** The exemption from listed building control in respect of churches in use is contained in [s.60\(1\) of the Planning \(Listed Building and Conservation Areas\) Act 1990](#) - see also the [Ecclesiastical Exemption \(Listed Buildings and Conservation Areas\) Order 2010](#).
- 24.3** The exemption from listed building consent in respect of schemes under the 2011 Measure providing for demolition is found in [s.60\(7\) of the 1990 Act](#) and from conservation area control by a direction under [s.75\(2\)](#). For further information see the [Operation of the Ecclesiastical Exemption and Related Planning Matters for Places of Worship in England](#) guidance (July 2010).
- 24.4** There is no ecclesiastical exemption in respect of development control (i.e. planning permission). Churches in use covered by the ecclesiastical exemption have no development rights, unlike secular buildings subject to development control. All churches, whether in use or declared closed for regular public worship, are subject to normal planning controls in respect of additions and extensions and changes of use.

Planning considerations and secular consents

Planning permission and listed building consent

- 24.5** Listed buildings are subdivided into 3 grades: I, II* and II. The great majority of listed buildings, all of which have been identified as being of special architectural or historic interest, are Grade II: those listed Grade II* have been identified as being of greater relative importance, while Grade I are those of the greatest interest. Although numbers of Grade I and II* listings are small in proportion to the total numbers of all listed buildings, churches are well represented in the higher grades: indeed they comprise the most numerous single building type among Grade I buildings.
- 24.6** Some older listings of churches were initially categorised A, B or C rather than I, II* or II. Such categorisation should be treated carefully: it is not possible simply to equate A with Grade I, B with II* or C with II. EH have now carried out an exercise to re-evaluate all remaining A, B and C gradings; new designation descriptions have been written and all are now re-graded as I, II* or II. For information on the current listing status, consult the [National Heritage List for England](#).

- 24.7** Except as outlined above regarding demolition pursuant to a scheme under the 2011 Measure, church buildings closed for regular public worship are fully subject to the normal listed building and conservation area controls. [Chapter 18](#) on the use seeking period stresses the need for early consultation with the local planning authority, including scrutiny of the local plan and consideration of whether to seek planning permission for change of use prior to marketing. Meanwhile, where the DBF considers it necessary during the use seeking period, under [s.61\(2\)](#), to remove fixtures from a listed building for safekeeping, the local authority should also be consulted and consent sought when required. In respect of alterations to Grade I and II* buildings it may also be prudent to consult EH.
- 24.8** In March 2012 the [National Planning Policy Framework](#) (NPPF) provided a new, simplified and consolidated planning framework which replaced existing Government planning policy, including that which had been set out in PPS 5 (which in turn had replaced PPG15 and PPG16). The NPPF covers all forms of development and sets out national economic, environmental and social priorities. For the impact on the re-use of buildings no longer required for their original purpose see, in particular, Chapter 12 on Conserving and Enhancing the Historic Environment.
- 24.9** The views of the local planning authority are sought prior to the closure of church building and the Commissioners serve on the local planning authority (and on the civil parish council) a copy of any draft scheme providing for the future of a church building closed for regular public worship. Completion of such a scheme is usually subject to any necessary secular consents being granted for the re-use of the building and in practice there will be prior contact with the local planning authority as part of the use seeking process.

Scheduled monument consent

- 24.10** 'Scheduling' provides the legal system for protecting and conserving nationally important archaeological sites. By virtue of [section 61\(8\) of the Ancient Monuments and Archaeological Areas Act 1979](#), ecclesiastical buildings in ecclesiastical use cannot be scheduled and there is an informal understanding that church buildings closed for regular public worship will not be scheduled during the use seeking period. Nevertheless, churches which have not formally been declared closed for regular public worship but have ceased to be used in the distant past may occasionally be scheduled. Where this is the case, it will have a significant impact on the scope for a suitable alternative use, although most such churches will anyhow be in a ruinous condition. Where a building is both scheduled and listed, the more detailed scheduled monument consent takes precedence, and any alteration to it will require consent, including repairs works. Controls on a scheduled site, which will generally include the buildings upon it apply both above and below ground. For further information see the [DCMS website](#) (http://www.culture.gov.uk/what_we_do/historic_environment/4171.aspx).

Archaeological considerations

- 24.11** Some church buildings closed for regular public worship may be surrounded by scheduled land, while others stand on ground which, even though not scheduled, is of intrinsic archaeological interest or is likely to contain archaeological remains. The

SAC's preliminary advice alerts the Commissioners to possible archaeological interest. The archaeological importance of a closed church building and its site should be taken into account by the DMPC when considering the building's future, and this should include the archaeological implications of any development proposals. Even if there is no reason at the outset to suppose that a use yet to be identified will necessarily have archaeological implications, an early indication of archaeological significance concentrates efforts on securing an alternative use which is both suitable and feasible.

Archaeological conditions attached to secular consents

- 24.12** The early consultation process involving the local planning authority is particularly relevant where there are potential archaeological considerations. In certain circumstances, where a site is of particular archaeological significance, it may also be helpful to consult EH. In practice raising archaeological issues may add to the difficulties of finding suitable alternative uses, and the need to expend money on archaeological assessment can sometimes act as a deterrent. The relevant parties should try to strike the correct balance in dealing with such considerations when trying to secure suitable and viable alternative uses.
- 24.13** It is important that the degree of likelihood of any archaeological condition attached to a planning permission is correctly assessed and made clear to prospective users as soon as possible. Any such condition has to be "fair, reasonable and practicable" but could, for example, require the prior implementation of a programme of archaeological work, or ensure reasonable access to a nominated archaeologist, or the recording of remains that might be lost in the course of works. Potential archaeological costs can, unless carefully handled, discourage prospective users. Where difficult situations arise these should be discussed between interested parties.

Roles and responsibilities of the main bodies concerned with built heritage

National Government: Department for Culture, Media and Sport (DCMS)

- 24.14** The Secretary of State for Culture, Media and Sport is responsible, inter alia, for the general legislative and policy framework relating to listed buildings and conservation areas; for the programme of listing of buildings of special architectural or historic interest (on the recommendation of EH); for the exercise of statutory powers to secure repairs to historic buildings and to designate conservation areas; for the scheduling of ancient monuments and for deciding applications for scheduled monument consent. The [DCMS](#) is also the main financial sponsor of the CCT and provides approximately 70% of its grant-in-aid funding.

National Government: Department for Communities and Local Government (DCLG)

- 24.15** Whereas the administration of the listing function is carried out by EH reporting to the DCMS, the listed building consent regime (as with planning permission) is the concern of the [DCLG](#). Although applications for consents are normally dealt with at local level, the Secretary of State maintains general oversight and has to decide on

cases of appeal or call in. The Department also issues planning policy guidance notes. Current planning policy for planning and the environment is set out in Planning Policy Statements (PPS) but it is intended to replace this with a consolidated national planning policy framework. Government guidance is generally supportive of re-use in order to save listed buildings and protect the nation's historic environment.

- 24.16** The Secretary of State is responsible for deciding whether or not to hold a non-statutory public inquiry or informal hearing into the proposed demolition pursuant to a scheme under the 2011 Measure of a listed church building closed for regular public worship, or an unlisted closed church building in a conservation area, where qualifying objections have been received (see [Chapter 20](#)).

National Government: Ministry of Justice (MoJ)

- 24.17** The MoJ has various responsibilities under burial legislation with regard to burial grounds, memorials and the burial and exhumation of human remains, and advises more generally on burial law and practice. Under s.78 and Schedule 6 of the 2011 Measure an MoJ order is required in most circumstances involving the disposal of a closed church and part or all of a churchyard which includes human remains (see 21.39 – 21.62).

Local Government

- 24.18** Local planning authorities (district, borough and unitary councils) exercise the leading role in securing the conservation of the historic environment in their areas. They are responsible for the integration of conservation policy with wider planning policy for their areas, and for the designation of conservation areas. They exercise controls over works to listed buildings and have powers to secure the repair of listed buildings which have been allowed to fall into disrepair, and to make grants towards the cost of repairing historic buildings (whether or not listed). They have the powers to carry out urgent works to keep unoccupied listed buildings wind and weathertight and charge the owner for the costs, and to serve Repairs Notices leading to compulsory purchase if reasonable steps are not being taken to preserve properly a listed building.
- 24.19** The core elements of the planning system are development plan-making and development management. Local planning authorities prepare development plans, through consultation with local communities, which set the broad framework for acceptable development in their area. Local development plans may include policies on the re-use of listed buildings no longer required for their original purpose. At the various consultation stages of such plans, dioceses should seek to secure positive policies towards possible changes of use for closed church buildings.
- 24.20** Local authorities are also responsible for development management. They will consult EH and the national amenity societies on certain categories of listed building consent application.

English Heritage

- 24.21** [EH](#)'s specific functions involve giving advice in relation to ancient monuments, historic buildings and conservation areas situated in England. They are responsible for

administration of the listing system, and for considering and advising on all applications for listing, and for making recommendations to the Secretary of State (DCMS) on the inclusion of buildings in the statutory list of buildings of special architectural or historic interest, and the scheduling of ancient monuments. They may make grants in relation to outstanding historic buildings, land and gardens, conservation areas, and ancient monuments, and in respect of archaeological investigation. In very exceptional circumstances EH will consider making a grant towards urgent repairs of a highly listed church building closed for regular public worship during the use-seeking period.

24.22 The National Monuments Record (NMR) is part of EH and maintains a major national database (the Inventory) of indexed descriptions of monuments and buildings. It also aims to provide access to databases of statutorily protected sites such as listed buildings and scheduled monuments. It can also advise on recording listed buildings at risk of demolition.

24.23 EH give advice to local planning authorities on certain categories of listed building consent application which have to be notified to them, and similarly advise both Secretaries of State (DCLG) on planning and listed building consent applications and appeals and (DCMS) on other matters generally affecting the historic environment. EH is a qualifying body under the arrangements for non-statutory public inquiries.

Commonwealth War Graves Commission (CWGC)

24.24 The CWGC commemorates those who died during the First and Second World Wars in service and maintains graves and memorials at some 23,000 locations in over 150 countries worldwide. It is a statutory interested party for schemes under the 2011 Measure involving the closure of church buildings and their disposal.

The National Amenity Societies

24.25 The six national amenity societies aim to protect different aspects of the built heritage. The societies are:

- (i) [Ancient Monuments Society](#) - concerned with historic buildings of all ages and types, but with a particular interest in churches;
- (ii) [Council for British Archaeology](#) - concerned with all historic buildings, but with a particular interest in the archaeology of subterranean and standing structures;
- (iii) [Society for the Protection of Ancient Buildings](#) - concerned mainly with structures erected before 1700, but also with philosophical and technical aspects of conservation;
- (iv) [Georgian Group](#) - concerned with architecture and architecture-related arts between 1700 and 1840;
- (v) [Victorian Society](#) - concerned with Victorian and Edwardian architecture and architecture-related arts between 1837 and 1914; and

- (vi) [*the Twentieth Century Society*](#) (formerly the Thirties Society) - concerned with architecture of the twentieth century in all decades except the first.

The national amenity societies are qualifying bodies under the arrangements for non statutory public inquiries.

A guide on the national amenity societies (including their role in the conservation of Anglican churches) has been prepared by the Societies. For details and to obtain copies contact the individual societies or the CBC.

National Lottery Grant Making Bodies

- 24.26** The National Lottery Grant Making bodies disburse funds for various good causes. The [National Heritage Memorial Fund](#) is responsible through the [Heritage Lottery Fund](#) (HLF) for grant aiding heritage related work, including the preservation and/or conversion of religious buildings. In partnership with EH, the HLF run the [Repair Grants for Places of Worship Scheme](#) in England. The scheme is for urgent repairs to the fabric of the building and is open to all listed places of worship which are in regular use as public places of worship.
- 24.27** The Commissioners should be informed if a church which is subject to proposals for closure for regular public worship has been the recipient of an EH or HLF grant. Arrangements have been agreed in such cases to add the HLF to the list of non-statutory parties who receive notice of draft schemes involving such closure proposals and/or providing for the future of such buildings.
- 24.28** Contracts with parishes under this scheme include provision for repayment of such grants in certain circumstances. Consequently dioceses should also keep the HLF informed at an early stage of any proposals involving the possible closure of a grant aided church.
- 24.29** The HLF also has other relevant funding streams and, for example, may grant aid the CCT for repair of a vested church or, alternatively, some other body coming forward with a suitable scheme for re-use of a church building closed for regular public worship. The other lottery bodies may also grant aid particular projects affecting closed churches which fulfil their criteria for making grants.

Other Organisations

- 24.30** Other organisations of interest include:
- (i) *The Society for Church Archaeology*, c/o The Council for British Archaeology, St Mary's House, 66 Bootham, York, YO30 7BZ.
Website: <http://www.britarch.ac.uk/socchurcharchaeol/>
- (ii) *The United Kingdom National Inventory of War Memorials*, Imperial War Museum, Lambeth Road, London, SE1 6HZ (Tel. 020 7207 9863/9851).
Website: <http://www.ukniwm.org.uk>

- (iii) *The Mausolea and Monuments Trust*, 70 Cowcross St, London, EC1M 8EJ.
Founded to take into care and to study outstanding funerary monuments.
Website: <http://www.mausolea-monuments.org.uk/>

Appendices

- 2.1 [Glossary of terms commonly used in pastoral reorganisation and dealing with church buildings](#)
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Appendix 2.1 - Glossary of Terms Commonly Used in Pastoral Reorganisation and Dealing with Church Buildings

<i>Advowson</i>	The right to appoint a priest to [fill] a benefice by presentation or collation . The owner of an advowson is called the patron. (Note: An advowson is 'property').
<i>Appropriation</i>	To change the use to which any land is put without necessarily changing the ownership of the land. Commonly used when land is held for charitable purposes.
<i>Archbishop</i>	Senior bishop with authority over a Province - of Canterbury and of York.
<i>Archdeacon</i>	An office held by a senior member of clergy appointed by the bishop with an administrative responsibility over an archdeaconry . Some of his/her duties are laid down by law but in other respects vary according to diocesan practice: they include care for church property.
<i>Archdeaconry</i>	Sub-division of the diocese over which an archdeacon has administrative responsibility.
<i>Area Bishop</i>	In some larger dioceses a bishop who shares spiritual oversight with the diocesan bishop over a particular area.
<i>Assistant Bishop</i>	Usually a retired bishop or a bishop who has served abroad, who helps the diocesan bishop in some of his work.
<i>Benefice</i>	An ecclesiastical office carrying certain duties. An incumbent's benefice is therefore not a geographical area (see parish) but the office to which (s)he is appointed and may comprise one or more parishes. A benefice may be a rectory or vicarage from which the incumbent is called rector or vicar .
<i>Bishop (See also Area Bishop, Assistant Bishop, Flying Bishop and Suffragan Bishop)</i>	In the Church of England the bishop is the central focus of organisation and ministry within his diocese. He is the chief pastor and authority and shares the cure of souls with all the incumbents of that diocese. He is also, in his own person, the chief representative of the diocese in the work of the wider church. He may be assisted by suffragan or assistant bishops.
<i>Bishop's Legal Secretary</i>	Office always held by a solicitor, and not a freehold. Duties are not precisely tied down but include advising and assisting bishop in legal matters which affect his episcopal jurisdiction and office (e.g. formalities connected with ordination, filling of vacant benefices, suspension of presentation, institutitons etc.). Office usually held in plurality by registrar.

<i>Bishop's Mission Order</i>	The Dioceses, Pastoral and Mission Measure 2007 made new provisions whereby a bishop may, following consultation, make an order providing recognition, accountability and oversight for a 'mission initiative' – see House of Bishops' Code of Practice on Bishops' Mission Orders . These provisions are now incorporated in Part 7 of the 2011 Measure.
<i>Canons</i>	Canons form part of the law of the Church of England. They are, in essence, 'by-laws' for the guidance of the church. Canons are made by General Synod and require Royal Assent but not Parliamentary Approval. They are applicable only within the Church of England and do not have the wider statutory force of a Measure.
<i>Cathedral</i>	The church in each diocese in which the bishop's throne is located. Although the bishop enjoys the pre-eminent rights in his own cathedral, its day-to-day administration is in the hands of a cathedral chapter . The cathedrals of dioceses founded between circa 1870 and 1930 remained as parish churches with parochial as well as cathedral responsibilities. Cathedrals dating from before the mid-19th Century are extra-parochial .
<i>Cathedral Chapter</i>	The body which governs and administers a cathedral. There is usually a 'greater' chapter which meets infrequently and has very limited duties and responsibilities. The 'administrative' chapter consists of the dean with the residentiary canons (i.e. those canons whose ministry is based wholly or in part on the cathedral). In parish church cathedrals administrative responsibility resides with a somewhat larger cathedral council which includes the dean, residentiary canons and a number of diocesan representatives. The property of the cathedral is legally vested in the chapter.
<i>Chancellor</i>	See Diocesan Chancellor
<i>Chapel of Ease</i>	A consecrated church that it is not a parish church but is within a parish that does have a parish church. Originally for the ease of parishioners who could not attend the parish church.
<i>Church</i>	Strictly, and exclusively for the purposes of the Mission and Pastoral Measure 2011 , a consecrated building used for public worship.

<i>Church Buildings Council (CBC)</i>	Statutory body serving as the unified national Church source of advice on church buildings. Under the Mission and Pastoral Measure 2011 it produces a report for the Diocesan Mission and Pastoral Committee on any church which it is proposed to declare closed and advises the Church Commissioners on churches closed for regular public worship on matters relating to the historic, architectural, and archaeological importance of such churches. Set up by the Dioceses, Pastoral and Mission Measure 2007, the CBC assumed in amended form the responsibilities formerly held by the Advisory Board for Redundant Churches and the Council for the Care of Churches. The CBC's Statutory Advisory Committee (SAC) advises the Church Commissioners on churches closing or closed for regular public worship.
<i>Church Buildings (Uses and Disposals) Committee</i>	A statutory committee of the Commissioners' Board of Governors (appointed under s.56 of the 2011 Measure) which makes decisions on closed churches matters. It is chaired by the Third Estates Commissioner.
<i>Churches Conservation Trust (CCT)</i>	A body established by the Pastoral Measure 1968 to care for closed churches of particular historic or architectural interest transferred to it by the Commissioners. (Formerly called the Redundant Churches Fund.)
<i>Church Representation Rules</i>	Schedule 3 to the Synodical Government Measure 1969 but updated as a separate booklet. They contain the mechanism for the setting up of representative bodies in the Church of England from parochial church councils to the House of Laity of the General Synod .
<i>Churchwardens</i>	The chief lay officers of a parish elected annually by parishioners with the consent of the incumbent. The number and qualifications of and the time and manner of choosing churchwardens are regulated by the Churchwardens Measure 2001. There are normally two churchwardens of every parish. They have various statutory duties. They have the right to make representations on a proposed glebe sale when the benefice is vacant and to receive notices under the Pastoral Measure and the Parsonages Measures if there is no parochial church council . They are frequently appointed as sequestrators during vacancies of benefices.
<i>Churchyard</i>	Consecrated land attached to a church that has often been used for burials.
<i>Civil consents</i>	See under secular consents.

<i>Civil Parish</i>	Until 1866 ecclesiastical parishes were also used as units of local government, but from this date a new unit known as the 'civil parish' was established. Sometimes these were identical to the older church parishes, but more often they were based around other divisions. Since 1866 these two types of parish have followed separate patterns of change, so in most cases the boundaries of these two units do not coincide.
<i>Closure, declaration of</i>	The act of closing a church for regular public worship under the Mission and Pastoral Measure 2011 .
<i>Collation</i>	The act of both presenting a priest to a benefice and of instituting him or her to that benefice when the bishop is patron .
<i>Common Tenure</i>	The basis on which all Church of England offices will eventually be held under the Ecclesiastical Offices (Terms of Service) Measure 2009. Under Common Tenure most office holders have security of tenure until reaching the age of 70 subject removal for lack of competency, ill health, or as a result of pastoral reorganisation or disciplinary proceedings and are entitled to a Statement of Particulars of their terms of service including the provision of housing. Existing holders of freehold offices may decide not to opt-in to Common Tenure but new office holders will be on Common Tenure.
<i>Commonwealth War Graves Commission</i>	A body established by Royal Charter whose duties are to mark and maintain the graves of Commonwealth forces who died in the two World Wars.
<i>Consecration</i>	<p>The act of setting apart land or buildings for sacred uses for all time. Performed by the bishop upon the decree of an ecclesiastical court. In the eyes of the law consecrated land can be used for none other than sacred purposes unless this legal aspect is set aside by due process of law. As a result of the Pastoral (Amendment) Measure 2006 it is now possible to lease under faculty part of a church building, provided that taken as a whole the building continues to be used primarily as a place of worship.</p> <p>(Note: The law does not provide for 'deconsecration'; when the future of a closed church is settled under the Mission and Pastoral Measure 2011 this normally removes the 'legal effects of consecration': the spiritual effects of consecration cannot be removed by legal process.)</p>

<i>Conventional District</i>	A defined area placed under the care of a curate in charge (called the Minister of the Conventional District) with a district church council, by agreement between the incumbent(s) and bishop . They are not parishes but can have all the apparatus of a parish. They are often thought of as experimental parishes pending their creation as proper parishes in their own right.
<i>Conveyance/Transfer</i>	The act by which title to property is conveyed/transferred from one party to another. Commonly refers to the legal document which sets out the details of what is to be conveyed/transferred. (Transfers relate to titles registered with H.M. Land Registry.)
<i>Covenant</i>	A legally binding agreement included in a conveyance, transfer or lease, between two or more parties to do, or to refrain from doing, a specified act. Covenants can be positive or negative.
<i>Curate</i>	Generally used to describe an assistant curate to an incumbent. Such assistant curates are licensed to their work by the bishop.
<i>Curate in Charge</i>	An assistant curate put in charge of an area within the parish , often with responsibility for a second or daughter church.
<i>Cure of Souls</i>	'Cure' means 'care'. The bishop has the universal cure of souls in a diocese but, subject to this, the incumbent of a benefice (or team rector and team vicar(s) in a team ministry) has the exclusive cure of souls within his or her parish or parishes. The expression should not be confused with the more general phrase 'pastoral care'.
<i>Curtilage</i>	Land attached to a church , usually consecrated , but which has not been used for burials.
<i>Deanery</i>	A sub-division of an archdeaconry usually comprising between 10 and 20 parishes.
<i>Deanery Synod</i>	A body of clergy and laity elected or appointed by the PCCs in a deanery.
<i>Deed</i>	A written document giving effect to some legal arrangement or transaction, signed and sealed by the parties involved.
<i>Detached area</i>	Part of the area of a parish detached from the main area of the parish.
<i>Diocesan Advisory Committee for the Care of Churches (DAC)</i>	Statutory Committee established by the Faculty Jurisdiction Measure to advise on matters affecting changes to church buildings, their contents and curtilage.

<i>Diocesan Board of Finance</i>	A company constituted by the diocesan synod and regulated by the Companies Acts. A board of finance holds property for Church of England purposes, transacts business in that connection and acts as a committee of the diocesan synod. It normally also acts as the diocesan trust .
<i>Diocesan Board of Patronage</i>	A statutory body which may acquire, hold and transfer rights of patronage . (See Schedule 3 to the Patronage (Benefices) Measure 1986 for its constitution and rules of procedure.)
<i>Diocesan Chancellor</i>	An eminent lawyer appointed by the bishop to be Judge of the Consistory Court of the diocese. The Consistory Court among other functions administers the Faculty Jurisdiction within the Diocese.
<i>Diocesan Parsonages Board/Committee</i>	Statutory Board/Committee for which provision is made by the Repair of Benefice Buildings Measure 1972. Its duty is to oversee the management of the diocesan housing stock and to provide a residence house for stipendiary ecclesiastical office holders other than diocesan bishops incumbents and cathedral clergy. (See section 1 of the 1972 Measure for its constitution and ss. 4-7 of the Ecclesiastical Offices (Terms of Service) Measure 2009 for its duties as a housing provider). In most dioceses the Diocesan Board of Finance acts as the Diocesan Parsonages Board.
<i>Diocesan Mission and Pastoral Committee</i>	Statutory Committee established by the Dioceses Pastoral and Mission Measure 2007 to replace the former diocesan pastoral committee and redundant churches uses committee. Its appointment and functions are now provided for in the 2011 Measure (see Chapter 2). Exercises a major role in relation to reviewing the arrangements for pastoral supervision in the diocese and, as appropriate, making recommendations to the bishop. (See s.2, s.3 and Schedule 1 to the Mission and Pastoral Measure for its constitution and rules of procedure.) Also maintains an overview of matters relating to church buildings and exercises functions in relation to church buildings closed for regular public worship.
<i>Diocesan Synod</i>	A body of clergy and laity, elected from the Deanery Synods , and chaired by the bishop of the diocese.
<i>Diocesan Trust</i>	A body, normally the diocesan board of finance , holding property upon trust for diocesan or parochial purposes.
<i>Diocese</i>	One of 43 main territorial units of the Church of England over which a bishop has responsibility. Divided into archdeaconries , deaneries and parishes .

<i>Dispossession</i>	The act under the 2011 Measure of depriving an archdeacon, incumbent or team vicar of his or her office by dissolving it or uniting it with another and not naming him or her as holder of any new office created by a pastoral scheme. This would include a team rector whose term of office comes to an end and who held a freehold prior to a pastoral scheme which created an office for a term of years. See also technical dispossession .
<i>District Church Council</i>	If a parish comprises two or more places of worship or churches then individual councils can be set up for the districts in which each place of worship or church is situated to exercise such functions as may be delegated within prescribed limits by the parochial church council .
<i>Draft</i>	As in draft “pastoral”, “pastoral church buildings” or “pastoral (church buildings disposal)” scheme . A document issued for consultation purposes.
<i>Easement</i>	A legal right to use some other person's land for a specific purpose e.g. to provide a right of access or to lay service pipes or wires.
<i>Ecclesiastical Commissioners</i>	The body which from 1836 to 1948 managed certain estates and revenues of the Church of England. It also took over the role of the Church Building Commissioners and gradually undertook national administrative tasks in relation to pastoral reorganisation. It was united with Queen Anne's Bounty in 1948 to form the Church Commissioners.
<i>Electoral Roll</i>	A register of lay members of the Church of England in each parish who are entitled to elect the parochial church council and attend the annual parochial church meeting.
<i>Endowment</i>	Capital (including land or securities) often deriving from gifts and held to provide an income, e.g. to the holder of an office.
<i>Extra-Parochial Place</i>	An area of land belonging to no parish. The exact historical reasons in any given case may be lost but often an extra-parochial place comprises a royal peculiar, a cathedral, or the site of an ancient priory etc.
<i>Faculty</i>	Official permission of the chancellor of a diocese (or an archdeacon) to make any changes to a consecrated building or land. Any such changes, e.g. structural works, must not alter the sacred nature of the building or land. A faculty is also required to authorise works to most unconsecrated places of worship and rights of way over a churchyard or church site - e.g. to provide access to the parsonage house.

<i>Faculty Jurisdiction</i>	The consecration of a piece of land has the automatic effect of bringing it within the jurisdiction of the bishop of the diocese whose permission by the granting of a faculty is necessary before alteration can be lawfully effected. In practice this jurisdiction is exercised on the bishop's behalf by the Chancellor of the diocese or an archdeacon . Jurisdiction would normally be claimed over unconsecrated places of worship. Faculty jurisdiction ensures that neither the structure nor the contents of churches are altered without authority. A church which has been declared closed by a pastoral scheme and has entered the "use seeking period" is still subject to faculty jurisdiction during this period (in addition, where applicable, to listed building consent).
<i>Flying Bishop</i>	The term commonly used to describe the suffragan bishops nominated by the archbishops as provincial episcopal visitors to undertake episcopal duties in those parishes who have petitioned their bishop for alternative arrangements in the light of their opposition to the ordination of women.
<i>Fee Simple</i>	To hold property "in fee simple" means to do so as one's absolute and rightful possession. It is another expression for freehold .
<i>Freehold</i>	An incumbent appointed before 1976 has, subject to certain conditions, the tenure of his benefice for life, even if the benefice to which he was originally appointed is subsequently affected by a pastoral scheme or order. Post 1976 appointees may only continue up to the age of 70. Certain other ecclesiastical office holders own a freehold. (See parson's freehold). No new freehold appointments may be made following implementation of the Ecclesiastical Offices (Terms of Service) Measure 2009 on 31 January 2011. New appointments will be on Common Tenure but freeholders already in post on that date may decide not to opt-in to Common Tenure.
<i>General Synod</i>	The 'Parliament' of the Church of England comprising the Houses of Bishops, Clergy and Laity. It replaced the former Church Assembly and continues to exercise the functions delegated by Parliament in 1919. The General Synod usually meets twice a year to debate and discuss matters of interest and to consider and approve amendments to Church legislation.
<i>Green Guide</i>	The commonly used name for the booklet giving the Commissioners' advice to dioceses and benefice architects on the standards of accommodation and design recommended for parsonage houses.
<i>Group Council</i>	Where a group ministry is established the parochial church councils of the individual parishes can form a group council to act in the area as a whole in such matters as the individual PCCs together decide.

<i>Group Ministry</i>	An arrangement, authorised by the Mission and Pastoral Measure 2011 , whereby the clergy of two or more separate benefices can assist each other to make the best possible provision for the cure of souls in the area as a whole.
<i>Guild Church</i>	A church in the city of London designated as a Guild Church under the City of London (Guild Churches) Act 1952. Formerly parish churches , they have been converted to 'weekday churches' to take account of the large working, and small resident, population of the City of London. A Guild Church does not have a parish but does have a Guild Church Council equivalent to a parochial church council.
<i>Incumbent</i>	Holder of a benefice (which can be either a freehold or a Common Tenure office) – and can be either a rector or a vicar - with responsibility for the cure of souls. May be assisted by curate, deacon, licensed lay worker, retired priest etc.
<i>Incumbent Designate</i>	A priest who has been presented to a benefice by the patron but not yet instituted and inducted. Such a person does not enjoy the legal rights of an incumbent . Alternatively a priest on the point of presentation and often named in a pastoral scheme .
<i>Interested Party</i>	One of the statutory persons or bodies that the DMPC is required to consult in accordance with s.6 and s.21 of the Mission and Pastoral Measure 2011 .
<i>Joint Parochial Church Council</i>	Where a benefice comprises two or more parishes the parochial church councils of the individual parishes can form a joint parochial church council to act in the benefice as a whole in such matters as the individual PCCs together decide.
<i>Lease</i>	A legal agreement by which one party grants possession of property to another for a defined period of time, normally for a rent or capital sum (premium) or both. Also the deed by which the agreement is made.
<i>Leasehold</i>	The holding of property on the terms and by the authority of a lease .
<i>Leave to Appeal</i>	Any person who makes a representation to the Commissioners against a pastoral scheme or pastoral church buildings scheme has a right to apply for leave to appeal to the Judicial Committee of the Privy Council against a decision of the Commissioners to proceed notwithstanding that representation.
<i>Lessee</i>	A person to whom property is leased.
<i>Lessor</i>	The owner or head lessee of the property which is leased.

<i>Local Ecumenical Project (or Partnership)</i>	A scheme under which Churches of more than one denomination agree, in relation to an area or institution specified in the scheme, to co-operate in accordance with the provisions of the scheme in matters affecting the ministry, congregational life or buildings of the Churches which are participating in the scheme.
<i>Measure</i>	The Church of England equivalent of an Act of Parliament. The General Synod has powers to formulate Measures which must be approved by Parliament and receive the Royal Assent. Whilst Parliament can reject a Measure it has no power to amend one. Measures form part of the laws of England.
<i>Members ('Other') of a Team Ministry</i>	May be clerical or lay (see s.34 of Mission and Pastoral Measure 2011). They share the pastoral care of the area with the team rector and team vicars, but NOT the cure of souls .
<i>Memorials</i>	See under Tombstones .
<i>Mission and Pastoral Measure 2011</i>	The Measure of the General Synod which authorises changes in pastoral reorganisation and deals with church buildings no longer required for public worship. Consolidated the Pastoral Measure 1983 , parts of the Dioceses, Pastoral and Mission Measure 2007 and other related Measures.. Designed to "make better provision for the cure of souls ". Part of the law of the land and equivalent to an Act of Parliament.
<i>Mission Church</i>	Used loosely to describe a 'daughter church' in a particular area of a larger parish, usually an unconsecrated building.
<i>Monuments</i>	See under Tombstones .
<i>Non-statutory Public Inquiry</i>	Similar to a Public Inquiry. May be called by Secretary of State where sustained qualifying objections to the proposed demolition under a scheme under the 2011 Measure of a listed closed church or an unlisted one in a conservation area are made by the SAC of the CBC , English Heritage, the Local Planning Authority or a national amenity society.
<i>Non Stipendiary Minister</i>	See Self Supporting Minister
<i>Order</i>	See Pastoral Order .
<i>Order in Council</i>	Ordinarily a government decree made under the authority of a statute. Also the means by which some ecclesiastical legislation becomes law. Formally a decree of the sovereign and Privy Council . (Schemes under the Pastoral Measure 1983 used to be confirmed by an order in Council; this is no longer the case.)
<i>P2/2A</i>	The forms sent in by a diocese indicating which Interested Parties have been consulted.

P10	The form completed by a diocese giving details of a church to be declared closed .
P20	The form completed by a diocese giving details of any consecrated land which is to be disposed of or appropriated under s.44 of the Mission and Pastoral Measure 2011 .
P30-P35	Consent forms under the shortened procedure (section 17 of the Mission and Pastoral Measure 2011).
Parish	The basic geographical unit over which an incumbent has cure of souls . There may be several parishes within the area of one benefice.
Parish Centre of Worship	An unconsecrated Place of Worship designated by the bishop under s.43 of the 2011 Measure , whereupon for most purposes (other than marriage) it is regarded as a parish church .
Parish Church	A consecrated building in a parish in which, subject to the canons the statutory services must be held. Parishioners have a right to be married, baptised etc. in the parish church. S.41(2) of the Mission and Pastoral Measure 2011 requires that any new church or existing building which is to become a parish church must be approved by the bishop, subject to the bishop having consulted both the DMPC and the DAC .
Parish Information Form (P100)	The form sent to a diocese when representations are received to gain information about parochial life that is useful to the Commissioners' Pastoral Committee when it considers the representations.
Parochial Church Council	Representative body of parishioners elected from those on the electoral roll in accordance with the Church Representation Rules . Usually chaired by incumbent.
Parsonage Building Fund	A Fund held by the Diocesan Board of Finance , under s.5(3) of the Parsonages Measure 1938, from the sale of a parsonage house or other parsonage land . It can only be used for parsonage purposes but, if not required for that use, may be appropriated, subject to rights of representation, for certain other purposes.
Parsonage House	The official place of residence of an incumbent of a benefice . The house belongs to the incumbent in right of his or her office.
Parsonage Land	Generally, any land or property no longer required as the official residence of an incumbent for which future provision has not yet been made. It is formally defined by s.45 of the Endowments and Glebe Measure 1976. It does not simply mean land adjoining the parsonage house.

<i>Parson's Freehold</i>	Until 1969 the incumbent of a benefice could not be removed (except for misconduct) if he chose to stay. The freehold was subsequently limited in two main ways: (a) by schemes now under the Pastoral Measure introduced in 1969 which may have the effect of dispossessing the incumbent of his or her benefice by its dissolution, with proper provision for compensation; and (b) by the Ecclesiastical Office (Age Limits) Measure 1975 which provides that all those newly appointed to benefices after the coming into effect of that Measure on 1/1/1976 must retire at the age of 70. Those appointed before 1/1/1976 may, if they choose, stay for life so long as they are not dispossessed. This applies even if their benefices are subsequently affected by pastoral schemes or orders. Following implementation of the Ecclesiastical Offices (Terms of Service) Measure 2009 on 31 January 2011, no new freehold appointments may be made. New appointments will be on Common Tenure but freeholders already in post on that date may decide not to opt-in to Common Tenure.
<i>Pastoral Committee</i>	A Committee of the Commissioners' Board of Governors which makes decisions on representations on pastoral, houses and glebe matters. It is chaired by the Third Church Estates Commissioner.
<i>Pastoral Order</i>	A document which effects changes in pastoral reorganisation made under the Mission and Pastoral Measure 2011 . Differs from a pastoral scheme mainly in that it deals with lesser matters and the procedures are simpler.
<i>Pastoral Scheme</i>	A document which effects more complex changes in pastoral reorganisation made under the Mission and Pastoral Measure 2011 (excluding the closure of church buildings).
<i>Pastoral Church Buildings Scheme</i>	A document made under the Mission and Pastoral Measure 2011 which effects the closure of a church building for regular public worship (and may settle its future). Other reorganisation may also be included in the scheme.
<i>Pastoral (Church Buildings Disposal) Scheme</i>	A document made under the Mission and Pastoral Measure 2011 which settles the future of a church closed for regular public worship (or makes new provision for a church whose future had previously been settled, including under earlier legislation).
<i>Patron</i>	The person or body owning an advowson (i.e. right to present a priest to a benefice) who may be a private individual or a corporation (ecclesiastical or lay).
<i>Patronage</i>	Another word for advowson .

<i>Place of Worship</i>	An unconsecrated building in a parish licensed by the bishop for public worship. It may additionally be licensed for marriages.
<i>Planning Permission</i>	Consent to a development or change of use given under Town and Country Planning Acts by a local planning authority. An 'outline' application establishes whether consent for the proposal will, in principle, be forthcoming and may set out such further details as will be required before 'full' or detailed planning permission is given. A 'full' planning application seeks authority for a particular proposal which has been worked out in detail. In some circumstances e.g.. in a conservation area, a 'full' application is required at the outset. Listed Building consent or Conservation Area consent may be separately required.
<i>Plurality</i>	The holding of two or more separate benefices by one incumbent . This can only be authorised by a scheme or order under the Mission and Pastoral Measure .
<i>Presentation</i>	The act, by a registered patron , of presenting a priest to fill a benefice .
<i>Priest in Charge</i>	A priest given charge of a benefice by licence of the bishop. (S)he has not been presented and is not the incumbent but holds office under common tenure . The office may cease to exist as a result of a Pastoral Scheme or on the appointment of an incumbent on the termination of the suspension, in which event the priest-in-charge may become entitled to (limited) compensation under the Ecclesiastical Offices (Terms of Service) Regulations 2009.
<i>Privy Council</i>	The private council of the Sovereign largely comprising present and former government ministers.
<i>Province</i>	An area of the church under the authority of an archbishop comprising a number of dioceses. There are two in England - Canterbury and York.
<i>Queen Anne's Bounty</i>	A corporation formed by Queen Anne in 1704 to distribute income which had previously been payable to the Pope and confiscated for the Crown by Henry VIII. Queen Anne surrendered this income for the benefit of the Church, initially to augment the livings of poorer clergy. Later the Bounty was empowered to make loans and (from 1830) grants for building and repair of parsonage houses. In 1948 it was united with the Ecclesiastical Commissioners to form the Church Commissioners.

<i>Quinquennial Report</i>	A building inspection report of a church or parsonage required to be undertaken every five years.
<i>Quota</i>	The annual contribution asked of each parish towards diocesan funds for clergy stipends, building, maintenance, diocesan purposes, Synod purposes etc. Also, in some dioceses, referred to as 'the parish share'.
<i>Rector</i>	The incumbent of a rectory .
<i>Rectory</i>	Historically a benefice where the whole of the tithe and glebe land were available for the maintenance of the minister. Rectories have also been created by statute e.g. a benefice where a team ministry is established. Also the house where a rector lives.
<i>Redundant Churches Fund</i>	See Churches Conservation Trust .
<i>Representations</i>	The Mission and Pastoral Measure 2011 requires that any draft scheme or order be published and made available to the public. Any person can make written representations to the Commissioners either for or against what is proposed.
<i>Resolution A</i>	A resolution passed by a PCC preventing a woman ordained as a priest from exercising certain priestly functions in the parish concerned.
<i>Resolution B</i>	A resolution passed by a PCC preventing a woman ordained as a priest from holding the office of incumbent, priest in charge or team vicar in the benefice.
<i>Resolution C</i>	A resolution passed by a PCC petitioning the bishop for special arrangements for episcopal duties under the Episcopal Ministry Act of Synod 1993. (See flying bishop .)
<i>Restriction of Presentation</i>	A provision whereby a bishop may restrict a patron from making a presentation to a vacant benefice for a period of up to one year while the Diocesan Mission and Pastoral Committee considers whether to initiate consultations for pastoral reorganisation affecting the benefice. Restriction of presentation for a period of up to three years (including the one year restriction if already imposed) also comes into operation automatically where suspension of presentation to the benefice is not already in force and the patron has received notice that formal proposals for reorganisation have been signed by the bishop.

<i>Reverter</i>	Provision in a conveyance for all or part of the property to return to the original grantor or his or her successors either at a specified time or when no longer required for its original purpose.
<i>Rural Dean (In some dioceses called Area or Urban Dean)</i>	The incumbent or priest-in-charge of one of the benefices in a deanery who acts as chairman of the clergy in the deanery and as a channel of communication between diocesan administration and parishes. His or her duties are not closely defined by statute and will vary from diocese to diocese. (S)he is however ex-officio a sequestrator of a vacant benefice.
<i>Rural Deanery</i>	See deanery .
<i>Scheme</i>	See pastoral scheme, pastoral church buildings scheme or pastoral (church buildings disposal) scheme .
<i>Sealing</i>	The final step in concluding a legal agreement or transaction by which the seals of the parties concerned are fixed to the document. (Only corporations need affix their seal.)
<i>Section 42</i>	The section of the Mission and Pastoral Measure 2011 which provides for a consecrated church which is not required as a parish church or chapel of ease to be declared closed for regular public worship, but does <u>not</u> settle its future..
<i>Section 44</i>	The section of the Mission and Pastoral Measure 2011 which permits the disposal or appropriation to another use of any land consecrated for the purpose of burials. In certain circumstances unconsecrated churchyards may also be dealt with under this section.
<i>Section 58</i>	The section of the Mission and Pastoral Measure 2011 which permits the whole of the proceeds of disposal of a church to be closed or church site to be used, so far as required, for the provision of a new church or place of worship .
<i>Section 59</i>	The section of the Mission and Pastoral Measure 2011 which permits both the closure of a church and its appropriation to a <u>new use</u> or its care and maintenance by the Churches Conservation Trust . Can also be used to authorise demolition if a church is unlisted and outside a conservation area.

<i>Section 66(1)</i>	The section of the Mission and Pastoral Measure 2011 which permits simplified procedure for churches to be declared closed where they have not been used for divine service since 1 April 1964 (five years before Pastoral Measure 1968 came into effect).
<i>Section 66(2)</i>	The section of the Mission and Pastoral Measure 2011 which permits the making of a pastoral (church buildings disposal) scheme to dispose of the site of any church or part thereof demolished before the commencement of the Measure or which is demolished otherwise than under Part III of the Measure.
<i>Secular (or Civil) consents</i>	The consents required to enable a change of use for a closed church (planning permission) or for alterations to a listed building (listed building consent) or a building in a conservation area (conservation area consent).
<i>See</i>	The official "Seat" or throne of a bishop , hence the place where the cathedral is generally situated and often used to denote the entire diocese . The See house is the bishop's official residence but need not be in the Cathedral City.
<i>Self Supporting Minister</i>	A deacon or priest who does not receive a stipend or clergy pension or a house but supports himself or herself from his or her own resources. An SSM may hold an office, such as incumbent or team vicar, which would usually be a stipendiary one.
<i>Sequestrator(s)</i>	The person(s) responsible for administering the income of a benefice in sequestration. The churchwardens of every parish in the benefice and the rural dean act as sequestrators together with a person appointed by the bishop if he so desires (s.1(1) of the Church of England (Miscellaneous Provisions) Measure 1992).
<i>Shortened Procedure</i>	Common name for the procedure under s.17 of the Mission and Pastoral Measure whereby, if all the interested parties agree to pastoral proposals which can be implemented by a pastoral order , the bishop can make the order without the need for a period inviting representations (includes provisions for 'deemed consent'). The Commissioners are not involved in such cases.
<i>Stamp Duty</i>	Tax payable to the government on conveyances/transfers of property. Since the Finance Act 1982 all transfers to Charities (including glebe purchases) are exempt. An historic concession on most parsonage sales was removed by the Finance Act 2003.
<i>Statement of Reasons</i>	A written statement from the Church Commissioners explaining their reasons whether to allow diocesan proposals under the Mission and Pastoral Measure 2011 , or proposals for the future of a closed church, to proceed notwithstanding representations.

<i>Statement of Particulars</i>	Statement which must be given to an office holder on Common Tenure detailing the terms on which he or she holds the office.
<i>Statutory Advisory Committee (SAC)</i>	Statutory Committee of the Church Buildings Council with responsibilities (in amended form) formerly held by the Advisory Board for Redundant Churches, primarily advising the Church Commissioners on churches closed or closing for regular public worship.
<i>Statutory Declaration</i>	Obtained when title deeds to a property cannot be found. It is a declaration made by someone who has known the property for an amount of time and is to the effect that they are not aware of anyone other than person X claiming title to the property. It is almost invariably the case that title documents to ancient churches cannot be found (if they ever existed at all).
<i>Statutory Notice</i>	Issued to certain statutory parties when a draft pastoral, pastoral church buildings or pastoral (church buildings disposal) scheme is published.
<i>Suffragan Bishop</i>	A suffragan bishopric, to which is attached the name of a prominent or ancient town within a diocese other than the cathedral city, is an office to which a bishop is appointed to assist the diocesan bishop in those functions which can only be undertaken by someone in episcopal orders e.g. confirmation or ordination. A suffragan bishop also shares in the diocesan bishop's pastoral care of the clergy and people of the diocese in such a way as the diocesan bishop requires him to. In some dioceses there are a number of suffragans each responsible for a geographical area in the diocese; elsewhere a suffragan operates on behalf of the bishop throughout the diocese.
<i>Suspension of Presentation</i>	A priest is 'presented' to the bishop as a candidate for a living by the patron. However, the bishop can initiate a period of suspension with the consent of the Diocesan Mission and Pastoral Committee and after local consultation. During such a period of suspension no-one may be presented to the living without the consent of the bishop and the diocesan pastoral committee. Such periods of suspension may not exceed five years but are capable of renewal for further periods of five years. See also Restriction of Presentation .
<i>Team Council</i>	Where a team ministry is established a team council can be established, either under the authority of a scheme or under the Church Representation Rules . Such a council is similar to a joint parochial church council and provides a formal structure for all the parishes in the team to discuss matters of mutual concern.

<i>Team Ministry</i>	A special form of ministry whereby a team of clergy and possibly lay people share the pastoral care of the area of a benefice . Can only be established by a pastoral scheme .
<i>Team Rector</i>	The priest in a team ministry who heads the team and owns the property of the benefice . (S)he shares the cure of souls with the team vicars .
<i>Team Vicar</i>	A priest of incumbent status in a team ministry , other than the team rector . (S)he shares the cure of souls with the team rector and other team vicars.
<i>Technical Dispossession</i>	The informal term used to describe the type of dispossession where a Scheme will result in an office holder's post ceasing to exist but it is known that the person concerned is to be offered a post in the reorganised benefices which is not one for which the first holder can be designated in the Scheme (e.g. a team vicar who is to be licensed as an assistant curate in one of the new benefices).
<i>Title</i>	Documentary proof of ownership of land. This may take the form of deed(s), a Land or Charge Certificate issued by H.M. Land Registry or, where no such evidence exists, a statutory declaration by a person who has known the property for many years. Before property is conveyed or transferred it is necessary for the vendor to establish title to the satisfaction of the purchaser.
<i>Tombstones, monuments and memorials</i>	Found within churches or churchyards. They commemorate deceased persons whether or not they are buried in the building or land. They remain the property of the heirs-at-law of the deceased and may, in certain circumstances, be removed or re-sited in advance of the disposal of a closed church building/churchyard. Even if they remain <i>in situ</i> following disposal of the building/land they do not pass into the ownership of the new user.
<i>Trust</i>	The holding of money or property for a particular purpose by a body or group of individuals legally entrusted with its administration.
<i>Trust Deed</i>	A legal document by which a trust is created and in which its conditions are set out.
<i>Use-seeking period</i>	Period within which Diocesan Mission and Pastoral Committee has to seek suitable alternative uses for closed church buildings. Normal maximum of 2 years but can be extended in exceptional circumstances.
<i>Vesting</i>	The transfer of church property to e.g. the Churches

Vicar

Conservation Trust or a diocese without any conveyance or other assurance (usually provided for within a **scheme**).
The incumbent of any benefice that is not a **rectory**.

Appendix 2.2 - Ecclesiastical Measures and other Acts of Interest

Ancient Monuments & Archaeological Areas Act 1979

This Act consolidated and amended the law relating to ancient monuments. It provides the machinery for scheduling buildings etc. as ancient monuments and makes it an offence to damage or demolish scheduled monuments without the consent of the Secretary of State for the Environment. The Act perpetuated Ancient Monuments Boards to advise the Secretary of State but the Board for England was dissolved by the National Heritage Act 1983 which transferred these functions to the Royal Commission on the Historical Monuments of England (merged with English Heritage in 1999). Some ruined churches may have been designated ancient monuments but the then Department of the Environment agreed some years ago not to so schedule churches being dealt with under the Mission and Pastoral Measure 2011.

Building Act 1984

This Act is the primary legislation under which the Building Regulations and other secondary legislation are made. It consolidated certain enactments concerning "buildings and related matters", i.e. building regulations and action with regard to dangerous structures. In this latter connection a local authority may serve notice on an owner that the state of a building is dangerous, prejudicial to health or a nuisance and, in the absence of action by the owner, may itself carry out the remedial work and recover the cost from the owner. Where the condition of a building necessitates the closing of roads in the vicinity a local authority is empowered to recover the expenses of doing so from the owner.

Burial Act 1857

This Act amended earlier legislation concerning the burial of human remains and made it necessary, except under faculty, for a licence to be obtained from the Secretary of State for the Justice to enable these to be moved from one place to another or for cremation. Where one or other of the burial places is consecrated a **faculty** will also be required.. Separate arrangements are in place in the 2011 Measure regarding human remains within closed churches and churchyards subject to disposal under the Measure.

Care of Cathedrals Measure 1990

This Measure established the Cathedrals Fabric Commission for England with responsibility for overseeing the care and conservation of cathedral churches, together with a separate fabric advisory committee for each cathedral.

Care of Churches and Ecclesiastical Jurisdiction Measure 1991

See **Faculty Jurisdiction Measure 1964** for further context. Among other things this Measure extended the role of Diocesan Advisory Committees (s.2); passed responsibility for

trees in churchyards to PCCs (s.6); confirmed that all churchyards of parish churches were subject to faculty jurisdiction (s.11(1)); applied faculty jurisdiction automatically to all licensed places of worship licensed after the Measure came into force (s.11(2)) unless the bishop, after consulting the DAC, directed that it should not so apply (s.11(3)); provided for the power to grant certain faculties to be delegated to archdeacons (s.14) (Faculty Jurisdiction Measure 1964 (a)); specified the procedure for the demolition or partial demolition of a church under faculty (s.17); provided for the emergency demolition or partial demolition of a church (s.18); and empowered a diocesan bishop to remove the legal effects of consecration from land not in church ownership (s.22). (See [6.22\(e\)](#).)

Cathedrals Measure 1999

This Measure superseded the Cathedrals Measure 1963 and set up a single framework for the efficient, effective and transparent governance of all cathedrals, providing the governing bodies with proper support, ensuring accountability and encouraging effective links with the bishops and the diocese as a whole.

It provides, amongst other matters, for a Cathedral Chapter to sell, lease, exchange or acquire property. The consent of the Commissioners is required as is that of the bishop and the usual occupant, if a clergy house of residence is involved. It also provides for the Commissioners to pay the stipends of the dean and two residentiary canons and to make grants towards the stipends of other cathedral clergy and the salaries of cathedral staff and to reimburse Chapters a proportion of their expenditure on chancels for which they are liable.

Chancel Repairs Act 1932

This Act transferred from the ecclesiastical to the civil courts the matter of enforcing chancel repair liability on a lay rector. The Act sets down the procedure which a PCC should follow when requiring a lay rector to carry out chancel repairs (it is clear that the responsibility is on the PCC to require the lay rector to carry out any necessary work, rather than for the lay rector to ask whether any work is necessary).

Church of England (Ecumenical Relations) Measure 1988

This Measure enabled provision to be made by Canon with respect to local co-operation between the Church of England and other Churches. Canon B43 (of relations with other Churches) and Canon B44 (of Local Ecumenical Projects) indicate possibilities and procedures for local initiatives from tentative first steps to developed partnerships. A Code of Practice to these "Ecumenical Canons" is available.

Church of England (Miscellaneous Provisions) Measure 1992

S.8 contains a number of amendments to the New Parishes Measure 1943. The most important of these provides that any land acquired for church or churchyard purposes which remained vested in the Commissioners would pass automatically to the incumbent. S.10 allows a PCC to hold the right of patronage in its own name.

Church of England (Miscellaneous Provisions) Measure 2000

This Measure reduced the Church Commissioners' national administrative role as various matters were devolved to dioceses with effect from 1 January 2001. Dioceses no longer had to seek the Commissioners' consent to most parsonage and glebe transactions under the Parsonages Measures and Endowment and Glebe Measure, provided certain criteria were met and there were no objections to proposals from interested parties. Dioceses were given responsibility for holding their Diocesan Stipends Funds and Diocesan Pastoral Accounts. They were also able to deal with certain pastoral reorganisation matters subject to the interested parties giving their consent (see [2.56-2.59](#)).

Church of England (Miscellaneous Provisions) Measure 2005

This Measure removed the need for pastoral schemes to be confirmed by Her Majesty in Council thus simplifying the administrative process.

Church of England (Miscellaneous Provisions) Measure 2010

This Measure, inter alia, removed the Commissioners as the acquiring body for acquisitions under the New Parishes Measure 1943 and also provided that the Commissioners' consent is only required for certain specified transactions.

It also amended s.69 of the Pastoral Measure 1983, providing that when the Privy Council's decision was awaited on appeal against a decision by the Commissioners in connection with adverse representations being received on a Pastoral Scheme, the 3 year maximum period for restricting presentation to any affected benefice would extend up to and including the date of delivery of the Privy Council's decision.

Church Commissioners Measure 1947

The purpose of this Measure was to unite Queen Anne's Bounty with the Ecclesiastical Commissioners under the title of the Church Commissioners to "promote the more efficient and economical administration of the resources of the Church of England".

The Measure defined the constitution of the Church Commissioners, providing among many other matters that the Archbishop of Canterbury should be chairman of the Commissioners and setting up a Board of Governors. The amalgamation took effect on 1 April 1948.

The Measure has been amended several times, more recently by the National Institutions Measure 1998 which changed the structure of the committees. There are now two committees, the Assets Committee and the Audit Committee, whose existence is provided by statute. The other committees are committees of the Board, created by the Standing Orders of the Board (with the exception of the Church Buildings (Uses and Disposals) Committee which is appointed by the Board under s.56 of the Mission and Pastoral Measure) and have such powers and duties as the Board devolves to them by resolution.

Church Commissioners (Assistance for Priority Areas) Measure 1988

This Measure enables the Commissioners to contribute if they feel able towards the Church Urban Fund in connection with projects for regenerating inner-city areas. This special Measure was needed as the Commissioners are ordinarily only empowered to spend their income on the stipends, housing and pensions of the clergy.

The Measure also amends the New Housing Areas (Church Buildings) Measure 1954 in relation to the qualifying period for population growth and gives the Commissioners power to provide assistance to other areas of social and economic change where suitable church buildings are required.

Church Property (Miscellaneous Provisions) Measure 1960

This Measure provided, among other things, for an incumbent or, during the vacancy of a benefice, the bishop, to grant an easement over part of the parsonage house grounds or to take an easement for the benefit of the parsonage, with the Commissioners, the Diocesan Parsonages Board and the Patron(s) as consenting parties. This Measure also substantially amended the New Parishes Measure 1943.

The Measure also made provision for the sale of unconsecrated land acquired for churchyard purposes under certain 19th Century Acts of Parliament, with the sale proceeds in any such sale payable to the Commissioners who had to agree a suitable parochial purpose for their use in consultation with the bishop (after consulting the incumbent). The Commissioners are not, however, a consenting party to the sale itself.

Churchwardens Measure 2001

This Measure, which replaced the Churchwardens (Appointment and Resignation) Measure 1964 and came into force on 1 January 2002, sets out the legal rules on the appointment and tenure of office of churchwardens.

Dioceses Measure 1978

This Measure was repealed by the Dioceses, Pastoral and Mission Measure 2007.

Dioceses, Pastoral and Mission Measure 2007

This Measure made a significant number of amendments to the Pastoral Measure 1983 and included other provisions which also impact on the 1983 Measure. It also wholly replaced the Dioceses Measure 1978 and provided for the establishment of a new Dioceses Commission whose responsibilities include a general duty to keep the Church's provincial and diocesan structures under review. It laid down a new set of provisions for reorganisation schemes affecting dioceses and diocesan boundaries. In practice the Commission deals only with substantive changes to diocesan boundaries while more minor changes can be dealt with under the Mission and Pastoral Measure 2011. S.13 provides for a diocesan bishop who has

executed a deed of resignation or who considers himself unable to discharge any or all of his functions by reason of illness or absence from his diocese, to make an instrument delegating certain functions as may be specified in the instrument.

Under the 2007 Measure Diocesan Mission and Pastoral Committees (DMPCs) replaced diocesan pastoral committees and also took over the functions of diocesan redundant churches uses committees. The Measure included new provisions related to the furtherance of the mission of the Church of England, including bishops' mission orders and a new general duty whereby any person or body carrying out functions under either Measure should have due regard to the furtherance of the mission of the Church of England. Changes in terminology also occurred, with, for example, 'redundancy' replaced by 'closure for regular public worship'.

Most of the 2007 Measure was subsequently consolidated in the Mission and Pastoral Measure 2011 with the exception of Parts I, II, dealing with the General Duty, and Provincial and Diocesan Structures, and the main provisions dealing with the Church Buildings Council in Part VII and related Schedules.

Ecclesiastical Dilapidations Measures 1923/9

These Measures, most of which dealt with the law regarding the repair of parsonage houses (those portions have been repealed), make provision for the redemption of chancel repair liability by means of a capital payment by the lay rector to the Diocesan Board of Finance. If either the DBF or PCC require it the Commissioners can be asked to determine the amount of capital sum involved (which sum should be sufficient to put the chancel concerned in good order and to maintain it thereafter, and to pay for insurance premiums).

Ecclesiastical Fees Measure 1986

This Measure, which follows an earlier Measure of 1962, in addition to providing for remuneration of certain ecclesiastical judges and legal officers, provides a statutory basis for fees for services which an incumbent is under an obligation to provide for his or her parishioners (i.e. a marriage or a funeral). It is the authority to prepare a parochial fees order, which needs to be approved by the General Synod and Parliament before it can become law, now rests with the Archbishops' Council.

Ecclesiastical Offices (Terms of Service) Measure 2009 **Ecclesiastical Offices (Terms of Service) Regulations 2009**

This Measure and its subsidiary Regulations, which took effect on 31 January 2011, provided that, with certain exceptions, office holders in the Church of England would from that date hold their offices on Common Tenure. Office holders on Common Tenure hold their offices until they are required to retire at the age of 70 in accordance with the **Ecclesiastical Offices (Age Limit) Measure 1975** but are subject to removal for lack of competency as well as for ill health or disciplinary reasons and as a result of pastoral reorganisation. All office holders are now entitled to compensation for loss of office arising from pastoral or diocesan reorganisation (although on less generous terms in the case of those who are not incumbents,

team vicars or archdeacons). Office holders are entitled to a Statement of Particulars of the terms on which they hold the office and, where they are full-time stipendiaries to the provision of housing. Existing freeholders may choose not to opt-in to Common Tenure but all subsequent holders of the office will be on Common Tenure. Terms of years for office holders in team ministries were converted to Common Tenure offices except for existing team rectors who may decide not to opt-in for the remainder of their existing term of years. Time-limited posts are now only possible in circumstances specified in Regulation 29.

Endowments and Glebe Measure 1976

This Measure, which became effective on 1 April 1978, transferred all benefice glebe (property, other than the parsonage house and other parsonage land, vested in successive incumbents) into the ownership of the DBF of the diocese to which the benefice previously owning the glebe belonged.

As glebe is held on charitable trusts for the benefit of the DSF it can only be used (subject to the exception of a glebe house used as the residence of a team vicar, curate, deaconess or licensed lay worker) in such a way as to achieve the best income for that purpose.

Each DBF is responsible for the management of its glebe, including the granting of leases and tenancies, collection of rent, rent reviews, carrying out repairs and improvements and, where desirable, sales and purchases. The requirement to seek the Commissioners' consent to certain transactions was removed by the Church of England (Miscellaneous Provisions) Measure 2000 subject to certain criteria being met.

Episcopal Ministry Act of Synod 1993

This was passed by the General Synod in 1993 to make provision for "the continuing diversity of opinion in the Church of England as to the ordination and ministry of women as priests, and for related matters." It provides for three types of arrangements to provide an appropriate ministry for those who are opposed to the ordination of women:

- (a) Diocesan arrangements - the diocesan bishop shall make arrangements so far as possible within his own diocese for appropriate care and oversight of the clergy and parishes in the diocese;
- (b) Regional arrangements - whenever possible diocesan bishops in a region (an area comprising two or more dioceses in a province) shall nominate one or more bishops (diocesan, suffragan or full-time assistant) opposed to the ordination of women to carry out for any parish in the region such episcopal duties as the diocesan bishop concerned may request;
- (c) Provincial arrangements - the Archbishop of Canterbury shall from time to time appoint up to two additional suffragan bishops to act as provincial episcopal visitors and the Archbishop of York shall appoint one such bishop. Each provincial episcopal visitor, commonly referred to as a "flying bishop", shall be commissioned to carry out for any parish in the province concerned such duties as the diocesan bishop may request. Any parish (except one in which there is a parish church cathedral) may

petition the diocesan bishop concerned to the effect that appropriate episcopal duties in the parish should be carried out in accordance with this Act of Synod in which case the diocesan bishop is responsible for making appropriate arrangements. The presentation of such a petition is commonly referred to as passing "Resolution C". The Act also provides for the ordination of women in the diocese of a bishop opposed to such ordination to be carried out, providing the bishop concerned has no objection, by the archbishop or a bishop acting as his commissary. (See also **Priests (Ordination of Women) Measure 1993**.)

Faculty Jurisdiction Measure 1964

Faculty jurisdiction relates in the main to churches in use for worship and its basis is not statutory. The 1964 Measure dealt with certain aspects of faculty jurisdiction some of which were amended by the Care of Churches and Ecclesiastical Jurisdiction Measure 1991.

- (a) A faculty is a licence granted by the Chancellor of the diocese concerned, an eminent lawyer appointed by the bishop to be judge of the Consistory Court of the diocese. The 1964 Measure made provision for an archdeacon to authorise works of a lesser nature than those for which a faculty was required by means of an Archdeacon's Certificate. This provision was, however, repealed by the 1991 Measure which empowered an archdeacon to grant a faculty in an unopposed case, subject to seeking the DAC's advice unless the case was related exclusively to exhumation or the reservation of a grave space. This power is confined to the matters specified in Appendix A to the Faculty Jurisdiction Rules. Where an archdeacon declines to grant a faculty or the grant is opposed by any person, or the matter is sufficiently urgent to proceed without obtaining the advice of the DAC, it has to be referred to the Chancellor.
- (b) A faculty is required for any alteration, repair, improvement or addition to the structure, fittings, ornaments, furniture or decorations of a church and to the disposal of any contents. Any such work carried out without a faculty is unlawful. Application for a faculty is usually made by the incumbent and churchwardens but anyone in the parish having an interest may apply. If a closed church is in the "use finding period" and vests in the DBF for care and maintenance, the DBF may find it necessary to apply for a faculty.
- (c) A faculty is obtained by application to the diocesan registrar for the appropriate form of Petition. This must be completed and returned to the registrar with a copy of the PCC's resolution of the works proposed, together with plans, specifications and estimates of the work. An appropriate fee is charged (although some dioceses meet such fees from the quota). The advice of the DAC must be sought except in a case relating exclusively to exhumation or the reservation of a grave space or where the matter is particularly urgent. The DAC will consider the proposals and recommend (or not) their acceptance to the Chancellor. A General Citation is displayed in a suitable place e.g. church porch for 10 days including two consecutive Sundays and any interested party may object to the proposals at this stage. The final decision and the granting of the faculty rests with the Chancellor (or archdeacon) who is not duty bound to accept the DAC's recommendations.

- (d) There follows a list of examples of the type of work which should only be carried out under a faculty:
- 1) major schemes of repair to the structure of the church;
 - 2) any alteration to the structure of the church;
 - 3) the addition or removal of any furniture, ornaments, stained glass etc.;
 - 4) the introduction of a memorial tablet into the church;
 - 5) installation of new heating or lighting systems;
 - 6) repairs or additions to the bells;
 - 7) churchyard improvement or alteration schemes;
 - 8) reservation of grave space;
 - 9) work involving organs;
 - 10) introduction of certain churchyard memorials.
- (e) A faculty is not required for certain items of a very minor nature, which will be specified by the Chancellor. For example, these will normally include replacing slates or tiles, mending windows, cleaning out gutters or routine maintenance of organs. The above list is not exhaustive and in case of doubt reference should be made to the DAC Secretary or the relative Archdeacon.

Inspection of Churches Measure 1955

The Measure authorised the establishment of schemes for the inspection of churches by architects at least once in every five years. Each diocese was required to establish a scheme to provide a fund to meet the cost of the inspections and for the appointment of architects to carry them out. Archdeacons have a duty to ensure that regular inspections are carried out.

Copies of reports prepared by the architects following their inspection (the Quinquennial Report) are sent to Archdeacons and PCCs. This is the responsibility of the parish.

New Parishes Measure 1943

This Measure originally re-enacted, with amendments, earlier legislation authorising the formation of new ecclesiastical districts as well as giving power for the (Ecclesiastical) Commissioners to acquire and deal with land for churches and parsonage houses. The former powers were replaced by the Pastoral Measure 1968 but the latter, as amended by the Church Property (Miscellaneous Provisions) Measures 1960 and 1992, remain in force, and are mainly used in the acquisition of additions to churchyards or burial grounds or the disposal of unconsecrated churches or land. This Measure was amended by the Church of England (Miscellaneous Provisions) Measure 2010 so that the DBF, not the Commissioners, are now the acquiring body. The Commissioners consent is only needed in specific circumstances, such as where a transaction is with a connected person.

Open Spaces Act 1906

This Act consolidated earlier enactments relating to open spaces. It empowered the transfer of, inter alia, disused burial grounds either permanently or upon agreed terms to local

authorities for the purpose of improving or laying out the same and for the purpose of giving public access. Where agreements have been made under this Act it is not possible to sell the land for any other use although it is possible under the Town & Country Planning Act 1971, as amended by the Local Government Planning and Land Act 1980 and the Local Government Act 1972, for the local authority to acquire the land and convey it to a third party for alternative use. (See [10.22 - 10.25](#) and [12.7\(iv\)](#).)

Parochial Church Councils (Powers) Measure 1956

Under this Measure any interest in land (other than certain short leases), and any personal property held on permanent trusts, held or acquired for a PCC must be held by the diocesan authority in trust for the PCC. The "diocesan authority" is normally the DBF but in some dioceses there is a diocesan trustee body which acts as the "diocesan authority" under the Measure. A PCC may not acquire or dispose of any property without the consent of the diocesan authority.

Parochial Records and Registers Measure 1978

This Measure, which replaced an earlier Measure of 1929, made provision for:

- 1) The provision and use of register books for baptisms and burials. The Measure specified a baptism register book to be provided for every parish or, if a parish has more than one parish church, in every such church. A burial register book was to be provided for every parish having a burial ground in use (one register for each burial ground).
- 2) The custody of register books. They are to be held by the incumbent or priest in charge or, if the benefice is vacant, by the churchwardens.
- 3) The establishment of diocesan record offices for the deposition of old register books.
- 4) The proper care and safekeeping of register books by the person having the custody of the books.
- 5) The disposal of register books in the event of a parish being dissolved by virtue of a pastoral scheme.

NOTE: The Measure relates to registers of baptisms and burials. Marriage registers are dealt with by the Marriage Act 1949.

Parsonages Measures 1938 & 1947

Under these Measures the incumbent of a benefice or, during a vacancy, the bishop has power to:

- 1) sell the parsonage house and grounds or part of the grounds;
- 2) exchange the parsonage house for another property;

- 3) demolish the parsonage house;
- 4) purchase or build a parsonage house.

The DPB and the bishop are consenting parties and notice has to be given to the patron(s) and PCC(s). The Commissioners' consent is no longer required provided that certain criteria are met.

Pastoral (Amendment) Measure 2006

This Measure provided a new mechanism through which a lease may be granted of part of a church building, provided that taken as a whole, the building continues primarily as a place of worship.

Pastoral Measure 1983

This Measure was repealed by the Mission and Pastoral Measure 2011.

Pastoral Reorganisation Measure 1949

A Measure to "make better provision for the cure of souls by simplifying the procedure for the union of benefices and the holding of parishes in plurality and to provide for the partial diversion of endowment income". It was repealed by the Pastoral Measure 1968.

Patronage (Benefices) Measure 1986

This Measure is the current legislation governing the ownership and exercise of patronage rights. It was the eventual response to a General Synod motion seeking the abolition of all private patronage rights and presented a compromise in that it maintained the existence of private patronage but imposed limitations on the way in which it was exercised. See [11.1](#) for details of the main changes brought about by the Measure.

Places of Worship (Enfranchisement) Act 1920

The original Act enabled trustees holding a lease of a place of worship for a period of not less than 21 years to acquire the freehold. The term "place of worship" was defined as "any church, chapel, or other building used for public religious worship" and included a "burial ground, Sunday or Sabbath school, caretaker's house or minister's house attached to or used in connection with and held on the same trusts as a place of worship". The Act was amended by s.40 of the Leasehold Reform Act 1967 enabling the freehold of a leased parsonage to be acquired under the Parsonages Measures 1938 and 1947.

The implications of this Act are considered when disposing of a closed church by way of lease for use for worship by another denomination or as a church hall, when the term of such a lease should be for less than 21 years if the possible loss of the freehold is to be avoided.

Priests (Ordination of Women) Measure 1993

This Measure made provision for the ordination of women as priests. The principal section which is relevant to these purposes is s.3. Under s.3 and Schedule 1 a PCC is permitted to pass either or both of the following resolutions: Resolution A: *That this parochial church council would not accept a woman as the minister who presides at or celebrates the Holy Communion or pronounces the Absolution in the parish*; Resolution B: *That this parochial church council would not accept a woman as the incumbent or priest in charge of the benefice or as a team vicar for the benefice*. Resolution A cannot be considered if the incumbent or priest in charge of the benefice concerned, or any team vicar or assistant curate for that benefice, is a woman ordained as priest. S.5 makes it an ecclesiastical offence for any bishop, priest or deacon to act in contravention of such a resolution. (See under **Episcopal Ministry Act Of Synod 1993** for "Resolution C".) (See also [11.3-11.4](#) for some practical effects of a PCC passing these resolutions.)

Redundant Churches and Other Religious Buildings Act 1969

This Act empowered the Secretary of State for the Environment, with the approval of the Treasury to make grants to the CCT. It also provided (s.2) that listed building consent was not needed for the demolition of a listed church if (but only if) demolition is carried out pursuant to a scheme under the Pastoral Measure.

Reorganisation Areas Measure 1944

The Measure authorised "the making of new arrangements for the pastoral supervision of areas which suffered war damage or in which, by reason of causes attributable to the war or as a result of planning schemes, material changes in the number or situation of the population have occurred or are likely to occur". The Measure was subject to some amendment by the Pastoral Reorganisation Measure 1949 and repealed by the Pastoral Measure 1968.

The 1968 Measure did, however, permit matters uncompleted under this Measure to be completed and schemes under this Measure can be amended by pastoral schemes.

Repair of Benefice Buildings Measure 1972

The Measure superseded the Ecclesiastical Dilapidations Measures providing for the repair of parsonage houses and glebe property and placed this duty on Diocesan Parsonages Boards or Committees.

Sharing of Church Buildings Act 1969

This Act provided for the sharing and use of church buildings by different Churches and has played an important role in the development of local ecumenical relations. The CCBI booklet "Under the same roof" provides guidelines to the Act which includes detailed advice on producing a sharing agreement.

Sharing of Church Buildings Measure 1970

This Measure extended the Pastoral Measure for the purpose of authorising sharing agreements in respect of consecrated churches and parsonage houses. Sections 3(3)(b) and 31(5) of the 2011 Measure are relevant but in practice these provisions have been very little used. Sections 58(4), 58(6) and 63(8) are also relevant when a church which is the subject of a sharing agreement is declared closed for regular public worship.

Team and Group Ministries Measure 1995

This Measure followed a review of the operation of team and group ministries and amended the Pastoral Measure with effect from 1 May 1996 to provide principally for the following:

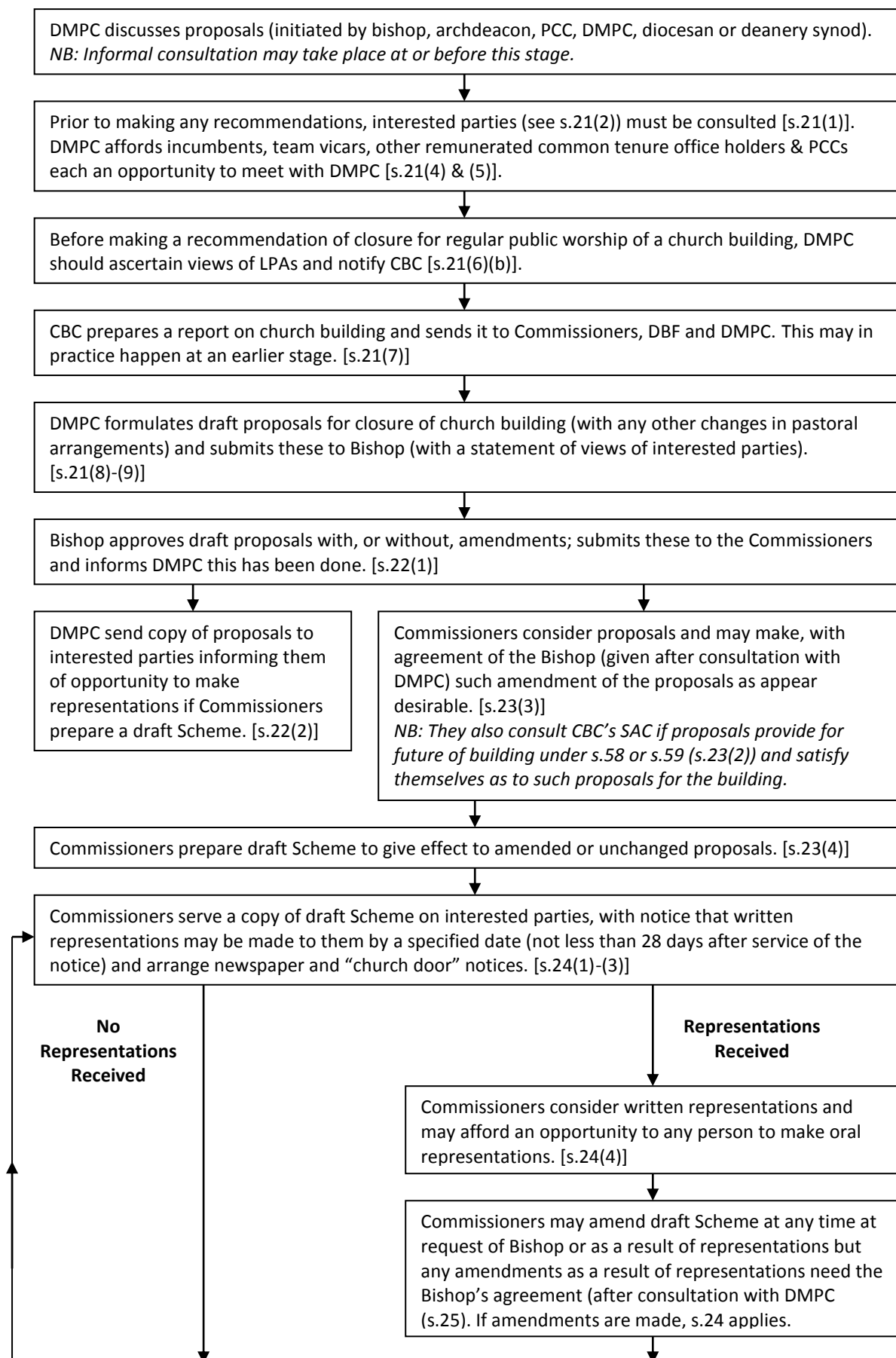
- (a) New team rectors and team vicars were to hold office for a specified term of years, or otherwise for seven years, and there would be no new freehold offices for rectors. The tenure of those rectors and vicars already in office was unaffected but their successors were to hold leasehold offices for seven year (renewable) terms.
- (b) Rectors and vicars were initially to have fixed term licences of the same duration. These were to be renewable for periods (which may be different) not exceeding the length of the specified term of years.
- (c) Deacons were to enjoy the same security of tenure as rectors and vicars if they were members of the team by authority/licence of the bishop and have the authority of the bishop to perform all the offices of an incumbent so far as is consistent with the office of a deacon.
- (d) Other deacons, readers and other members of the team (via the bishop's licence) were given security of tenure for a specific term of years (although they did not enjoy the same security of tenure as those under (b) and (c) as it remained possible to summarily revoke their licences).
- (e) Vicars, deacons appointed under (c) above and other members of the team with special pastoral responsibility were automatically to have the right to attend and share a joint vote where a rector was to be appointed by a Patronage Board or the Diocesan Board of Patronage. The same would apply where a vicar was being appointed by a Board.
- (f) PCCs were to appoint representatives to approve a vicar's appointment in a similar manner to the right under the Patronage (Benefices) Measure 1986 for parish representatives to approve an incumbent (or rector).
- (g) Existing teams established under the Pastoral Measure 1968 in which team membership was limited to the rector and vicars were automatically to have their membership widened to allow for the bishop to license other persons to serve as members of the team. This was subject to the right of PCCs of such teams to make representations to the then Diocesan Pastoral Committee to the effect that wider team membership should not apply to their team. The Church Commissioners were to consider any such representations.

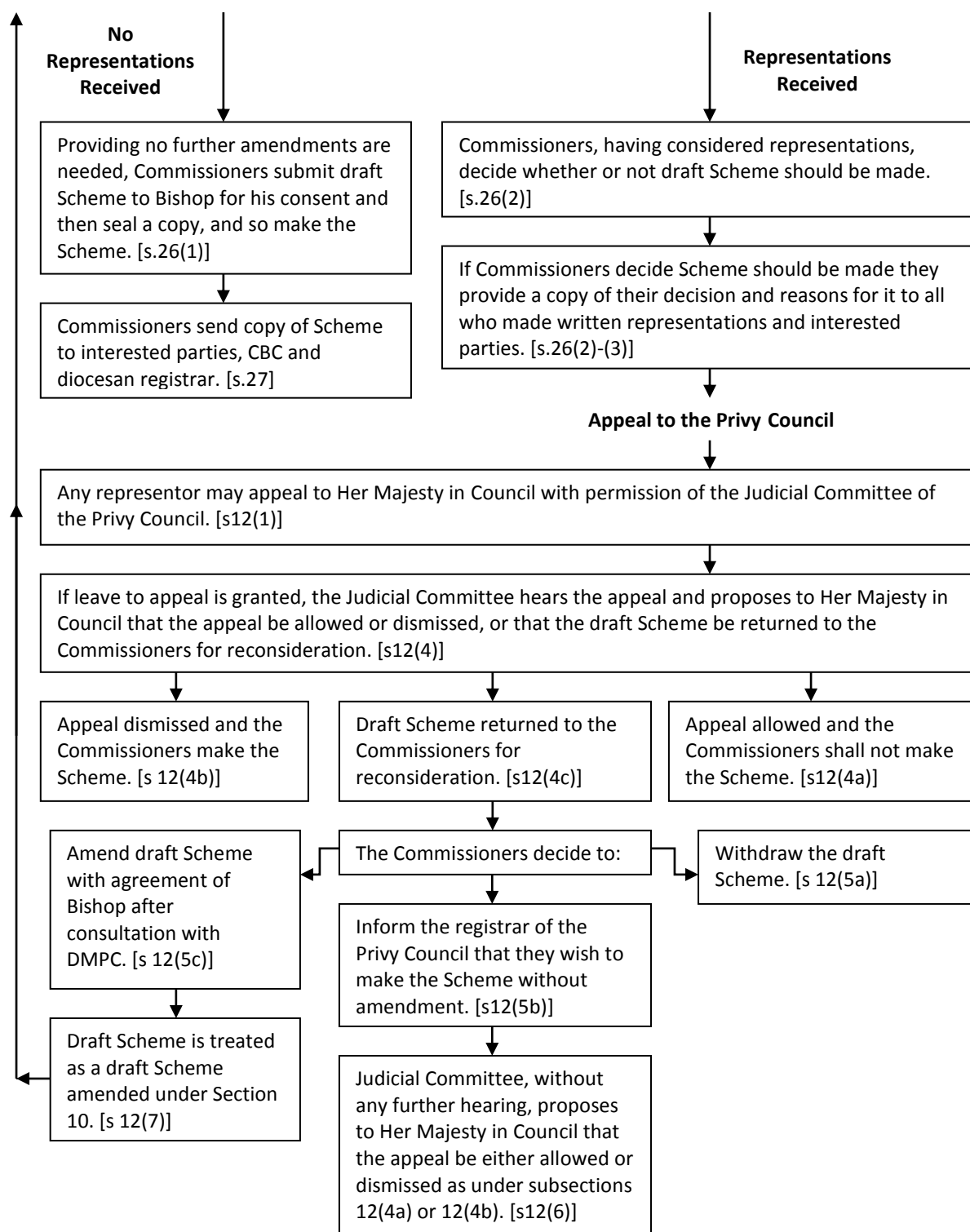
The provisions in a) to d) above have been largely superceded by the provisions for Common Tenure in the **Ecclesiastical Offices (Terms of Service) Measure 2009** and those in e) and f) by amended provisions introduced by the **Dioceses Pastoral and Mission Measure 2007**.

Union of Benefices Measure 1923

This Measure made provision for pastoral reorganisation outside the City of London. The Measure contained powers to pull down, sell and appropriate to other uses churches, parsonages and other property. The uses to which churches could be appropriated were limited to educational and charitable purposes and they remained in diocesan ownership and the legal effects of consecration were not removed. When the original use ceases, churches in this position are sometimes subject to an amending pastoral (church buildings disposal) scheme under s.69 of the Mission and Pastoral Measure 2011. Sites of demolished churches could not be used for secular purposes without the consent of the Archbishop of the Province and the diocesan bishop and, where human remains were interred, the Secretary of State for the Home Office. The Measure was repealed by the Pastoral Measure 1968.

Appendix 2.3 – Part 4 Progress of a Pastoral Church Buildings Scheme flowchart

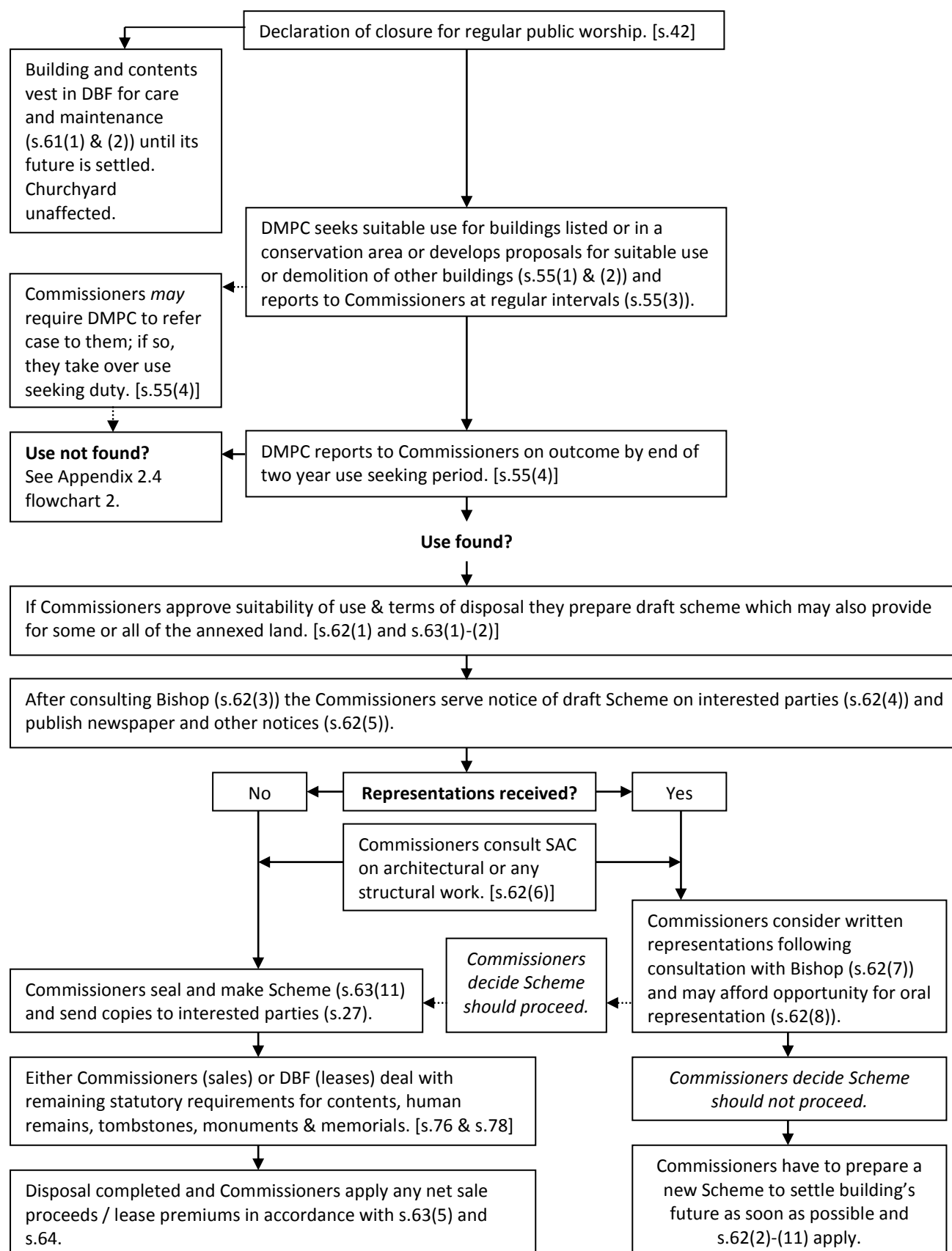




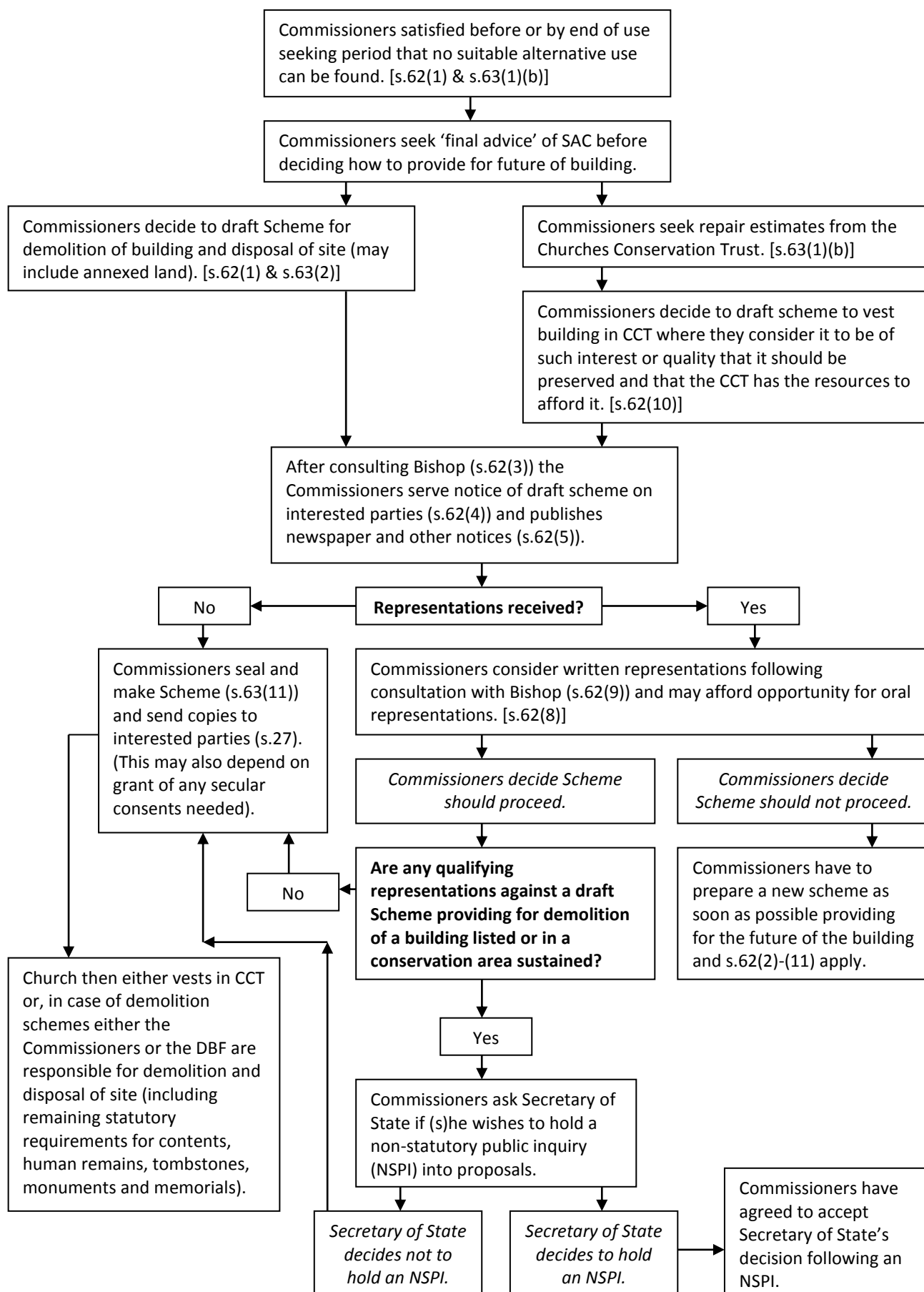
NB: The making of Schemes settling the future of the building at the time of closure under s.58 or a.59 may be subject to listed building and conservation area consents (in the case of alternative uses) or the possibility of a non-statutory public inquiry (in the case of certain contested demolitions).

Appendix 2.4 – Settling the Future of a Closed Church Building (excluding s.58 & s.59 schemes)

Flowchart 1: Where an alternative use is found



Flowchart 2: Where an alternative use is not found



Appendix 2.5 – Vesting Guidelines

General

1. There is a general presumption against partial vestings or the vesting of ruins unless there are compelling reasons to the contrary.

Direct Vesting

2. The policy of the Commissioners' Church Buildings (Uses & Disposals) Committee (the Committee) is that direct vesting should be used only for "exceptional" cases. It will consult the Church Buildings Council's Statutory Advisory Committee and take into account the following factors:-

Is closure self-evident and uncontroversial?

3. The DMPC should outline the rationale for the proposed closure and indicate whether they believe it is likely to prove controversial.

Is there a demonstrable lack of possibility of an alternative use?

4. The Committee will wish to be assured that the DMPC has explored all reasonable possibilities for finding a suitable alternative use. This will take into account the SAC's advice on e.g. the scope for structural alterations, and the likelihood that only a limited range of suitable alternative uses will present itself. The following factors will also be relevant:-
 - a) Has the local planning authority been consulted on the types of use it might consider acceptable?
 - b) Has any approach been made to local landowners/the local authority to take responsibility for care and maintenance?
 - c) Has there been exploration of the possibility of a local Trust assuming responsibility?

The Churches Conservation Trust's estimate of repair costs

5. The Committee has indicated that low repair costs may constitute an "exceptional" factor (but will also take into account the whole life costs of preserving and maintaining a building). It has not established any likely upper limit which might apply, but will judge each case on its merits. The Trust's repair estimates and assessment of the work necessary will be taken into account accordingly, as will any assessment of the condition of the building. The scope for match funding and prospects for raising money from other sources may also be relevant.

Condition of the building

6. The Committee will pay particular attention to the condition of the building and the likely speed of further deterioration. Depending on the circumstances a large repair

estimate could be counted as an argument to vest quickly before further deterioration (or alternatively not to vest due to cost).

Quality of building

7. The Committee's consideration will give full weight to the SAC's detailed advice on the historic, archaeological and architectural significance of the church.

Public Access and Visitor Potential

8. The diocese should provide any relevant information on how accessible the building is to the public and the potential for attracting visitors. This should also cover the level of potential support and interest available to the Trust in the event of vesting.

Any special factors?

9. The Committee will also take into account any special factors put forward by the DMPC.
10. If it declines to approve direct vesting, the Committee may nonetheless wish to indicate its willingness to reconsider the case for vesting following closure if no suitable use has been found. The merits of vesting the church would be reviewed alongside other churches with competing claims.

Vesting following closure

11. Many of the factors outlined above will also be relevant when considering the future of a closed church in the event that no suitable use can be secured.
12. Attaining the correct balance between fully investigating potential uses and not delaying a decision unduly, particularly on a potential borderline 'last resort' vesting, is not easily achieved. It is important to set reasonable but timely deadlines for potential users to develop proposals/ feasibility studies but also to ensure in the meantime that the building is kept wind and watertight to prevent any deterioration in its condition.
13. Where a use is not found the diocese will be asked to include in its report details of repairs carried out during the use seeking period (for which help is available from the TMA) and of any contents removed temporarily for safe keeping.

Appendix 2.6 – Contents of Closed Church Buildings



CHURCH COMMISSIONERS

CLOSED CHURCHES GUIDANCE NOTE

CCG 1

CONTENTS OF CLOSED CHURCH BUILDINGS

July 2012 Edition

**Closed Churches Division
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London
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You may obtain further copies of this note by telephoning 020 7898 1783
or email mpmcode@churchofengland.org

Closed Churches Guidance:

Contents of Closed Church Buildings

The law and good practice on the care and disposal of contents of churches closed for regular public worship, derives primarily from the Mission and Pastoral Measure 2011 and its Code of Recommended Practice. This note brings together this material with further advice in the light of current practice and circumstances and also covers church buildings which are or may become subject to closure.

This guidance is primarily for Diocesan Boards of Finance, Diocesan Mission and Pastoral Committees, Diocesan Furnishings Officers, Archdeacons and others involved in settling the future of the contents of closed churches.

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PART 1

Church Buildings Which Have Not Been Declared Closed For Regular Public Worship

1. Churches in Use

- 1.1 By virtue of the ecclesiastical exemption, works to Church of England churches in use are not subject to secular listed building or conservation area control. However, there is no ecclesiastical exemption from the need to obtain planning consent for development.² The introduction, alteration, removal or disposal of the contents of churches in use is not, therefore, likely to require secular consents but is subject to faculty jurisdiction.
- 1.2 Churchwardens have legal ownership and custody of the moveable goods belonging to the church whilst the parochial church council (PCC) is responsible for the care, maintenance, preservation and insurance of the church “and its goods and ornaments”.
- 1.3 Churchwardens are required to compile and maintain a full inventory of all items belonging to the church. This should be kept in a secure place and updated on a regular and systematic basis. Photographs provide a useful supplementary method of recording items of particular interest or value. The churchwardens should also maintain a log-book containing a full note of all alterations, additions and repairs to the articles belonging to the church. A proforma Church Property Register (also known as the Terrier and Inventory) is available from Church House Publishing.
- 1.4 As soon as practicable the churchwardens must send a copy of the inventory to the person designated by the bishop. To some extent this will depend on the availability of suitable storage facilities which are also accessible but the archdeacon or the Secretary to the Diocesan Advisory Committee (DAC) might be a suitable recipient. In some cases it might be more appropriate for the inventory to be stored in the diocesan record office in the care of the diocesan archivist. At intervals fixed by the bishop the churchwardens must notify the person who holds the inventory of any alterations to its contents.
- 1.5 The person with whom they are lodged should treat as confidential the inventory, the copy and the log-book and make them available only to those with a legitimate reason for inspecting them. This is necessary, sadly, because of the increase in thefts of church property where it is clear that artefacts of particular value or interest have been specifically targeted.
- 1.6 The PCC should give consideration to securing items of particular value either by physical means such as bolts or chains or by security systems. It should also ensure that such items are identified by photograph or security marking, previously obtaining expert advice as to whether and how an object should be marked. In exceptional

² *The Operation of the Ecclesiastical Exemption and related planning matters for places of worship in England – Guidance* (Department for Culture, Media and Sport, July 2010)

circumstances the churchwardens should deposit vulnerable items in a secure repository, e.g. bank or diocesan (Cathedral) repository, approved for this purpose under rules made under s.21 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (CCEJM). Where, after consultation with the DAC, the churchwardens remove an item for safekeeping, they need not obtain a faculty but they should clearly note the new location on the inventory and inform any other person who holds a copy (see paragraph 1.4).

- 1.7 Any permanent disposal of contents requires prior consultation with the DAC and a faculty. In removing any items fixed to the walls or floor the churchwardens should always take care to avoid damage to the fabric. Removal should be avoided where it cannot be achieved without damage to the fabric.
- 1.8 The churchwardens should clearly annotate the inventory in respect of any item permanently removed, giving its original location, where it was moved to and any damage incurred during removal.

2. Church Buildings for which a Declaration of Closure for Regular Public Worship is Proposed or Being Considered

- 2.1 Where closure is a possibility the legal position regarding contents is exactly the same as set out in paragraphs 1.1 - 1.8. However this note gives some additional guidance to cover the possibly greater vulnerability of contents in this situation.
- 2.2 The PCC and churchwardens should take special care over the contents of a church building which is proposed to be declared closed for regular public worship or where possible closure is being considered. The report prepared by the Church Buildings Council (CBC) under section 21(7) of the Mission and Pastoral Measure 2011 (“the 2011 Measure”) provides an independent assessment of the church’s furnishings and fixtures and offers a guide to items which the PCC and churchwardens particularly need to safeguard. Where the congregation has ceased using the church on a regular basis it may be more vulnerable to thieves and vandals and the churchwardens need to consider how best the contents can be safeguarded. (Sections 7 and 8 offer guidance on the possible application of secular listed building legislation in these circumstances.)
- 2.3 If they are judged to be vulnerable, contents of particular value should be temporarily removed by the PCC for safe-keeping in a secure repository. The PCC should consult the DAC first but a faculty would not be needed. The deposit of such items is subject to the CCEJM rules.
- 2.4 The churchwardens should clearly annotate the inventory of the church contents to show that an item has been removed for safe-keeping, and they should indicate its original location, its new location and any damage incurred during removal.
- 2.5 It is the duty of the PCC and churchwardens to ensure that all contents remaining in the building are kept secure and insured. They also remain responsible for contents removed temporarily for safe-keeping and should consult their insurers about any changes which may be needed to their existing policies.

2.6 While paragraphs 1.7 and 1.8 apply to permanent disposal of contents of a church proposed or being considered for closure, such permanent disposal is undesirable in these circumstances. This is especially so where the church is a possible candidate for vesting in the Churches Conservation Trust (CCT), or where there is a possibility that it will be appropriated to an alternative use for which the contents may be required. Permanent disposal of contents may also be regarded as pre-judging objections to closure.

2.7 An up-to-date annotated copy of the inventory should be supplied by the churchwardens to the CBC officer when (s)he is asked to compile a report on a church building under the 2011 Measure.

PART 2

Closed Churches

3. Care of Contents of Church Buildings Closed for Regular Public Worship

- 3.1 Upon the declaration of closure for regular public worship taking effect, the ownership of the building and its contents transfers to the Diocesan Board of Finance (“the DBF”). The inventory should be agreed between the churchwardens and a DBF representative. This should be annotated and should show any item removed either for safe-keeping or permanently, its original and new location and any damage caused by its removal. The DBF should send two copies of the inventory to the Church Commissioners (“the Commissioners”) at this time.
- 3.2 The DBF is responsible for the closed church building and its contents until the future of the building is settled by a pastoral (church buildings disposal) scheme. Such contents may sometimes be as important artistically or historically as the building itself, or more so, and the DBF should take great care of them during the use-seeking period (this is the name given to the period between the declaration of closure of a church building and its future being settled). The DBF should avoid hasty disposal of contents and seek expert advice to enable the bishop to give directions in due course which make the best provision for their future in the context of the ultimate decision on the future of the church itself. (See also paragraph 3.8 and Section 8.) During this use-seeking period, the DBF is responsible for:-
- (a) the care and maintenance of the closed building;
 - (b) the safe-keeping of the items belonging to the building whether in the building or elsewhere; and
 - (c) the insurance of both the building and its contents.
- 3.3 In the use-seeking period it is normally only practicable for the DBF to obtain fire risk insurance cover on contents. Although it is possible to extend this cover in some circumstances, the difficulty in doing so reinforces the need for the DBF to keep the building secure and, if appropriate, move the more valuable contents to a repository authorised under the CCEJM 1991 for safe-keeping.
- 3.4 The Statutory Advisory Committee (SAC) of the CBC gives information and advice to the Commissioners about the contents of a church which is proposed for closure. The DBF should pay full regard to such advice as passed on to them by the Commissioners.
- 3.5 During the use-seeking period, the building and contents remain subject to faculty jurisdiction. However, the temporary removal of contents for safe-keeping may be undertaken without a faculty by the DBF, although this should be after consulting the DAC and Chancellor unless the urgency of the situation makes this impracticable (s.61(2) of the 2011 Measure). Details of any such transfer should be notified to the Commissioners, the CBC, the CCT, the Diocesan Registrar and any incumbent, priest-in-charge, PCC or sequestrators concerned. Where appropriate (see paragraph

- 3.7) the local planning authority should be consulted. Removal should be avoided where it cannot be achieved without some damage to the item or to the fabric of the building.
- 3.6 The DBF should avoid permanent disposal of contents where this might reduce options for the future of the building. (See also paragraph 5.1.)
- 3.7 When a declaration of closure for regular public worship takes effect and the closed church building enters the use-seeking period and becomes fully subject to the normal listed building and conservation area controls. The permanent disposal of fixtures and, perhaps, some furnishings from listed closed churches, therefore, requires listed building consent. The DBF is also advised to consult the local planning authority prior to the temporary removal of such fixtures to avoid complications in the future. (See also Sections 7 and 8.) The Diocesan Mission and Pastoral Committee (DMPC), which is responsible for seeking a suitable alternative use for the building, should ensure that the future of the contents form part of the negotiations with the end user.
- 3.8 Immediately a building is declared closed, it may be advisable for the DBF to remove items at risk of fire damage, e.g. vestments, soft furnishings, service books, music sheets. However, hasty disposal of the more sizeable articles, e.g. vestments or frontals, should be avoided because these items are sometimes of great artistic or historic interest or particular significance in that church. The DBF should arrange for church records to be examined to ascertain whether vestments, candlesticks, and altar furnishings such as frontals were donated to the church and whether the terms of the gift contained any provisos as to what should happen to them should they no longer be required. Old photographs showing past incumbents or the church at earlier stages may be of local historic interest. Books of choir music or old hymn books may also be historically interesting. The DBF should, therefore, seek the best advice (e.g. from the DAC, diocesan or county archivist or local public libraries) to identify items of artistic or historic interest and to make satisfactory provision for their future.
- 3.9 The disposal of parochial records and registers is regulated by the Parochial Registers and Records Measure 1978. Prayer books, Bibles and other documents which are not covered by the 1978 Measure but which are regarded as of historic interest to the Church of England are covered by rules made under the CCEJM 1991 providing for their safe-keeping, care, inspection and preservation. 18th and 19th Century (or earlier) Bibles, Books of Common Prayer, and other liturgical material ought to be carefully examined, and the advice of the diocesan books advisor and/or the county archivist sought by the DBF before any decisions are taken as to their future. This advice should also be obtained with respect to ephemera such as old parish magazines, plans and miscellaneous papers etc. Unless a book is in a parochial library within the operation of the Parochial Libraries Act 1708, a faculty is not needed to authorise its disposal.
- 4. Appointment of Diocesan Furnishings Officers**
- 4.1 Dioceses are advised to appoint Diocesan Furnishings Officers (DFOs) with relevant qualifications and experience and sympathy for the subject. They should encourage

those who lack training to attend an approved course. The appointment should be made by the DBF following consultation with the DAC.

- 4.2 As a matter of good practice the DFO should be a member of the DMPC, or should attend its meetings as an assessor when required. The DFO should be familiar with all relevant legislation and advice and be encouraged to familiarise him or herself with the significant furnishings in churches in the diocese and to consider churches in the diocese as a whole.
- 4.3 The DFO should consult the DAC and pay full regard to the SAC's advice passed on by the Commissioners to ensure that the diocese deals with contents appropriately. The DFO should take care to ensure that valuable items are not lost through negligence or indiscriminate dispersal, and should consult officers of the CBC or the Commissioners if appropriate.

5. Disposal of Contents Closed Church Buildings

- 5.1 If, notwithstanding the advice in paragraph 3.6, the DBF disposes permanently of any contents, fixtures or fittings from closed church buildings during the use-seeking period, it must consult the DAC before applying for a faculty. The diocesan organs adviser should be consulted, if appropriate.
- 5.2 The DBF should notify the Commissioners, the CBC, the CCT and the diocesan registrar of such faculty applications. Notice must also be served on any incumbent, priest in charge, PCC or sequestrators. If the building is listed, the DBF must obtain listed building consent before permanently removing any fixtures or fittings (see paragraph 7.4 and Section 8) – if in doubt, consult the local planning authority.
- 5.3 Once a pastoral church buildings scheme or pastoral (church buildings disposal) scheme settling the future of the church takes effect, then faculty jurisdiction ceases to apply (unless specifically retained by the scheme). Unless the scheme authorises demolition, secular listed building and conservation area control (continue to) apply. *(Demolition pursuant to a scheme under the 2011 Measure is exempt from listed building control by virtue of section 60 of the Planning (listed Buildings and Conservation Areas) Act 1990, and from conservation area control by a direction under section 75(2); although the Commissioners have agreed to ask the Secretary of State in certain circumstances if he wishes to hold a non-statutory public inquiry).*
- 5.4 Section 76 of the 2011 Measure deals with the disposal of contents when providing for the future of a closed church. In most cases the scheme settling the future of the building will make provision for disposal of the contents (excluding tombstones, monuments and memorial, which are to be dealt with in accordance with Schedule 6 of the 2011 Measure). At this stage, the DMPC should obtain the bishop's directions for dealing with contents (including, subject to listed building consent being granted, fixtures and fittings). These directions may provide for retention or disposal of the contents.
- 5.5 As part of the agreed terms of disposal the DMPC may recommend that certain contents should be left in the building and included in the property conveyed to the new owner. Alternatively, the bishop may agree to allow the contents to remain in the

building on loan. In such circumstances, a formal Loan Agreement between the bishop and the purchaser should be completed which lists the items involved and the terms of the loan. The DMPC should forward two copies of the Agreement to the Commissioners and one to the SAC. Contents which are inadvertently left in the building, and for which no alternative provision or arrangement has been made, automatically become the property of the new owner upon completion of the sale or gift. If immediate disposal is not possible, the DFO should give consideration to the storage of surplus contents in the meantime. Some dioceses have a furniture store and this would be the obvious place to keep such items pending their disposal.

5.6 There is a variety of methods of disposal, viz:-

- (a) transfer to other churches in the locality;
- (b) through the Commissioners' Central Contents Registrar;
- (c) retention in the closed building (see paragraph 5.4);
- (d) sale for secular use.

The DFO's first priority in considering disposal should be the preservation of items of artistic or historic interest through retention in the closed building, use in another church, or deposit in the diocesan treasury or local museum. The DFO must also give consideration to the need for listed building consent to be obtained (if appropriate) before any fixtures or fittings are removed (see Section 8).

5.7 When all arrangements for the disposal of all contents have been completed, the DMPC should forward to the Commissioners two copies of the inventory, duly annotated to show how they will be dealt with, and one copy to both the SAC and the diocesan records office. The bishop should, subject to any provisions of the scheme, give directions as to the application of any sale proceeds deriving from the disposal of the contents (s.76(2) of the 2011 Measure).

5.8 The 2011 Measure contains separate provision (s.76(1)) for dealing with the font, altar and Communion plate in accordance with directions of the bishop, unless the scheme directs otherwise. Such items are usually transferred by the DBF to another church in the area of the benefice, failing which they might go to another church or chapel in the diocese, as directed by the bishop. The DMPC should advise the Commissioners on any particular requirements for dealing with these items in the scheme itself so they can include the appropriate wording.

5.9 Bells are part of the fabric of the building and their removal requires listed building consent. They should not be taken down during the use-seeking period and left to stand on the floor. The bells adviser of the DAC or the bells sub-committee of the CBC should be consulted by the DFO about the quality of the bells and arrangements put in hand for their disposal as soon as the future of the building has been settled. Often it may be preferable for bells to be retained in situ but, where this is not possible, the Redundant Bells Committee of the Central Council of Church Bell Ringers is prepared to arrange for removal and storage (at no cost) and to assist in finding new homes for them.

5.10 Old bells should be preserved whenever possible and not sold as scrap except as a last resort or where an expert has indicated this to be the most suitable course.

- 5.11 The disposal of any tombstones, monuments and memorials in the closed church building or land belonging to it is governed by separate provisions in Schedule 6 of the 2011 Measure. The headstone (tombstone), monument or memorial is the property of the person who erected it or affixed it in the church. On his or her death, ownership is generally thought to pass to the heir(s) of the person(s) commemorated. The 2011 Measure provides that where a closed church building and/or churchyard are to be disposed of, provision should also be made for the tombstones, monuments and memorials. This can include leaving them in situ.
- 5.12 Once the future of the tombstones, monuments and memorials is decided, the bishop will, after consulting the DAC, issue directions stating how they are to be dealt with. This is subject, where appropriate, to listed building consent being granted for any to be removed (see paragraph 8.9). These directions form the basis of the "tombstone notice", which either the Commissioners or the DBF publish in a local newspaper, advertising also the rights of personal representatives or relatives, after giving the appropriate notice in writing, to remove the tombstone, monument or memorial themselves within a set period. Where the tombstone, monument or memorial commemorates a person interred in the building or land less than 25 years before the date of the notice, a separate notice must be served on the personal representatives or next of kin (or in the event of their being untraceable, any known relative) of the deceased.
- 5.13 No removal or disposal of any tombstone, monument or memorial should be effected until the requirements of the 2011 Measure have been complied with and, if appropriate, listed building consent granted. Disturbance should be avoided wherever possible and the Commissioners (in the case of a sale or gift) or the DBF (in the case of a lease) should be consulted if removal is required either to facilitate a new use or prior to demolition.
- 5.14 There is no need to remove tombstones etc. where a closed church building is to vest in the CCT or if, without any structural alteration, it is to be used as an institutional chapel, a private chapel, a monument, or for worship by another Christian body. This exemption applies also to any land annexed to the closed building and also to any land which is to be appropriated to use as part of a burial ground.
- 5.15 Doubt is sometimes expressed over the status of windows, whether stained glass or plain. These are definitely part of the fabric of a church building closed for regular public worship. They are not part of its contents. Any proposals for the disposal of the building, therefore, also cover their future. If the building is listed, the windows are covered by the listing and proposals for their removal (or alteration) will require listed building consent, except where this is consequent upon demolition pursuant to a scheme under the 2011 Measure (see also Part 4).

PART 3

The Churches Conservation Trust

6. Churches vested in the Churches Conservation Trust

- 6.1 Where a church vests in the Churches Conservation Trust (CCT) so, usually, do its contents.
- 6.2 The DBF should consider, in consultation with the DAC and CCT, whether the plate should vest in the Trust, go to another church or to the diocesan (Cathedral) treasury or a local museum. The Commissioners should be informed of the decision so that they can make the appropriate provision in the pastoral church buildings or pastoral (church buildings disposal) scheme.
- 6.3 When the relevant vesting scheme takes effect the churchwardens (in the case of a pastoral church buildings scheme) or the DBF (in the case of a pastoral (church buildings disposal) scheme) should formally "hand over" the contents, including any removed temporarily for safe-keeping, to the CCT (in practice to the CCT's regional officer) and at the same time provide the CCT with a copy of the annotated inventory. Copies of the inventory, annotated to show the new location of all items, should also be sent to the Commissioners (two copies) and the SAC.
- 6.4 Where contents of closed churches to be vested in the CCT have been removed to another church or one of the other repositories mentioned in paragraph 6.2, the scheme may, if appropriate, give the CCT the power to recover such items.

PART 4

Secular Controls

- 7. Buildings no longer in Ecclesiastical Use and Listed Building and Conservation Area Controls**
- 7.1 The total or partial demolition of a closed Church of England church building pursuant to a pastoral church buildings or pastoral (church buildings disposal) scheme under the 2011 Measure is exempt from listed building or conservation area controls (although the Commissioners have undertaken to accept the Secretary of State's recommendation following a non-statutory inquiry into such a proposed demolition).
- 7.2 In all other cases, a church becomes fully subject to the normal listed building and conservation area controls once a declaration of closure for regular public worship takes effect.
- 7.3 These controls also extend to the church's fixtures and fittings on which further advice is given in Section 8. It is good practice for any DBF (or DFO) considering their removal to consult the local planning authority about the application of the secular controls. Removal should usually be avoided where it cannot be achieved without some destruction.
- 7.4 The permanent disposal of fixtures of listed closed church buildings in the use-seeking period (other than as described in paragraph 7.1) is subject to listed building control if the building is listed. No such disposal should, therefore, be undertaken until listed building consent has been obtained (in addition to the requisite faculty if this occurs during the use seeking period).
- 7.5 If a closed church building is appropriated to an alternative use under a pastoral church buildings or pastoral (church buildings disposal) scheme, it is subject to the secular listed building and conservation area controls (but not faculty).
- 7.6 Where a closed church is vested in the CCT it remains consecrated but is exempt from faculty jurisdiction for the duration of the vesting. It is, however, subject to the secular controls.
- 7.7 Where a church has not been used for worship for some years but has not been declared closed for regular public worship it is legally still within the parochial system and may be argued to be subject only to ecclesiastical legislation (see also paragraph 2.2). However, the local planning authority may argue that it is also caught by the secular listed building and conservation area controls as a building no longer in ecclesiastical use. If any relevant works are proposed the DBF is advised to discuss with the planning authority whether secular controls might apply. Where the local planning authority does argue that secular controls are applicable, the DBF is advised to seek listed building consent for relevant works.

8. Contents, Fixtures and Fittings

It is not always easy to be sure whether a particular item within a closed church building is or is not covered by listed building control. We are grateful to English Heritage for the following advice on this issue.

- 8.1 Once a building is listed, only the address of the building formally constitutes the entry in the statutory list. There will also be a brief description of the building, for identification purposes, but the fact that the description does not refer to specific features such as statuary must not be taken as an indication that such features are not protected by the listing.
- 8.2 A listed building is defined as including:-
- (a) any object or structure fixed to the building
 - (b) any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1 July 1948.

This is the statutory definition which determines whether a particular item is part of a listed building. A less formal definition would be that if removal requires a chisel or screwdriver or more drastic means then the item is surely fixed.

- 8.3 The position with respect to whether something is a "fixture" (real property) or a "fitting" (chattel) is less clearly defined. However, if it can be shown that the intention of the person who introduced the object was to incorporate it as part of the overall design on a permanent basis into the infrastructure of the building (or the grounds), the object is highly likely to be a fixture. But the law also accepts that objects not physically fixed can in some circumstances be "fixtures".
- 8.4 Works of art which were placed in a building primarily to be enjoyed as objects in their own right, rather than forming part of the building or land, are not likely to be properly considered as fixtures. Each case must be treated in the light of its own facts, and if any relevant works are proposed the DBF is advised to consult its local planning authority first. The same consideration applies where a structure or building forms part of land which surrounds or is connected to or serves a listed building. This could cover free-standing statues unless they were acquired and installed after 1 July 1948.
- 8.5 In considering whether to grant listed building consent the local planning authority, or the Secretary of State for Communities and Local Government, is required to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The local authority also has control over how the proposals will affect specific fixtures and it can condition its consent to preserve particular features of the building either as part of it or after severance from it.
- 8.6 These provisions apply to all grades of listed building and, once listed, the entire structure is covered by the legislation including the whole of the interior. This control is exercised over both internal and external works that would affect a building's

special interest, whether or not the particular feature concerned is specifically mentioned in the list description. Alterations to, or the removal of, such features would almost certainly require listed building consent but, if there is any doubt, the DBF is advised to consult the local planning authority.

8.7 In assessing whether listed building consent is needed, there are certain questions that are relevant in determining whether objects are, or are not, part of the overall design or historic interest of the building. These might include the following (which are not intended to be conclusive):-

- (a) What is the nature of the object or structure? By whom was it designed? Who commissioned it?
- (b) What is its relationship to the building, its designers, its patrons and owners, and what does it tell you of its time and place in the patronage system?
- (c) Is it documented or illustrated in any historic form? Is it associated with any historic personage or event?
- (d) How many comparable examples survive? Is this a typical or atypical example of its type?
- (e) When was it acquired and by whom? What is its provenance and context? Was it acquired as part of the conveyed property?
- (f) Has it been moved previously within this or any other building? Is its present location related specifically to other features within the listed building? Will its removal have a detrimental effect on its context?
- (g) Has it been exempted from Inheritance Tax?
- (h) What is its condition - has it been restored?
- (i) Does it have an intrinsic or extrinsic value?

Some of these criteria might not be relevant to features in or belonging to a closed church building. Extracts from Pevsner, the CBC report and the brief description attached to the entry in the statutory list may all provide useful pointers to features of architectural or historic interest.

8.8 English Heritage advise that the following are all covered by the listed building legislation by virtue of being physically attached to the building:-

Panelling, chimney-pieces, staircases, over mantels, window and door surrounds, door pelmets, dadoes, cornices, fireplaces, windows, balustrades, windvanes, chimneys, floors and wrought-iron, stone or wooden balconies.

This category will also include:-

Paintings on panels, wood, walls, ceilings, plaster or canvas that are integrated into the structure itself, plasterwork, swags, screens, shutters, and stained glass that are physically fixed, and, where incorporated into the fabric of the building, sundials, bookcases, plaques, sconces, pier-glasses, busts, light fittings, fenders, and wood, plaster, or stone reliefs.

8.9 Objects, therefore, such as monuments or memorials which are incorporated into the fabric of the building are covered by the legislation and consent will be required

before they can be removed or altered. The DBF or the prospective user should apply for the necessary consents once the Bishop's directions in this respect are obtained (see paragraph 5.12). If there is any doubt as to what is covered by the listed building legislation, the DBF or the prospective user should consult the local planning authority.

- 8.10 These requirements apply to churches which have been declared closed for regular public worship and are either in the use-seeking period, or have been appropriated to an alternative use pursuant to a pastoral church buildings or a pastoral (church buildings disposal) scheme under the 2011 Measure. They may also apply to churches which have not been used for some time but have not been declared closed for regular public worship (see paragraph 7.7). In those cases the DBF is advised to consult the local planning authority.
- 8.11 It is a criminal offence to remove objects which are part of a listed building without the local planning authority's consent where the removal alters the special architectural or historic interest of the building. However, it is a defence to show that the removal of the object(s) was "urgently necessary" in the interests of safety or for the preservation of the building. It is also open to either the local planning authority or the Secretary of State to serve a listed building enforcement notice to require the return of the object. The fact that the object may have been removed or repositioned at some time in the past does not itself exempt the owner from applying for consent to carry out works in relation to it.
- 8.12 These requirements do not apply to churches still in regular use for public worship.

Summary of procedure for DFOs in dealing with contents

Action following declaration of closure for regular public worship	<ul style="list-style-type: none"> a) Check inventory in consultation with churchwardens and prepare typed list of contents. b) Arrange temporary removal for safekeeping if necessary of items of value and any contents which may suffer through closure of the building (vestments, hymns and prayer books not required by the parish should be made available for re-use elsewhere). c) Arrange with e.g. County archivist for the examination of all parochial records and the transfer of the parochial registers and records. Seek advice from diocesan music adviser on choir books or sheet music. d) Annotate parish inventory and typed list of contents indicating location of any items removed for safekeeping. e) Forward 2 copies of typed list to the Commissioners and notify the interested parties mentioned in Section 61(4) of removal of any items. <p>Note: Check that the building is left on a tidy condition and all obsolete notices and rubbish are removed.</p>
Action where church is to vest in the CCT	<ul style="list-style-type: none"> a) Consider in consultation with DAC and CCT whether plate should vest in the CCT, go to another church or the diocesan treasury or a local museum; inform the Commissioners accordingly for inclusion in the pastoral (church buildings disposal) scheme. b) When the scheme takes effect arrange formal 'handover' of contents to CCT, including any temporarily removed for safekeeping. c) Forward annotated copies of contents list to Commissioners (2 copies) and SAC.
Action where church is to be appropriated to new use or demolished	<ul style="list-style-type: none"> a) Take account of SAC's recommendations, arrange valuation of contents and consult DAC on their disposal. b) Consult appropriate bodies on disposal of organs, bells and, if necessary, stained glass. c) Prepare proposals for disposal of contents for approval by bishop. d) Notify Commissioners of any specific provision for disposal of the font, communion table(s) and plate for inclusion in the pastoral (church buildings disposal) scheme. e) Arrange for transfer of any items earmarked for other churches and storage of items not immediately required elsewhere. f) Arrange for sale of surplus items for which no other provision can be made. g) Notify the Commissioners of any items for disposal through the Central Contents Register. h) When scheme takes effect and disposal of contents is completed, forward copies of the contents list, duly annotated, to the Commissioners (2 copies) and the SAC.

Specimen Outline Report on Disposal of Contents from a Closed Church

To: CBC/CC

Items Transferred Elsewhere (including Plate):	List each item and new location.
Remaining Furniture and Furnishings:	List items to remain in situ on the sale/lease of the building.
Monuments and Memorials:	List monuments and memorials and provide inscription details. Indicate whether they are to remain in situ or, if removed, their new location.
Stained Glass:	List details and position of stained glass. Particularly where any glass is removed, provide a photographic record.

Note: Include, where appropriate, identifying photographs of items of particular artistic or historic worth.

Appendix 2.7 – The Theology of Mediation: Some Brief Comments

In the New Testament a mediator (Greek, *mesites*) is one who “stands between” two opposing parties, usually to remove disagreement, misunderstanding, or alienation, and to promote a relationship of mutual understanding, acceptance, and reconciliation. The Mediator represents each party to the other. In the Epistle to the Hebrews Jesus Christ mediates between God and humankind. He shares in the human condition to represent humankind to God, and shares in the being of God to represent God to humankind. He mediates a new covenant, to establish the terms of the restored relationship (Hebrews 8:6; 9:15; 12:24). He is “Mediator” in 1 Timothy 2:5 and Galatians 3:19-20, and this becomes prominent in Calvin and the Reformers.

In the Old Testament Job cries out for a mediator, who will serve as a negotiator, arbiter, or umpire, and thus facilitate reconciliation between Job and God (Job 9:33). Such a negotiator will also interpret his case and defend his claims to innocence before a court (16:20-21). Job has become isolated from any who might understand his plea (19:13-19), and he longs for a mediator-helper (19:23-27). These themes draw on several Hebrew terms: *sah di*, advocate; *‘edi*, witness; and *sarsor*, negotiator, interpreter, broker.

The application to disagreements in contexts of pastoral or ecclesial affairs is clear. God wills restored relationships between humankind and God, and between human persons. Strong biblical traditions support the notion of calling in a “middle” (Greek *mesos*) party to represent each party to the other to interpret what may otherwise be misunderstood, and as a last resort perhaps to propose some kind of arbitration. In post-biblical Christian tradition to act as “go-between” (Greek *mesiteuo*) or mediator occurs frequently in the Church Fathers, including Origen, Chrysostom and Basil. Basil writes: “The complete elimination of suspicions and clashes... is impossible unless there be some trustworthy person to act a mediator (Greek *mesiteuo*) in the interest of peace” (Letters 156:1). A mediator may ensure that each side knows that it has been “heard”, and thereby facilitate acceptance, reconciliation, and ideally agreement.

Anthony C. Thiselton, 23rd March 2004

Appendix 2.8 – The Commissioners’ Church Buildings (Uses and Disposals) Committee’s role in relation to Closed Church Buildings Matters under the Mission and Pastoral Measure 2011

Introduction

1. The Church Buildings (Uses and Disposals) Committee (the CBUDC) is a statutory committee under the Mission and Pastoral Measure 2011 (the 2011 Measure) appointed by the Church Commissioners’ Board of Governors. It acts for the Board in matters relating to settling the future of church buildings closed (or to be closed) for regular public worship. The Committee comprises the Third Church Estates Commissioner (Chairman), four clergy and four lay people, and any such additional members as the Board shall from time to time appoint. The Pastoral and Closed Churches Secretary acts as Secretary to the Committee and is in turn supported by the staff of the Closed Churches Division. The Commissioners’ main functions in relation to closed churches work are:
 - ❑ **Casework:** Settling the future of all church buildings closed for regular public worship;
 - ❑ **Quasi-judicial:** i.e. to consider representations against provisions in pastoral church building schemes to settle the future of churches to be closed and against pastoral (church buildings disposal) schemes;
 - ❑ **Advisory:** to produce in consultation with dioceses a Code of Recommended Practice to the 2011 Measure and to issue amendments from time to time as and when legislation or general policy changes.
2. This note deals with the CBUDC’s quasi-judicial function under the 2011 Measure and explains the legal basis on which it operates. The flowcharts in the Code in part summarise the procedures followed by the Commissioners when they receive representations.
3. The 2011 Measure provides the legal machinery for pastoral reorganisation, including the processes for closing church buildings which are no longer required for public worship and for settling the future of closed church buildings. Part 6 provides that the final decision on the future of a closed church rests with the Commissioners (but this is subject to secular planning in respect of new uses, possible non-statutory inquiries in certain contested demolition cases and the right to seek leave to appeal to the Judicial Committee of the Privy Council where the declaration of closure and future of the building are both dealt with in the same scheme). The principal possible outcomes are:-
 - ◆ disposal for a suitable alternative use
 - ◆ vesting in the Churches Conservation Trust (“the CCT”) for preservation
 - ◆ demolition and disposal of site.

4. The choice between these options is not unrestricted; suitable alternative use must normally be considered first, but where a church is unlisted or situated outside a conservation area there is no requirement to seek an alternative use before proposals for demolition can be put forward.

Settling the Future of Closed Church Buildings

5. The future of a closed church can be settled via a one-stage procedure at the time of closure in a pastoral church buildings scheme or, following closure, in a subsequent pastoral (church buildings disposal) scheme. Section 3 of the 2011 Measure sets out the functions of the Diocesan Mission and Pastoral Committee (DMPC) and the matters to which it must have regard in carrying any of these out functions. Included in the DMPC's duties under S.3(3)(e) is:

“in the case of listed buildings or buildings in a conservation area, to make, in accordance with section 55, every endeavour to find a suitable alternative use or suitable alternative uses for churches which are proposed to be closed and buildings which have been closed for regular public worship in the diocese under a pastoral church buildings scheme and, in the case of any other such building, to develop proposals for the suitable alternative use or uses of the building or for the demolition of the building and the disposal of its site.”

Pastoral church buildings schemes

6. For details of the process of closure and the role of the Commissioners' Pastoral Committee - see Volume 1 of the Code of Recommended Practice to the 2011 Measure. The CBUDC's involvement arises where a draft pastoral church buildings scheme includes provisions under sections 58 or 59 of the 2011 Measure to settle the future of the building at the time of closure.
7. Where the DMPC develops such proposals, and before a draft pastoral church building scheme under s.58 can be published, the Commissioners have to be satisfied with the proposals for the future of the building to be closed; similarly they have to be satisfied with respect to a scheme under s.59 that either a suitable use for such a building is available (s.59(1)); or, where no such use is available, that after consultation with the SAC, the church is of such historic interest or architectural quality that it ought to be preserved by the CCT and the CCT will have the resources to repair it (s.59(2)); or be satisfied with the proposals for the future of an unlisted building outside a conservation area (s.59(4)).
8. Publication by the Commissioners of a draft scheme under section 58 or 59 means that the CBUDC (or staff under delegated powers) have taken a prima facie view that they are satisfied with the proposals being made in the draft scheme for the future of the building to be closed, subject to consideration of any representations.
9. Any representations received in respect of the proposed closure are considered by the Pastoral Committee, while representations in respect of the provisions for the future of the building (if closed) are considered by the CBUDC. Where representations relate to both aspects then both Committees will be involved, each considering the aspect relevant to its remit (but the CBUDC's consideration will only be required if the Pastoral Committee's decision is that the draft scheme should proceed

notwithstanding the objections to the proposals for closure). The consideration of such representations is covered in Paragraph 12 onwards.

Pastoral (church buildings disposal) schemes

10. The 2011 Measure provides for a use seeking period of up to two years following closure of a church building, by the end of which the Commissioners are required to prepare a pastoral (church buildings disposal) scheme to settle its future (unless they have extended this period after consultation with the Diocesan Board of Finance and with the consent of the bishop). The principal possible outcomes are again as set out in Paragraph 3 and the Commissioners take a prima facie view on the provisions they make in the draft scheme to settle the building's future. Where the DMPC reports that it has been unable to find a suitable use for the building, or the Commissioners otherwise consider that such a use cannot be found, then the Commissioners will provide in the draft scheme either to vest the building in the CCT, or for its demolition and the disposal of the site.
11. There is no explicit statutory guidance in the 2011 Measure as to suitability of alternative use, but the Commissioners have indicated in the Code of Practice to the 2011 Measure various types of use which might be regarded as suitable in principle, although not necessarily for each building. Under s.98 the DMPC has to have regard to the advice set out by the Commissioners in the Code of Practice.

The consideration of representations by the Commissioners

12. It is the CBUDC's task - delegated to it by the Board of Governors - to decide whether or not a pastoral (church buildings disposal) scheme should proceed, having considered any representations that are not otherwise resolved (see also Paragraphs 6 to 9 in respect of pastoral church buildings schemes).
13. However, where any representation by way of objection is received by the Commissioners with respect to a draft pastoral (church buildings disposal) scheme or to provisions relating to closed churches in a draft pastoral church buildings scheme where the use of a closed church building for non-Christian religious purposes is proposed, the Committee shall (under its terms of reference): –
 - (a) before considering the representation, consult the Board;
 - (b) in determining whether the scheme should proceed notwithstanding the representation, pay particular regard to the views expressed by the Board; and
 - (c) report its decision to the next following meeting of the Board.
14. Under S 24(4) and S 62(8) of the 2011 Measure the Commissioners may, if they think fit, afford an opportunity to any person, whether (s)he has made written representations or not, to make oral representations with respect to the draft scheme or order. Their practice is for this to take place in a formal public hearing by the Committee. However it is also open to the Committee to appoint a Sub-Committee to visit the area.

15. While the CBUDC will consider issues raised in representations regarding closed church buildings matters on their merits, it will in general, when considering such representations, look both to the criteria to which the DMPC is required to have regard in S.3 when carrying out any of its functions, and the duty of the DMPC in respect of churches which are proposed for closure or church buildings which have closed, as set out in Sections 3(e) and 55. The CBUDC will also have regard to the relevant criteria in Sections 58, 59 or 63 on which the Commissioners have to be satisfied when providing for the future of a closed church building. (These include the need for the Commissioners to be satisfied as to the suitability of any proposed use for the building, or to be otherwise satisfied with the proposals being made for settling its future.)
16. The 2011 Measure Code of Recommended Practice deals with these and other matters and under S.98 the DMPC has to have regard to the advice set out by the Commissioners in the Code.
17. Subject to these general tests the CBUDC is entitled, as indicated above, to take a view on the merits or the points raised in the representations.
18. Where a scheme provides for a suitable alternative use the CBUDC will take account of the need for any secular planning or listed building consents. Similarly, when considering representations regarding proposals for demolition which may result in a referral to the Secretary of State for a possible non statutory public inquiry (NSPI), the CBUDC will take account of the relevant issues which would need to be addressed in the context of any such NSPI.
19. This is without prejudice to the General Duty in Part 1 of any person or body carrying out functions under the 2011 Measure “to have due regard to the furtherance of the mission of the Church of England”.
20. In respect of a pastoral (church buildings disposal) scheme, under section 62(7) the CBUDC may decide not to proceed with it or to amend it or to proceed with it in its original form. The Commissioners decision in this respect is final (subject to the arrangements for consulting the Secretary of State in possible NSPI cases).

Leave to Appeal

21. There is no right to seek Leave to Appeal from the Judicial Committee of the Privy Council against the Commissioners' decision in respect of a pastoral (church buildings disposal) scheme, but there is in the case of a pastoral church buildings scheme under s.58 or 59. In various Judgements delivered by the Judicial Committee of the Privy Council their Lordships have made it clear that in general "they will not, unless for irregularity of procedure, for excess of jurisdiction, or on cogent evidence of erroneous judgement, refuse to confirm a Pastoral Scheme" (Holy Trinity Birkenhead PCC v the Church Commissioners, May 1974). In turning down an application for leave to Appeal under the Pastoral Measure 1983 in 2012 the Judicial Committee for the first time gave reasons for its decision and indicated that it would only grant Leave to Appeal “if it is arguable that the decision was manifestly wrong or there was an error of principle or serious procedural irregularities.”

22. In theory anyone who had made representations could seek a Judicial Review of the CBUDC's decision but the grounds on which a Judicial Review might be granted are, however, limited and broadly similar to those set out in the Birkenhead Judgement.
23. It is clear from the above that, before agreeing to the making of a scheme notwithstanding adverse representations or subsequently to defend an appeal (if Leave were given for the same in respect of a pastoral church buildings scheme), the CBUDC need to be satisfied that the case has been handled in accordance with (a) the procedures and criteria laid down in the 2011 Measure and (b) with administrative law and best administrative practice.

Administrative Law/Judicial Review

19. In considering matters under the 2011 Measure, the Commissioners have a duty to the public and not just to those who make representations. Judicial Review is not concerned with the merits of a decision (unless it is irrational), but the process by which the decision was made. The grounds for an action have been classified as illegality, irrationality and procedural impropriety. The Human Rights Act is now also a factor, with any Court being under a positive duty to give effect to the European Convention on Human Rights.

Illegality

20. The decision makers must understand correctly the law that regulates their decision and must give effect to it. An action claimed to be *ultra vires* or an abuse of power would provide material for a review.

Irrationality

21. This is the test of reasonableness. A review could only succeed on this count if it could be demonstrated that the decision was one which no reasonable tribunal could have reached on the information before it.

Procedural Impropriety

21. This covers a variety of cases, most importantly those which involve a breach of "natural justice". There is no universal definition of this expression, but it is generally understood to mean a duty to act fairly - that is to arrive at a decision fairly, not necessarily to arrive at a fair decision. This would include the principles of listening to both sides of the arguments and not being a judge of one's own cause. The "right to a fair trial" under the Human Rights Act reinforces this.

Church Commissioners for England

CODE OF CONDUCT

FOR COMMISSIONERS AND OTHERS WHO SERVE AS MEMBERS OF THE BOARD OF GOVERNORS AND ITS COMMITTEES

Introduction

The Church Commissioners work on behalf of the Church of England and are an integral part of Her Christian witness to the nation. Living out this witness implies that:

1. Members of the Board of Governors and its Committees ('members') must at all times
 - observe the highest standards of impartiality, integrity and objectivity in relation to the business and management of the Church Commissioners for England; and
 - be accountable to the General Synod and Parliament, and to the Church and public more generally for the activities of the Church Commissioners and for the standards of service it provides.

Standards in Public Life

2. All members must:
 - follow the Seven Principles of Public Life set out by the Committee on Standards in Public Life (as annexed);
 - comply with this Code of Conduct, and ensure that they understand their duties, rights and responsibilities, and that they are familiar with the function and role of the Board of Governors and/or of any of its Committees on which they serve;
 - not misuse information gained in the course of their service to the Church and public for personal gain, nor seek to use the opportunity of such service to promote their private interests or those of connected persons, bodies or other groups or organisations to which they belong.

Role of Members

3. Members have collective responsibility for the activities and decisions of the Board of Governors and/or the Committees on which they serve. They must engage fully in collective consideration of the issues, taking account of the full range of factors, including the statutory and other powers under which they operate and, in the case of Committees, any guidance issued by the Board of Governors. They must abide by the decisions reached.

4. Members will receive much information that has not yet been made public and is still confidential for proper reasons (e.g. matters awaiting final decision by the Board or a committee). Some members will receive information that must always remain confidential for proper reasons (e.g. commercial terms). Members must not breach such confidences.

Handling Conflicts of Interest

5. The purpose of these provisions is to avoid any danger of members being influenced, or appearing to be influenced, by their private interests (or the interests of those persons or bodies they are closely connected with) in the exercise of their duties as a member.

Registration of Interests

6. All members should register in the Members' Register of Interests any personal interest which might influence their judgement or which could be perceived (by a reasonable member of the public) to do so.
7. In particular, members should register:
 - a) relevant personal direct and indirect pecuniary interests;
 - b) relevant direct and indirect pecuniary interests of close family members of which members could reasonably be expected to be aware; and
 - c) relevant personal non-pecuniary interests, including those which arise from membership of Church, and other bodies, groups or organisations.

In this paragraph:

“relevant” interest, whether pecuniary or non-pecuniary, and whether direct or indirect, means any such interest which might influence the judgement of a member, or which could be perceived (by a reasonable member of the public) to influence his or her judgement, in the exercise of his or her duties;

“indirect pecuniary interest” means an interest which arises from connection with bodies which have a direct pecuniary interest; and

“close family members” include spouses, personal partners, parents, children (adult and minor), brothers, sisters and the personal partners of any of these.

8. The Members' Register of Interests should be kept up-to-date and be open to public inspection (and such availability be publicised at least annually).

Oral declaration of interests

9. An oral declaration of a relevant interest should be made at any meeting of the Board of Governors or of its Committees (and notwithstanding its inclusion in the Members' Register of Interests) if it relates specifically to a particular issue under consideration and should be recorded in the minutes of the meeting.

Withdrawal from meetings

10. If the outcome of any discussion at a meeting of the Board of Governors or of any of its Committees could have an effect on any relevant pecuniary interest of a member or person or body connected to a member, or an effect on a non-pecuniary interest that is more than the generality of those affected, that member should not participate in the discussion or determination of the matters that might affect that interest and should withdraw from the meeting.

Lobbying of other members

11. A member should not seek to lobby fellow members about a matter in which he or she (or a connected person or body) has a relevant interest.

Gifts and Hospitality

12. Members must treat with great care any offer or gift, favour or hospitality that is made personally and in connection with their service as a member. Members should only accept gifts of nominal value.
13. Members should only accept hospitality in connection with their service as a member where it is commensurate with the style, presentation and value which it would be appropriate for a public body to provide on a reciprocal basis when acting as host.

Adopted by the Board of Governors on 25 May 2000

The Seven Principles of Public Life

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands this.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

Appendix 2.9 - Covenants to be included in the Disposal of a Closed Church Building

Most of these should usually be included but some may be adapted to meet the requirements of the individual case. They are set out here in the context of a freehold transfer but should be adapted for inclusion in any leasehold disposal (see [18.18 - 18.24](#) for further explanation).

In any transfer the following paragraphs are included to explain the special force of the covenants under the Measure.

- (i) As provided by Section 75(1) of the Mission and Pastoral Measure 2011 the following covenants on the part of the Transferee shall be enforceable as if the Transferor were the owner of the adjacent land and the covenants were expressed to be entered into for the benefit of that adjacent land and (in the case of covenants of a positive nature) as if they were negative.
- (ii) The burden of the following covenants is intended to bind and binds each and every part of the property into whosoever hands it may come.
- (iii) A covenant not to do any act or thing includes an obligation not to permit or suffer that act or thing to be done by another person.
- (iv) The Transferee [jointly and severally] covenants with the Transferor:

The covenants below must be included in every case

- (aa) Not to use the property for any purpose other than as/for
[the text of the use clause in the Scheme is followed here and may not be amended] and ancillary purposes;
- (bb) Not to use the property for any illegal or immoral purpose or for any purpose which may be or become a nuisance annoyance or disturbance to the Transferor or which shall (in the opinion of at least two of the following: the bishop for the time being of the diocese in which the property is situated, the dean for the time being of the cathedral which is the seat of the bishop and the archdeacon for the time being of the archdeaconry in which the Property is situated) be offensive to the principles and practice of the Christian faith;
- (cc) Not to demolish any building nor to erect any new or additional structure or building on the property;
- (dd) Not to disturb any human remains interred in the property;

The covenants below will need to be adapted to the circumstances of the case

- [(ee) To ensure the maintenance in a prominent position of a notice board of a size and type to be approved in writing by the Transferor indicating that the property is now used for the purpose stated in subclause (aa) *[and displaying

the conditions of access for people wishing [to visit the former church or] to tend particular graves in the property;]

- [(ff) Within [*usually six months and not usually longer than 2 years*] months of today's date to carry out to the satisfaction of the Transferor's surveyor the works necessary to make all buildings on the property wind – and watertight and thereafter to keep such buildings in the like condition and to such satisfaction;]
- [(gg) Within [*a maximum of two years is usually suggested*] years of today's date to carry out and complete to the satisfaction of the Transferor's surveyor the works shown on the plans numbered already submitted to and approved in writing by the Transferor;]
- [(hh) Not to make any architectural or structural changes (including, for the avoidance of doubt, any alteration to or the removal of any stained glass) in any building on the property except in accordance with plans previously submitted to and approved in writing by the Transferor;]
- [(jj) Not to damage any tombstone monument or memorial in the property nor, without the Transferor's consent, to remove or disturb any such [after consultation with the Commonwealth War Graves Commission];]
- [(kk) Not to permit or allow use of the property for the solemnization of marriages under section 26(1)(bb) of the Marriage Act 1949 or as a place at which two people may register as civil partners of each other under section 6 of the Civil Partnerships Act 2004 or under any other legislation for the time being in force amending or replacing the said Acts;
- [(ll) To give access at reasonable times to all persons wishing [to visit the former church or] to tend particular graves in the property, provided such persons have made prior written application to the Transferee;] [and to keep unobstructed by undergrowth overgrowth rubbish or other obstacles the access to any war grave];]
- [(mm) Within 3 months of today's date to erect to the reasonable satisfaction of the Transferor's Surveyor [a stockproof post and wire fencing] along the [.....] boundaries of the property and thereafter to maintain the same in good repair and condition to the reasonable satisfaction of the parochial church council for the parish in which the property is for the time being situated;]
- [(nn) Not to grow anything on the property which may weaken or undermine the structure of any building or wall on the property nor to allow any trees or shrubs within 3 metres of any such building or wall to grow to a height greater than 1.5 metres;]
- [(oo) To give access at reasonable times and on reasonable notice to the Transferor's surveyor to enable him to inspect the works undertaken by the Transferee in accordance with these covenants;]

Covenants to be included in the disposal of the Site of a Closed Church Building

These covenants are usually included but some may be adapted to meet the requirements of the individual case. They are set out here in the context of a freehold transfer but should be adapted for inclusion in any leasehold disposal (see [18.18 - 18.24](#) for further explanation).

In any transfer the following paragraphs are included to explain the special force of the covenants under the Measure.

- (i) As provided by Section 75(1) of the Mission and Pastoral Measure 2011 the following covenants on the part of the Transferee shall be enforceable as if the Transferor were the owner of the adjacent land and the covenants were expressed to be entered into for the benefit of that adjacent land and (in the case of covenants of a positive nature) as if they were negative.
- (ii) The burden of the following covenants is intended to bind and binds each and every part of the property into whosoever hands it may come.
- (iii) A covenant not to do any act or thing includes an obligation not to permit or suffer that act or thing to be done by another person.
- (iv) The Transferee [jointly and severally] covenants with the Transferor:

Where the use of the site is set out in the scheme:

- (aa) Not to use the property for any purpose other than as/for [*the text of the use clause in the Scheme is followed here and may not be adapted*] and ancillary purposes;

Where no limitation of use is provided in the scheme it may be important to include:

- (aa) Not at any time to use or permit to be used the said property or any part thereof or any buildings erected thereon as or for:-
 - (i) a place of worship school mission room or institute for or under the control of any religious body
 - (ii) a theatre cinema betting shop sex shop funfair dance hall or other place of entertainments or for sport or amusement or any purpose connected with the same

In every case

- (bb) Not to use the property for any illegal or immoral purpose or for any purpose which may be or become a nuisance annoyance or disturbance to the Transferor or which shall (in the opinion of at least two of the following: the bishop for the time being of the diocese in which the property is situated, the dean for the time being of the cathedral which is the seat of the bishop and the archdeacon for the time being of the archdeaconry in which the Property is situated) be offensive to the principles and practice of the Christian faith;

Include in all cases where the land is buried or where it is not known if the land is buried

- (cc) Not to disturb any human remains interred in the property;

Include in cases where tombstones, monuments or memorials are being retained on the site

- (dd) Not to damage any tombstone monument or memorial in the property nor, without the Transferor's consent, to remove or disturb any such [after consultation with the Commonwealth War Graves Commission];
- (ee) To give access at reasonable times to all persons wishing to tend particular graves in the property, provided such persons have made prior written application to the Transferee;] [and to keep unobstructed by undergrowth overgrowth rubbish or other obstacles the access to any war grave];

Where the site adjoins land which is retained in the ownership of the Incumbent or the DBF such as a parsonage or other clergy house consideration needs to be given to including these covenants adapted to reflect the relevant land ownership:

- (ee) Not at any time to allow permit or suffer any act deed matter or thing in or upon the property or any part thereof or in upon the buildings erected thereon which may be or become a nuisance annoyance or disturbance to [the incumbent for the time being of the benefice of or other relevant beneficial owner.] or which may tend to depreciate or lessen the value of the adjoining and neighbouring property [belonging to the said benefice] *adapt as may be necessary*;
- (ee) Not to erect any building on the property or any part thereof except in accordance with plans previously submitted to and approved in writing by the Transferor [(such approval not to be unreasonably withheld or delayed)];