

# Wider Use of Part or Parts of a Church Building

## A Guide to Section 68 of the Mission and Pastoral Measure 2011

*(The text of this Guidance Note was updated in July 2011 to  
reflect the consolidation of the Pastoral Measure 1983 in the  
Mission and Pastoral Measure 2011)*

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## A Guide to Section 68 of the Mission and Pastoral Measure 2011

The Mission and Pastoral Measure 2011 (the 2011 Measure) consolidated parts of the Dioceses, Pastoral and Mission Measure 2007 and other related legislation. This guide deals with the provisions which are now section 68 in the 2011 Measure, which were first introduced by the Pastoral (Amendment) Measure 2006.

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## **PREFACE**

Church buildings are first and foremost places of worship. Yet their very function as places where the Word of God is preached and the love of Christ proclaimed gives them an extra dimension, as places from which the people of God can reach out to others in all conditions of life, whatever their faith – or even if they have none. In England, churches are also ‘jewels in the crown’ of the historic environment; venues for concerts and drama; places to visit; and, increasingly, venues for community activity of many kinds. In recent years there has been an increasing recognition in many quarters that these types of wider use may be complementary to a church’s primary purpose as a place of worship, rather than opposed to it, and that they can provide a valuable means of bringing the church congregation and the wider community more closely together.

The Pastoral (Amendment) Measure 2006 (‘the 2006 Measure’) took this concept forward by providing 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 to be used primarily as a place of worship. This guidance aims to explain the background to this amendment (as now set out in section 68 of the 2011 Measure), what a parish has to do if it wishes to proceed under it, how to assess whether the provision will be of value to it and how to carry out the consultation required. It also gives examples of successful alternative uses.

The provisions of section 68 will not be suitable for use in all churches, or in all circumstances. They do, however, provide a tool which some may find of value and may enable wider uses for the benefit of the church and community. We hope you will find this guidance clear and helpful in making up your own mind about whether they can help your parish.

## INTRODUCTION

### 1. History of the Pastoral (Amendment) Measure 2006

- 1.1. The 2006 Measure<sup>1</sup> has its origin in the report of the Review of the Pastoral Dioceses and related Measures, *A Measure for Measures* (GS 1528)<sup>2</sup>, which was debated and accepted by the General Synod in February 2004. Relevant extracts from the report are reproduced in Appendix 1.
- 1.2. The report highlighted that many parishes are seeking wider uses for parts of their churches as a matter of outreach, as a response to community need and as a means of raising revenue for the continued mission of the Church in their area. More recently, the policy statement by the Church Heritage Forum, *Building Faith in Our Future*<sup>3</sup>, emphasised the great significance which church buildings can have, far beyond the worshipping congregation, and the need to simplify the administrative and legal systems relating to their use.

### 2. The changes made by the 2006 Measure

- 2.1. Until the 2006 Measure came into force, the greatest bar to facilitating a wider range of uses had been section 56(2) of the Pastoral Measure 1983 ('the 1983 Measure'), which had prohibited the sale, lease or other disposal of the whole or any part of a consecrated church other than under the 1983 Measure. The 2006 Measure changed the law to facilitate alternative use in cases in which parishes find that, if such use is to be possible, the intended user group needs to have a lease of the part of the church in question, rather than merely a licence (which could previously, and still can, be authorised under faculty). In many cases this will be because a lease, with its consequent security of tenure, is required to enable the user group to secure financial support from one or more public funding bodies (this being a common requirement of a number of such bodies). The difficulty up until 2006 was that a lease of part of a church could only be granted after the making of a scheme for partial closure under the 1983 Measure - a procedure that was not only long and complex but could also send the wrong messages about the future of the church building in question.
- 2.2. Section 56 of the 1983 Measure as amended by the 2006 Measure provided for an alternative possibility, by giving the chancellor of the diocese power to grant a faculty authorising the granting of a lease of part of a church – subject to the very important qualification that, taken as a whole, the church building will continue to be used primarily as a place of worship. This procedure sits alongside, but does not replace, the existing power to authorise a licence (which will also continue to be subject to the qualification that the church building will continue to be used primarily as a place of worship). In the case

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<sup>1</sup> 2006 No.2.

<sup>2</sup> Available from Church House Publishing at [www.chpublishing.co.uk](http://www.chpublishing.co.uk)

<sup>3</sup> Also available from Church House Publishing

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of a listed church this emphasis is of particular importance because alterations to the building can be authorised by a faculty alone and there is exemption from the need to obtain listed building consent or conservation area consent provided that the “primary use is as a place of worship.”<sup>4</sup>

- 2.3. Since the continued viability of the church building as a place of public worship must remain paramount, the 2006 Measure provided that both the purpose and the manner of any use of any part of the church building under a lease must not be inconsistent with the use of the premises primarily as a place of worship. Following the consolidation of the Pastoral Measure 1983 and parts of the Dioceses, Pastoral and Mission Measure 2007, section 68 of the Mission and Pastoral Measure 2011 (“the 2011 Measure”) now sets out this amended provision.<sup>5</sup>

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<sup>4</sup> This is known as “the ecclesiastical exemption”, see the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 2010 (SI 2010 No. 1176).

<sup>5</sup> The full text of section 68 of the 2011 Measure is contained in Appendix 2, with explanatory notes provided in Appendix 3.

## WHAT IS INVOLVED IN SEEKING AN ALTERNATIVE USE FOR PART OF OUR CHURCH?

3. **Safeguarding the continued primary use of the church as a place of worship**
  - 3.1. The purpose for which a church is built is for the worship of Almighty God. This is so whether it was built centuries ago or in more recent times. Use for worship is its essence or ‘primary purpose’. A church is recognised in law as “*a local centre of worship and mission*”<sup>6</sup> with the word worship rightly coming first. The building may be capable of being used for other purposes in addition to worship, but if the consequence of such other use would be that worship is reduced to a mere token, then the church would have ceased to fulfil that primary purpose.
  - 3.2. Any parish contemplating entering into an arrangement with a person or body desiring to occupy and use part of the church must from the outset of discussions keep in mind the ‘primary purpose’ of the church. As explained above, a lease is an alternative procedural means of facilitating the use of part of a church where a licence is not appropriate. However, the principles determining whether a proposed use is acceptable will be the same whether the chancellor is asked to grant a faculty authorising a licence or a lease. In the case of a lease the chancellor is expressly required<sup>7</sup> to “*ensure*” that, where part or parts are to be let, the building as a whole will still be used primarily as a place of worship.
  - 3.3. How the balance between use for worship and ‘non-worship’ can properly be kept is a question of fact to be decided in an individual case depending upon the size and layout of the building, the scale or extent of the sub-division proposed and the part or parts intended to be licensed or let for ‘non-worship’ purposes. The number of days each week during which outside bodies may use parts of the church will be relevant to this question of balance. For example, use during normal working hours from Monday to Friday may be acceptable but use on seven days a week, particularly if there is no separate access, could interfere with both regular worship and the use of the church for occasional services such as marriages, and could thus be unacceptable as interfering with the ‘primary purpose’.
  - 3.4. Some churches have already used a licence to enable an outside body to use part of the church (for example, for a nursery school). It will always be time well spent for a parish to contact one or more other parishes with experience of such use to find out what can be done before advancing too far down a particular route with a potential licensee or lessee.

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<sup>6</sup> Section 1 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991.

<sup>7</sup> By section 68(3) of the 2011 Measure..

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- 3.5. Any arrangement will be drawn to last for a substantial period of years (25 or 28 years, for example) and sometimes circumstances change over time. Parishes considering entering into such an arrangement therefore need to consider the long-term implications of what is proposed, including how the proposed use might be affected by future changes in the life of the parish. They must also bear in mind that a faculty will only authorise the use of the part of the church identified in the licence or lease permitted by the faculty. It will not therefore be open to the parish to agree to allow the licensee or lessee to use an additional part of the church, or to extend the times of user provided for in the documents, without obtaining permission to do so by way of a variation under s.68(7) or a new faculty. This is another way in which the 'primary purpose' of the church is safeguarded by the law.

### **4. Examples of types of wider uses that have been successful**

- 4.1. Many such wider uses are consistent with the mission of the Church. Examples of successful arrangements which have already been adopted include:
- the use of crypts for a variety of alternative purposes such as rehearsal space, for classes and social groups, nurseries and drop-in centres;
  - a similar variety of uses for vestries, including club rooms for teenagers, and use as a village community shop;
  - the use of a room attached to a church (with its own external access) as a community police base where surgeries are held regularly;
  - the use of other rooms in churches for a variety of charity and community groups and as community or internet cafes; and
  - (following reordering), multipurpose community spaces within the nave, used by schools and community groups and for exhibitions etc. (In one case the nave is used as a school hall, gymnasium and dining hall; in another the west end of the nave has been converted to provide two storey accommodation housing a charity shop, library and exhibition space; and in a third the altar has been placed centrally in the nave, with a kitchen installed in the south porch and the tower developed to provide a disabled access WC and vestry in its base and a meeting room at first floor level, thus enabling greater use of the church for meetings, a summer play scheme etc.)
- 4.2. Churches are already used regularly, therefore, often under licence, for a variety of community and related purposes. It is intended that the new powers under section 68 will facilitate this further in appropriate cases<sup>8</sup>.

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<sup>8</sup> For further illustrated examples see *Building Faith in Our Future* details in footnote 3 on page 4 above.

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### **5. Licence or lease or partial closure – which do we need?**

- 5.1. The advantage of a lease or a licence is that the church building remains consecrated and at the end of the permitted period of user, or its earlier termination for some legitimate reason, the part which was let or licensed can be used again for worship. (For example the congregation may have grown and need additional extra space.) In the interest of flexibility it may therefore be prudent to use a lease or licence in the first instance rather than seek a declaration of partial closure. However, there may be special circumstances relating to an individual church where partial closure is the better option. If so, section 68 does not prevent this course being followed.
- 5.2. Finally, none of the three alternatives of licence, lease or partial closure should be regarded as a panacea where the struggle facing a diminishing congregation realistically points in the direction of permanent closure of the church building.

### **6. Why the new powers to lease under faculty were needed**

- 6.1. While most of the types of use indicated above can be achieved under licence, there were cases in which this was not possible, and the partial closure procedures had to be used. In a number of examples this has been necessary to permit the leasing of parts of churches in order to accommodate the requirements of those providing funding for the projects concerned. This was the position in particular in relation to projects dependent on major external funding packages, often involving significant input from Lottery funding, where the funding bodies have required the applicant to hold a freehold or leasehold interest in the property.
- 6.2. One disadvantage of proceeding under the partial closure procedure, apart from the lengthy procedures it entails, is that the effect of closure is to ‘deconsecrate’ (i.e. remove the legal effects of consecration from) the part of the building concerned, so that when any lease comes to an end the part formerly leased cannot automatically revert to being part of the church. Furthermore, the signals which the closure provisions produce can be confusing to those beyond the congregation, even when the aim is to enable wider community use of a building that is to remain in use as a church for public worship.
- 6.3. The partial closure process also brings practical and legal difficulties by removing the closed part of the church from the ownership of the incumbent and transferring it to the Diocesan Board of Finance (‘the DBF’) for the purposes of leasing for the agreed use (see also paragraph 8.4 below).

### **7. Leasing under faculty**

- 7.1. The provisions of section 68 of the 2011 Measure enable a chancellor to grant a faculty authorising the incumbent to grant a lease of part of a church in use for a specified number of years, “*provided that ... the premises remaining*



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*unlet, together with the premises let, under any lease or leases granted ... are, taken as a whole, used primarily as a place of worship*". This procedure sits alongside, but does not replace, the chancellor's power to authorise a licence, and the latter possibility therefore remains available to be used when a lease is not required.

- 7.2. In such circumstances the chancellor will wish to satisfy him or herself that a proposal meets the above requirement, and that granting a lease under faculty is the appropriate way forward. A particular consideration is likely to be that the funding arrangements for the potential user - either by borrowing money or securing grant funding - require the security of a leasehold interest in the property.

### **8. Where using the closure provisions under the Mission and Pastoral Measure 2011 may still be appropriate**

- 8.1. Notwithstanding the power to authorise a lease under faculty, the partial closure route available under the 2011 Measure may still be appropriate in particular cases where, for example, the building taken as a whole is no longer to be used primarily for worship, or where it is considered that the part intended to be leased is no longer pastorally required and it is desirable that the Parochial Church Council ('the PCC') should no longer be responsible for its care and maintenance.
- 8.2. In such circumstances the relevant statutory requirements of the 2011 Measure will apply, and what is known as a 'pastoral church buildings scheme' will be required. Such a scheme declares the relevant part of the church closed for regular public worship, appropriates it to an alternative use (specified in the scheme) and, if this is the proposed course of action, empowers the DBF to lease that part (and possibly some annexed land) for such a use. Examples of alternative uses that might be specified include use 'for any ecclesiastical purpose of the parish and for educational, community and cultural purposes' or use for some specified purpose (e.g. 'nursery use' where there is a single proposed use solely as a nursery).
- 8.3. The closure process under the 2011 Measure involves quite different procedures from those required for a faculty and can be lengthy and complex, so it is **very important to establish at an early stage, if there is any uncertainty, which is the best course to pursue** to achieve the intended outcome (see paragraph 9.1 onwards below)<sup>9</sup>.
- 8.4. One effect of going down the partial closure route is that this will result in 'dual ownership' of the property, with the part continuing in use as a church remaining in the ownership of the incumbent, and the part closed likely to be vested in the DBF which will then grant a lease of it for the use authorised by the scheme. This means that it is important to clarify at the outset respective

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<sup>9</sup> Fuller details of the (partial) closure route can be found in the Code of Recommended Practice to the Mission and Pastoral Measure 2011, which is available on the Church Commissioners' website at: <http://www.ccpastoral.org>.

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responsibilities for repair and maintenance of the building so that these can also be reflected in the lease. The pastoral church buildings scheme itself will provide for the granting and reserving of rights of way etc. The part of the church declared closed for regular public worship will no longer be subject to the ‘ecclesiastical exemption’ from listed building control (see paragraph 2.2 above).

### **9. Considering the options and deciding on the way forward**

- 9.1. As already indicated, each proposal will need to be judged on its individual circumstances, and so it is important to take advice as soon as possible, when proposals are at a formative stage, on the most appropriate route forward.
- 9.2. The parish should first consult the diocesan registrar and then the Diocesan Advisory Committee (‘the DAC’) on whether what is proposed is likely to fall within the scope of the provisions for leasing under faculty. If it does, then the parish will need to take the necessary steps to initiate this process. The DAC should be approached through its secretary, who may be contacted at the diocesan office.
- 9.3. However, if there is any doubt on whether the leasing option is appropriate, and whether one of the alternatives outlined above should be pursued, then the registrar/ DAC secretary may consult the Diocesan Mission and Pastoral Committee. The Church Commissioners’ Pastoral and Closed Churches Department or the Church Buildings Council may also be consulted depending on the circumstances.
- 9.4. Because the procedures for leasing under faculty and for (partial) closure are quite different from each other, it is important to embark on the appropriate process from the outset, not least because of possible time constraints imposed by funding bodies. Early consultation can save a great deal of time and effort in the long run.

### **10. Initial consideration by the PCC– consideration of options - what do we want to achieve, financial implications, and how do we want to do it? Consultations in the parish**

- 10.1. Because all church buildings are different, the issues that give rise to consideration of wider use vary in all cases. Any project must have a clear vision, and it is important, therefore, for the PCC to be clear as to what the issues are for its church. Much valuable written material is available (see the bibliography at the end of this guidance), so it is important that the PCC reads widely on the issues early on, has discussions with the diocesan registrar, DAC secretary, archdeacon and such other diocesan officials as may be appropriate and learns from the experience of other churches. This is the case in all situations, whether a wider use can be accommodated with little change to the church building or whether significant building work is needed to permit the wider uses. There are also a range of organisations who can give advice on ‘capacity building’ to help parishes through the process.

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10.2. The issues that might be considered initially by the PCC are:

- **What are our parish and community needs?** This is a key question in any consideration of wider use, and needs to be considered in liaison with the whole community and representative groups. There are some sub-issues under this heading:
  - What partners (community groups, statutory bodies etc.) can be identified to develop and implement the proposal?
  - Are others providing similar facilities in the community? If so, what are the views of the bodies concerned?
  - What are the community's physical (e.g. medical, recreational, social) and material (e.g. shopping, financial and banking, car parking, refreshment) needs?<sup>10</sup>
- **Finance - does the project have a community or a financial impetus?** Does the project have an opportunity to bring in significant income, and so regenerate church life, or just contribute to the running costs? What about heating the building? What are the fund raising issues?
- **Has an audit of the church and its land been undertaken** to ascertain the resources available to the parish? Are there any under-used parts or areas (such as part of the nave, a crypt or part of the churchyard)? Has a statement of significance been prepared (which will be necessary as part of the faculty process)?
- **How can any such project develop the church as a centre of worship and mission and preserve the holiness of the place?**
- **Is the incumbent supportive and willing to drive the project forward?**

10.3. Alongside consideration of such issues, it is vital to talk to diocesan officials, to visit other churches where wider use has been successful, and to learn from the experience in other places. But it must always be borne in mind that each church is unique, and the issues will be entirely different in each parish. So any 'copycat' scheme probably won't work. Neither will a scheme devised by church people to impose on the community. There needs to be a patient process of discussion with the entire community to discern its needs, buttressed by prayer.

10.4. At this stage consultation needs to take place beyond just the church congregation and PCC, to answer points from local people and to ensure as far as possible that whatever is planned meets local needs. Written publicity in the area and use of the local media is a good way to publicise proposals, as is a

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<sup>10</sup> A guidance note on carrying out local buildings audits is available on the Church Commissioners' website at <http://churchofengland.org/clergy-office-holders/pastoralandclosedchurches/commonresources/lbas.aspx>

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public meeting. Wider use may require significant changes to a church building, about which local people have the opportunity to make representations through the faculty process. Whilst controversy can never be avoided, openness on the part of the PCC and a desire to enable the entire community to grasp the vision behind the project will in many cases minimise any opposition in the community.

### **11. The role of the archdeacon**

- 11.1. The archdeacon is a key figure, in the process of exploring alternative uses, by virtue of having legal and pastoral responsibilities within the diocese. Archdeacons are, of right, members of the bishop's senior staff team and the DAC, and they often also hold positions on the bodies within the diocese which manage financial affairs. Because of the legal requirement that they make regular visitations to parish churches and their people, they also are grounded in the everyday local life of the Church and understand its problems, opportunities and complexities.
- 11.2. An archdeacon, therefore, is ideally placed to give good advice to parishes and to enable them in their local strategies, having an overview of the whole life of the Church and its ongoing ministry. However, they will also have contacts with those outside the Church who have a role to play in the maintenance and development of our church buildings. They will be in regular contact with English Heritage, the amenity societies and other advisory bodies. The archdeacon may accordingly be able to influence such bodies and draw on their help and expertise.
- 11.3. Through their legal responsibilities and powers, archdeacons should also be well-versed in understanding the legal framework surrounding church buildings, and should be able to help with advice on the relevant legislation and much more. Often the archdeacon has also developed a personal interest and expertise in the creative use of church buildings and is able to offer useful and instructive insights into modern practice with regard to them. He or she can therefore be one of the people in the process who can open up new possibilities, sharpen vision and advise the parish on how to deal efficiently and quickly with the work and offer opportunities to visit other church communities who have undertaken similar development work. At the very least, through their daily work, archdeacons are in regular contact with architects, builders, designers and church communities for whom church building care, use and development are important concerns.
- 11.4. The archdeacon, therefore, is well positioned to be a conduit of information and communication between the various parties involved in the maintenance of, and changes to, church buildings. He or she should be one of the first people, if not the first person, to be consulted when a church community is thinking about the ongoing care and use of its building - certainly before any architectural plans have been commissioned or drawn - and should preferably be asked for advice on the choice of architect and any designers, surveyors or structural engineers. The archdeacon can raise awareness of any pitfalls that might be encountered, give preliminary suggestions for sources of funding and

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also help shape a community's strategy and streamline the way forward. But the archdeacon's role does not end there: he or she is available throughout the process for help, support and advice when needed.

### **12. Formulating and furthering the plan**

- 12.1. Alongside the archdeacon, the DAC should be one of the first bodies approached by any church community considering works to their church building. It is vitally important that they are involved before any plans have been commissioned or drawn, as expenditure at this stage may be expensive and not in line with DAC advice. It is best to have the mind of the DAC from the outset as to what work is preferable and in what form, so that ideally there is support for the scheme from its inception.
- 12.2. The first meeting with the DAC or its representatives should be a 'vision raising' exercise, in which church community and DAC look for the best and most creative way forward. Initial meetings with the DAC should include the architect and representative members of the church community such as churchwardens; and the archdeacon will usually wish to be involved with the DAC at this stage as well. In more highly developed and adventurous schemes, it is desirable that the DAC makes regular visits as plans and work progress to offer advice and support at all stages and to give good notice of any aspects of the proposals that it might not support. At this stage, there will also be advice on the other bodies that may need to be consulted and whether planning permission will also be required.
- 12.3. When the PCC has developed its initial thinking, a proposal may have been identified in liaison with whatever partnership bodies have been identified. This then needs to be developed into a comprehensive plan. It is worthwhile structuring the plan using the 'SMART' system (which involves its component parts being Specific, Measurable, Achievable, Realistic and Timely). Issues that should then be considered are:
  - What skills are needed to develop the project - are they available within the congregation, or does outside help need to be involved?
  - Have the financial implications been considered, and any necessary fund raising planned or got under way?
  - What are the implications for the building and has consultation started towards appointing professional advice, obtaining a faculty and other consents?
  - Has the community been fully consulted on the scheme to ensure that the scheme meets local needs?
  - What are the day-to-day management implications (caretaking, bookings, administration, insurance etc)?

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- If part of the management of the church building will be handed over to another body, what are the implications of that?
- Is the scheme really sustainable? ‘White elephants’ should be avoided.
- What agreements are necessary for the work to go ahead? Has advice been obtained from the diocesan registrar and have the proposed terms been discussed in principle with the bodies involved?

12.4. Hopefully, careful consideration of these issues early on will enable development of a workable scheme that will be of lasting benefit to church and community.

### **13. The role of the DAC, DMPC and the Church Buildings Council**

13.1. The Diocesan Advisory Committee (DAC) is a body of highly skilled individuals, usually supported by a professional secretariat and chaired by a senior personage within diocesan life, which advises the chancellor of the diocese on faculty applications. Membership must include persons skilled in repair and conservation; architecture and design; liturgy and mission; art and design, as well as members or advisors with specific expertise in areas such as bells, organs, heating and lighting.

13.2. Although the main concerns of the DAC are the care, repair, development and enhancement of church buildings in line with contemporary good practice, the law balances this with the need for the DAC to have a proper regard in its decision making for the ongoing mission of the Church: the inclusion of church members and clergy in the membership of DACs ensures this is a reality. The DAC secretary usually has a close working acquaintance with the church buildings and people of the diocese, and endeavours to create a positive relationship with those within the church communities who are charged with the care of buildings. In addition, DAC members will be constantly updating their knowledge of the art and practice of church care, repair and development through their own professional bodies and through such training opportunities as the annual conference of the Church Buildings Council. Many members of any DAC should have a thorough knowledge and understanding of development schemes in the national Church and beyond, and be able to offer up to date advice on the best form a proposed scheme might take. The archdeacons are *ex officio* members of the DAC. Whilst the chancellor of the diocese may grant a faculty against the advice of the DAC, in practice, the advice of the DAC is deeply valued and influential.

13.3. To enable the process of engagement with the DAC to be a helpful and creative one, rather than appear obstructive and onerous, an early, in-depth, conversation with the DAC secretary is essential as recommended earlier in this guidance.

### **14. Liability for council tax under lease or licence**

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- 14.1. A place of public religious worship which belongs to the Church of England is exempt from local non-domestic rating<sup>11</sup>.
- 14.2. The exemption extends to cover any part of the building used as an office or for office purposes or other similar activities relating to the conduct of public worship in that building<sup>12</sup>. Thus a vestry or a church office is exempt, but the diocesan office is not exempt because it relates to all the church buildings in the diocese.
- 14.3. It is always a question of fact and degree, but *prima facie* the grant of a lease or licence of part of a church building to a third party is likely to have the effect that the part of the building comprised in the lease or licence becomes a separately rateable unit. The lessee/ licensee will be unable to rely upon the Church exemption.
- 14.4. This is particularly important where the lessee/ licensee is occupying for commercial purposes. The lease/ licence will need to clarify the responsibility for council tax.
- 14.5. Where the part of the building comprised in the lease or licence is occupied wholly or mainly for charitable purposes (e.g. as a village hall or community hall) the liability for council tax still arises but the charity may apply to the council for mandatory relief under section 43(5) and 43(6) of the 1998 Act, and possibly also for a separate discretionary relief.
- 14.6. If the lease/ licence comes to an end the church may become liable as owner to pay council tax on the vacant part of the building unless steps are taken to bring it back into use for public religious worship. Notice of the change of use should be given to the local authority.

### **15. Terms of lease**

- 15.1. A possible form of draft lease is attached to this guidance, based on the model in *Butterworth's Forms and Precedents* (see Appendix 4). This sets out the general framework for a lease of part of a church but may well need adaptation to meet the circumstances of the particular case (e.g. for commercial use of part of the curtilage of a church). The diocesan registrar should always be consulted about the appropriate form of lease.

### **16. A lease of land on its own**

- 16.1. Section 68(4) of the 2011 Measure permits a lease of land belonging to or annexed to a church, whether or not a lease is granted of any part of the church building itself.

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<sup>11</sup> Section 51 and paragraph 20(1) and 20 (2) of Schedule 5 to the Local Government Finance Act 1988.

<sup>12</sup> Paragraph 11(2)(a) and 11(2)(b) of Schedule 5 of the 1998 Act.

## **A Guide to Section 68 of the Mission and Pastoral Measure 2011**

- 16.2. This offers an alternative to a pastoral scheme under section 44 of the 2011 Measure, which may appropriate a churchyard or other land annexed or belonging to a church to an alternative use and provide for its disposal for that use.

### **17. Costs in connection with lease or licence**

- 17.1. Before giving final support to a scheme involving a lease or licence of part of a church, or land belonging to or annexed to a church, the PCC must obtain appropriate professional advice (see paragraph 18.4 below). This will mean incurring some expense. Any rent or licence fee must be the best reasonably obtainable, so the PCC cannot simply rely on its own judgment but must be able to demonstrate that it has received independent advice. Similarly, the lease or licence must be prepared by a solicitor instructed on a professional basis.
- 17.2. It is prudent to raise the subject of these professional fees in discussion with the prospective occupier at an early stage. It should then be possible to agree that the lessee/ licensee will repay the whole or a substantial part of the fees to be incurred by the PCC at the time when the lease or licence is actually entered into.

### **18. The process and timetable for obtaining a faculty and agreeing a licence or lease**

- 18.1. The application to the consistory court for a faculty will need to obtain the authorisation and approval of the court to (i) any alterations required to the church building for which a faculty is required (e.g. the introduction of a screen partition to enable part to be used for some other purpose) and (ii) the granting of a lease or licence in favour of the proposed occupier.
- 18.2. The PCC should appoint a member (with property experience if possible) to discuss proposals with the proposed occupier. It is important for all discussions to be expressed (in writing) as being “subject to contract and subject to Faculty”. The PCC member should also keep the archdeacon briefed about the progress of discussions.
- 18.3. Once preliminary heads of terms have been identified which are acceptable in principle to the PCC, the PCC should appoint (i) a qualified surveyor to advise and prepare a report to the PCC<sup>13</sup> and (ii) a solicitor to draft a lease or licence based on the report.
- 18.4. Particulars of any proposed building works requiring a faculty need to be submitted to the DAC for its recommendation. The works should be reversible when the lease ends if they are to satisfy the DAC in terms of their effect on

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<sup>13</sup> It is recommended that this report should conform to the requirements of Section 36 of the Charities Act 1993 in relation to disposals of charity land.



## **A Guide to Section 68 of the Mission and Pastoral Measure 2011**

the building. The DAC may request consultation with the local planning authority, and with English Heritage, the Church Buildings Council and/ or an amenity society.

- 18.5. Assuming the stages referred to above are successfully completed, the faculty petition should be lodged in the diocesan registry. The petitioners will be (i) the incumbent (ii) the PCC, acting by the chairman of the PCC and two other members and (iii) the proposed occupier, whether lessee or licensee.
- 18.6. The documents lodged with the faculty petition should include (with the DAC certificate, PCC minutes, etc. as in every other faculty application):
  - (i) plans and specifications in respect of any proposed building works requiring a faculty;
  - (ii) detailed results of the various consultations suggested above; and
  - (iii) the draft lease or licence for which approval is sought. This will have been prepared by the PCC's solicitor and submitted to the proposed occupier or the proposed occupier's solicitor for consideration, subject to contract and subject to faculty.

It will be for the chancellor to decide how to respond to the petition, and to give such directions (including directions for a visit to the church building) as he or she may think fit.

## **19 Conclusion**

- 19.1. We hope that parishes will find this guidance helpful as a means of investigating the options available to them in what can be a complex area and that some parishes will take advantage of the provisions that this section of the Mission and Pastoral Measure 2011 provides.

## APPENDIX 1

### Extract from the report of the Review Group on the Pastoral and Dioceses Measures, *A Measure for Measures*

#### “Facilitating extended use of church buildings

##### Recommendation 39

- **Section 56(2) of the 1983 Measure should be amended to allow a lease of part of a church in use<sup>14</sup>.**
  - a) One of our key aims is to facilitate the extended use of church buildings without the current need in some cases to use the redundancy procedures as a ‘device’ to achieve this. Our consultation highlighted this as a matter of some uncertainty and concern to dioceses and one particularly deserving attention.
  - b) Many parishes are seeking to accommodate wider uses while retaining part of their churches for worship. This is a matter of outreach and response to social and community needs, but also a means of raising revenue to help maintain the church building and support the Church's wider mission. Two potential restrictions on the extended use of consecrated churches are the act of consecration itself (setting the building aside for ‘sacred purposes’, and section 56(2) of the Pastoral Measure which prohibits the sale or lease of any part of a consecrated church other than under the Measure.
  - c) The latter is in reality a greater bar to extended use than the act of consecration itself. Wide interpretation of “sacred purposes” by some chancellors has resulted in parts of churches being converted to provide various parish facilities and benefits, with tenure for non-parish groups being achieved by licence. Making too hard a distinction between sacred and non-sacred is difficult, and new generations have different understandings. However it remains a matter for interpretation of individual diocesan chancellors and our view is that it would be helpful to have a clearer steer in the legislation on what can be achieved by extended use under faculty, while decisions in individual cases continue to rest with the chancellor.
  - d) In some cases an extended use is only practicable if the new occupier acquires a legal interest in the part of the building in question (for example, because of funding requirements). Licences may be made under faculty but leasehold or freehold interest can only be granted by declaring all or part of the church redundant. In a number of instances parishes have proceeded with the faculty route in mind, only to become aware at a fairly advanced stage that their proposals would necessitate partial redundancy and would need to be pursued

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<sup>14</sup> Because we believe this might assist in enabling churches to remain in use, and the consultation process suggested this is a matter of urgency, we propose that this should be implemented at an early stage, most likely in the form of a short Measure to be introduced in February 2004.

## **A Guide to Section 68 of the Mission and Pastoral Measure 2011**

under the Pastoral Measure. We have heard of imaginative schemes which have been jeopardised or delayed because of confusion and concern over the processes involved.

- e) We recommend as a matter of urgency **an amendment to Section 56(2) to allow a lease of part of a church in use.** (A lease of the whole of the building or freehold disposal would still require the redundancy process). One of the concerns about a lease is that it confers a legal right of occupation coupled with the possibility of the tenant acquiring rights under the Landlord and Tenant Act as a business tenant. We have suggested it would therefore be prudent to include a proviso in an amendment to section 56(2) that any such lease must fall outside the security of tenure provisions in the Landlord and Tenant Act 1954 or other legislation. (As a matter of good practice a covenant should be included in the lease that all disputes and questions of enforcement for both parties will be referred to and determined by the Consistory Court.)
- f) In the evidence we received there was a considerable amount of support for this proposal to facilitate extended use and we believe it would be beneficial for this particular proposal to be pursued in advance of general legislative change.”

## APPENDIX 2

### Section 68 of the Mission and Pastoral Measure 2011

#### **68 Churches not to be closed or disposed of otherwise than under this Measure**

- (1) 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 or the exercise of powers under section 67.
- (2) Subject to subsections (3) and (4), it shall not be lawful to sell, lease or otherwise dispose of any church or part of a church or the site or part of the site of any church or any consecrated land belonging or annexed to a church except in pursuance of powers under this Part or section 44.
- (3) Without prejudice to subsection (15)(a), on an application by the incumbent of the benefice comprising or including the parish in which the church is situated or, where the benefice is vacant, the bishop in the name and on behalf of the incumbent in the corporate capacity of the incumbent, the court may grant a faculty for a lease to be granted by the incumbent or, as the case may be, the bishop, of part of a church, provided that the court shall ensure that the premises remaining unlet, together with the premises let, under any lease or leases granted under this subsection, are, taken as a whole, used primarily as a place of worship.
- (4) On an application by any person referred to in subsection (3) the court may, whether or not it grants a faculty under that subsection, grant a faculty for the lease of any land belonging to or annexed to a church.
- (5) The parochial church council for the parish in which the church or land is situated shall be a party to any lease granted under subsection (3) or (4) and, without prejudice to the rights and obligations of the lessor, shall have the same rights as the lessor to enforce any term of the lease which may be binding on the lessee, including any rights to forfeit the lease or to distrain on the property of the lessee.
- (6) Subject to any directions of the court, any rent or other payment payable under any lease granted under subsection (3) or (4) shall be paid to the parochial church council.
- (7) Subject to subsections (6) and (8), any such lease shall be for such period, and may contain such terms, as the court may determine and the lease or any terms contained therein may be varied at any time by the court on application by any party to the lease or otherwise as authorised by the court.

## A Guide to Section 68 of the Mission and Pastoral Measure 2011

- (8) Any such lease shall be deemed to contain the following terms—
- (a) in the case of a lease of part of a church granted under subsection (3), the premises which are the subject of the lease shall not be used for purposes which are, or in a way which is, inconsistent with the use specified in that subsection, and
  - (b) in the case of a lease granted under subsection (3) or (4), no use shall be permitted for residential purposes except by a person who, as an employee of the lessor or otherwise, is required, as a condition of the employment or contract, to reside in the premises or part thereof, and the lease shall be deemed to contain a covenant on the part of the lessee to perform those terms.
- (9) Where any lease is granted under subsection (3) or (4)—
- (a) in the case of a lease of premises to trustees to be held on trust to be used for the purposes of a place of worship, the trustees shall not be entitled to exercise the right conferred by the Places of Worship (Enfranchisement) Act 1920 (10 & 11 Geo. 5 c. 56) to enlarge the leasehold interest by acquiring the freehold;
  - (b) in the case of a lease consisting of a tenancy of premises occupied or to be occupied wholly or partly for the purposes of a business, the tenancy shall not be subject to any provision of Part II of the Landlord and Tenant Act 1954 (2 & 3 Eliz 2 c. 56) under which the lease is continued until determined, or under which the tenant is entitled to apply to the court for the grant of a new tenancy, in accordance with the provisions of that Part; and
  - (c) in the case of a lease of land consisting of a tenancy which would, but for this subsection, be a farm business tenancy to which the Agricultural Tenancies Act 1995 (c. 8) applied, that Act shall not apply to the tenancy and, accordingly, the tenant shall not be entitled to exercise any of the rights conferred by Part I, II or III of that Act.
- (10) Without prejudice to section 103, where, at any time, there is no parochial church council, the foregoing provisions of this section shall have effect and any lease granted under subsection (3) or (4) shall be construed as if, for any reference therein to the council, there were substituted a reference to the churchwardens.
- (11) Where a lease has been granted under subsection (3) or (4) and, at any time, the benefice is vacant, the bishop in the name and on behalf of the incumbent in the incumbent's corporate capacity may exercise the power conferred on the lessor by subsection (7) to apply to the court for a variation of the lease or any terms therein and the lease shall be construed as if any reference in it to the incumbent were a reference to the bishop acting in the name and on behalf of the incumbent in the incumbent's corporate capacity.

## **A Guide to Section 68 of the Mission and Pastoral Measure 2011**

- (12) Any question relating to the interpretation or enforcement of any term of any lease granted under subsection (3) or (4) shall be determined by the court and section 11 of the Faculty Jurisdiction Measure 1964 (1964 No. 5) shall apply in relation to proceedings under subsection (7) and this subsection as it applies to the proceedings mentioned in that section.
- (13) Section 16(2), so far only as it applies to the archdeacon, (3) and (4) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (1991 No. 1) shall apply to proceedings under subsections (3), (4), (7) and (12) as they apply to other proceedings for a faculty.
- (14) In this section, except subsection (9)(b), “the court” means the consistory court of the diocese in which the building is situated or, in the case of the diocese of Canterbury, the commissary court of that diocese and section 14 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 shall not apply to the jurisdiction of the courts conferred by the foregoing provisions of this section.
- (15) The foregoing provisions of this section shall not—
  - (a) prevent the grant of a faculty authorising a suitable use of part of a church or the grant of any faculty in respect of any such land as aforesaid; or
  - (b) affect any powers under any Act of Parliament;
  - (c) affect the power of the bishop of a diocese under section 22 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 to make an order directing that a building or land shall not be subject to the legal effects of consecration.
- (16) Where any church other than a church which has been declared closed for regular public worship is purchased compulsorily or is purchased by agreement under an enactment conferring powers of compulsory purchase, then for the purpose of any enactment applying to the disposal of sums paid to the Commissioners in respect of the purchase of the church or any land annexed or belonging thereto, or in respect of compensation for damage to other ecclesiastical property arising in connection with the purchase, the provisions of this Part relating to the disposal of the proceeds of sale of a building closed for regular public worship or any land annexed or belonging to a building closed for regular public worship shall be deemed not to be applicable.

## **APPENDIX 3**

### **Notes on sub-sections of section 68 of the Mission and Pastoral Measure 2011**

Sub-section (1) makes it unlawful for a consistory court to make any order or direction for closing a church on the ground that it is no longer required for use as a church.

Sub-section (2) provides that it is unlawful to sell, lease or otherwise dispose of consecrated churches, otherwise than in accordance with the following provisions of section 68.

Sub-section (3) permits the consistory court of the diocese, by faculty, to authorise a lease of part, or parts, of a church building, provided that, taken as a whole, the building continues to be used primarily as a place of worship. The application for such a faculty, and the lease itself, must be made by the incumbent (or, during a vacancy, the bishop).

Sub-section (4) confers a corresponding power in relation to any land belonging to or annexed to a church, whether or not any part of the church building is leased with it.

Sub-section (5) provides for the parochial church council to be a party to any such lease and to have the same rights as the lessor to enforce it, including the power to forfeit and distrain for non-payment of rent.

Sub-section (6) provides that, subject to any directions of the consistory court, any rent or other payment under any such lease is to be paid by the lessee to the parochial church council.

Sub-section (7) provides that the terms of any such lease are to be as the consistory court may decide and permits it to vary them as a result of an application by any party to the lease or any other party authorised by the court to apply to it for that purpose.

Sub-section (8) safeguards the continuing church use by prohibiting, in the case of a lease of a church building, use of the leased premises for purposes, or in a way, inconsistent with use as a place of worship and, in the case of both church buildings and other land, residential use (except in limited circumstances).

Sub-section (9) removes rights of enfranchisement or of obtaining a lease extension or renewal for religious, business or agricultural tenants that would otherwise be available under Acts of Parliament.

Sub-section (10) deals with the situation where there is no parochial church council by allowing the churchwardens to take its place for the purposes of the Measure.

Sub-section (11) makes further provision for the bishop to act when the benefice is vacant.

Sub-section (12) allows the consistory court, rather than the secular courts, to deal with issues as to the interpretation or enforcement of any such lease.

## **A Guide to Section 68 of the Mission and Pastoral Measure 2011**

Sub-section (13) provides for the relevant archdeacon to have the same interest in relation to proceedings under the Measure as in relation to general faculty proceedings.

Sub-section (14) confers the new faculty jurisdiction on the consistory court and provides that the grant of a lease cannot be authorised by an archdeacon.

Sub-section (15) makes some other exceptions to the general rule against disposal laid down by sub-section (2).

Sub-section (16) relates to an issue not relevant to this guidance.



## APPENDIX 4

### Copyright note

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### A ‘model lease’

Lease of part of consecrated church under sections 68(3) and (4) of the Mission and Pastoral Measure 2011

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[PRESCRIBED CLAUSES<sup>15</sup>

**LR1. Date of lease**

**LR2. Title number(s)**

**LR2.1 Landlord’s title number(s)**

**LR2.2 Other title numbers**

**LR3. Parties to this lease**

**Landlord**

THE REVEREND (*name*) of (*address*) being [*or*<sup>16</sup> THE RIGHT REVEREND FATHER IN GOD (*name*) BY DIVINE PERMISSION LORD BISHOP OF (*diocese*) acting in the name of and on behalf of] the incumbent of the benefice of (*name of benefice*) in the Diocese of (*diocese*) acting in the corporate capacity of the incumbent (“the Incumbent”)

**Tenant**

(*tenant*) [company number (*number*)] [of (*address*) or whose registered office is at (*address*)] (“the Tenant”)

**Other Parties**

THE PAROCHIAL CHURCH COUNCIL OF THE PARISH OF (*name of parish*) in the Diocese of (*diocese*) (“the Council”)

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<sup>15</sup> For use where the lease will be registered at the Land Registry.

<sup>16</sup> Where the benefice is vacant.

**LR4. Property**

**In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.**

The Property as specified in the schedule

**LR5. Prescribed statements etc.**

**LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity), or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003.**

Recital (7)

**LR6. Term for which the Property is leased**

The term as specified in this lease at Clause 1

**LR7. Premium**

**LR8. Prohibitions or restrictions on disposing of this lease**

This lease contains a provision that prohibits or restricts dispositions.

**LR9. Rights of acquisition etc.**

**LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land**

None.

**LR9.2 Tenant's covenant to (or offer to) surrender this lease**

None.

**LR9.3 Landlord's contractual rights to acquire this lease**

None.

**LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property**

None.

**LR11. Easements**

## **A Guide to Section 68 of the Mission and Pastoral Measure 2011**

### **LR11.1 Easements granted by this lease for the benefit of the Property**

The rights granted as set out in the schedule.

### **LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property**

The rights reserved as set out in the schedule.

### **LR12. Estate rentcharge burdening the Property**

None.

### **LR13. Application for standard form of restriction**

[(Form E) No disposition by the proprietor of the registered estate to which section 36 or section 38 of the Charities Act 1993 applies is to be registered unless the instrument contains a certificate complying with section 37(2) or section 39(2) of that Act as appropriate.]

### **LR14. Declaration of trust where there is more than one person comprising the Tenant**

## A Guide to Section 68 of the Mission and Pastoral Measure 2011

THIS LEASE is made between the parties referred to in clause LR3 and the provisions that follow have effect subject to the provisions contained and terms used in clauses LR1 to LR14]

[<sup>17</sup>THIS LEASE is made the.....day of.....BETWEEN

- (1) THE REVEREND (*name*) of (*address*) being [*or*<sup>18</sup> THE RIGHT REVEREND FATHER IN GOD (*name*) BY DIVINE PERMISSION LORD BISHOP OF (*diocese*) acting in the name of and on behalf of] the incumbent of the benefice of (*name of benefice*) in the Diocese of (*diocese*) acting in the corporate capacity of the incumbent (“the Incumbent”)
- (2) THE PAROCHIAL CHURCH COUNCIL OF THE PARISH OF (*name of parish*) in the Diocese of (*diocese*) (“the Council”)
- (3) (*tenant*) [company number (*number*)] [of (*address*) *or* whose registered office is at (*address*)] (“the Tenant”)]

### RECITALS

- (1) The land described in the schedule to this lease (“the Property”) forms part of [<sup>19</sup>the curtilage of] the Parish Church of (*dedication and name of parish*) (“the Church”) in the Diocese of (*diocese*) (“the Diocese”) and County of (*name of County*) [<sup>20</sup>and part of the curtilage of the Church]
- (2) The Church is consecrated and the freehold interest in the Church is vested in the Incumbent in the corporate capacity of the Incumbent
- (3) By a faculty issued by the Consistory Court of the Diocese (“the Court”) on (*date*) [the Incumbent was authorised to grant this lease] [*or* the Bishop of the Diocese was authorised to grant this lease in the name of and on behalf of the Incumbent] pursuant to Mission and Pastoral Measure 2011 (“the Measure”) section[s] 68 [(3)<sup>21</sup>] [and] [(4)<sup>22</sup>]
- (4) The Council is a party to this lease in accordance with section 68(5) of the Measure and so has the same rights as the Incumbent to enforce any term of this lease which may be binding on the Tenant including any rights to forfeit the lease or to distrain on the property of the Tenant
- (5) In consequence of section 68(9) of the Measure this lease carries no right of enfranchisement under the Places of Worship (Enfranchisement) Act 1920, does not have the protection of Part II of the Landlord and Tenant Act 1954 and cannot create a farm business tenancy to which the Agricultural Tenancies Act 1995 applies
- (6) In consequence of section 68(7) of the Measure this lease may be varied at any time by the Court on the application of any party to this lease or otherwise as authorised by the Court

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<sup>17</sup> For use where the lease will not be registered at the Land Registry.

<sup>18</sup> Where the benefice is vacant.

<sup>19</sup> Where the Property comprises only land annexed to or belonging to the church and not part of the church itself.

<sup>20</sup> Where the Property comprises part of the church and land annexed to or belonging to the church.

<sup>21</sup> If the Property is or includes part of the church.

<sup>22</sup> If the Property is or includes land annexed to or belonging to the church.

## **A Guide to Section 68 of the Mission and Pastoral Measure 2011**

- (7) [The Property will, as a result of this lease, be held by the Tenant [in trust for (name of charity)], a non-exempt charity and the restrictions on disposition imposed by Charities Act 1993 section 36 will apply to this lease (subject to section 36(9) of that Act)]<sup>23</sup>

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<sup>23</sup> To be used where the tenant is a non-exempt charity.

NOW THIS DEED WITNESSES as follows:

## **1 Demise**

In consideration of [the sum of £ (pounds) paid by the Tenant to the Council (the receipt of which the Council acknowledges) and of] the rent and covenants contained in this deed the Incumbent demises to the Tenant ALL THAT the Property TO HOLD to the Tenant for the term of ..... years from the ..... day of ..... YIELDING AND PAYING to the Council (*insert details of rent and provision for rent review where appropriate*)

## **2 Covenants by Tenant**

The Tenant covenants with the Incumbent (and as a separate covenant with the Council) as follows:

- 2.1 To pay the rent reserved by this deed to the Council promptly and without deduction or set off
- 2.2 To pay all rates and other outgoings attributable to the Tenant's occupation and use of the Property
- 2.3 [To pay all charges for gas and electricity consumed in the Property] OR [To reimburse the Council on demand for a due proportion of the cost of all gas and electricity consumed in the Church such proportion to be determined by agreement or, in the event of dispute, by the Court]
- 2.4 To pay to the Council on demand [ ] per cent of the insurance premium paid by the Council for insuring the Church against fire and other usual risks
- 2.5 Not to use the Property:
  - 2.5.1 for purposes which are, or in a way which is, inconsistent with the primary use of the Church as a place of Christian worship<sup>24</sup>
  - 2.5.2 for any illegal or immoral purpose
  - 2.5.3 In such a way as might prejudice or vitiate any policy of insurance maintained by the Council in respect of the Church
- 2.6 Not to use or permit the Property to be used in a manner that causes nuisance or annoyance:
  - 2.6.1 to the minister for the time being conducting or the congregation attending divine service in any part of the Church
  - 2.6.2 to persons attending the Church for services and for any other purpose authorised by the Incumbent or the Council
  - 2.6.3 to the owners or occupiers of any nearby premises
- 2.7 Not to introduce any inflammable or dangerous or noxious material or substances into the Property
- 2.8 To use the Property as [a community hall] and for no other purpose and not to use the Property for residential purposes [except by a person who is required as a condition of their contract of employment to reside in the Property or part of the Property<sup>25</sup>]

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<sup>24</sup> This covenant is implied by the Mission and Pastoral Measure 2011 s 68(8)(a).

<sup>25</sup> See Mission and Pastoral Measure 2011 s 68(8)(b). Although the words in square brackets appear to be part of a covenant implied in every lease, it is suggested that it is open to the parties to exclude residential use entirely.

- 2.9 Not to add to or alter the Property without first obtaining:
  - 2.9.1 the written consent of the Incumbent and the Council, and
  - 2.9.2 a faculty of the Court authorising the addition or alteration except where the Chancellor or the Registrar of the Court deems that a faculty is not required
- 2.10 Not to assign underlet charge or part with or share possession or occupation of the Property or any part of it [but this covenant does not prevent the assignment of this lease to new trustees of the Tenant or the vesting of this lease in the Official Custodian for Charities]
- 2.11 To permit the Incumbent and the Council and persons authorised by them on prior written notice to the Tenant (except in case of emergency) to enter the Property for all or any of the following purposes:
  - 2.11.1 inspecting the state and condition of the Property and other parts of the Church
  - 2.11.2 carrying out works of repair or maintenance to the Church
  - 2.11.3 [viewing photographing and recording the Church and the tombs and monuments in the Church]
- 2.12 *(insert other covenants as appropriate, including provision for repair, decoration and maintenance)*

### **3 Covenants by Incumbent**

The Incumbent covenants with the Tenant that on condition that the Tenant pays the rents and performs and observes its covenants it shall have quiet enjoyment of the Property during the Term as against the Incumbent and all persons claiming under or in trust for the Incumbent

### **4 Covenants by Council**

The Council covenants with the Tenant as follows:

- 4.1 Insurance
  - 4.1.1 to keep the Property insured against loss or damage by fire and other usual risks in an amount which in the opinion of the Council is equal to the cost of providing a modern replacement building (including the cost of all professional fees debris removal demolition and site clearance the cost of any work which might be required by or by virtue of any Act of Parliament and at least two years loss of rent) making reasonable provision for the anticipated effect of inflation on such cost and any reasonable delays in reinstatement
  - 4.1.2 upon request by the Tenant (made not more often than once each year) to produce at the Tenant's expense a copy of any policy effected by the Council pursuant to clause 4.1.1 above and the receipt for the last premium payable for the same
  - 4.1.3 in the event of the Property being destroyed or damaged by any of the risks against which the Council has insured to lay out the insurance moneys (except those receivable in respect of loss of rent) as far as they will go in the reinstatement of the Property or such part of it as has been destroyed or damaged PROVIDED THAT the Council shall be under no obligation to rebuild or reinstate the Property in the form in which it existed immediately before the damage or destruction in question
  - 4.1.4 if it is impossible or impracticable to rebuild or reinstate in accordance with clause 4.1.3 above then the insurance moneys receivable in respect of loss of

rent shall be paid to the Landlord and the balance shall be divided between the parties in proportion to the capital values of their respective interests in the Property immediately before the damage or destruction in question and upon such division this Lease shall automatically determine

*(insert other covenants as appropriate)*

## **5 Provisos**

5.1 The Incumbent and the Council or either of them shall be entitled to re-enter the Property or any part of it in the name of the whole in any of the following cases:

5.1.1 *(list grounds for forfeiture)*

5.2 if the Property is so destroyed or damaged by any risk against which the Council has insured as to become wholly or partly unfit for use and occupation and the insurance moneys are not wholly or partly irrecoverable by reason of any act or omission of the Tenant or any licensee of his then the rent or a fair proportion of it shall be suspended from the date of the destruction or damage until the Property is again fit for use and occupation

5.3 Any question relating to the interpretation or compliance by any party with the terms of this lease shall be referred to the Court for determination

5.4 *(insert other provisos as appropriate)*

IN WITNESS etc

### SCHEDULE (the Property)

[The [part of the nave of the Church together with the vestry on the ground floor of the tower] as the same is identified by red edging on the annexed plan TOGETHER WITH the rights (in common with the Incumbent and all others similarly entitled) *(insert rights as appropriate)* RESERVING TO THE INCUMBENT AND THE COUNCIL *(insert reservations as appropriate*<sup>26</sup>)]

*(signatures and seals of parties)*

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<sup>26</sup> In addition to reservations in respect of service media and rights of way, it may be intended that the Property is used for church purposes at certain times, in which case appropriate rights should be reserved.



## **Schedule of Works and Proposals for Petition**

The grant pursuant to Mission and Pastoral Measure 2011 section 68[(3)] [and] [(4)] by the petitioner the Reverend AB to the petitioner CD of a lease of [part of the said church] [and] [land annexed to or belonging to the said church] for a term of \*\* years from the \*\* day of \*\* at a rent of \*\* per annum in the form of the draft lease lodged with this petition, the Property demised being more particularly described in the draft lease.



### **SCHEDULE**

#### **DESCRIPTION OF WORKS AND PROPOSALS AND ANY CONDITIONS ATTACHED TO THE FACULTY**

The grant pursuant to Mission and Pastoral Measure section 68[(3)] [and] [(4)] by the petitioner the Reverend AB to the petitioner CD of a lease of [part of the said church] [and] [land annexed to or belonging to the said church] for a term of \*\* years from the \*\* day of \*\* at a rent of \*\* per annum in the form of the draft lease lodged with the petition, the Property demised being more particularly described in the draft lease.

#### **CONDITIONS & PROVISOS**

1. The grant of the lease shall be completed within [three] months of the date hereof and a copy of the completed counterpart lease shall be lodged in the Registry forthwith upon completion
2. The lease shall not be varied except with leave or at the direction of the Court
3. Any question relating to the interpretation or enforcement of any term of the lease shall be referred to the Court for determination
4. All parties shall have liberty to apply for the purposes of conditions 2 and 3 of this faculty
5. This faculty does not authorise or permit any extension or renewal of the lease
6. The petitioner CD shall pay the costs of and occasioned by these proceedings and the costs of the petitioner the Reverend AB incurred in connection with the preparation, negotiation and completion of the lease.

## **FURTHER CONTACTS AND SOURCES OF INFORMATION**

### **Contacts**

Pastoral and Closed Churches  
Church Commissioners for England  
Church House  
Great Smith Street  
London  
SW1P 3NZ  
Tel: 0207 898 1000  
e-mails: pmcode@churchofengland.org

### **Sources of information**

Ahmed, Finneron, Singh, *Tools for Regeneration: A Holistic Approach for Faith Communities*, 2004

Akker and Passmore, *Opening Our Doors: A practical Guide to the wider use of church buildings*. The Children's Society 1997

Durrant, *Making Church Buildings Work*, Canterbury Press Norwich 2005

Durrant, *Regenerating Local Churches*, Canterbury Press Norwich 2006

Rowe, *A Review of the Rural Churches in Community Service Programme*, 2004

General advice about the use and maintenance of church buildings, with links to other contacts and sources of information, is available at [www.churchcare.co.uk](http://www.churchcare.co.uk)