

**Diocese of Truro  
Newsletter  
Easter 2019**

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## 1 **Welcome**

Welcome to the Easter 2019 edition of the Diocese of Truro Newsletter.

This publication has been produced by the Truro Diocesan Registry Team at VVV for clergy, churchwardens and other PCC officers in the Diocese of Truro.

The aim of the newsletter is to keep you up to date with the latest legal issues and developments affecting the Diocese, and to highlight some of the key issues we have seen in the Registry over the past few months.

The articles are not comprehensive, but aim to provide a brief overview of the issues arising in respect of each topic in order to highlight the key points to you and draw on our experience as Registrar and legal advisors to Church of England Dioceses.

Although you may find that not all of the articles below are directly relevant to you and your parish, we believe that it is still helpful to have some awareness of the current issues.

We hope you find the newsletter helpful. Please let us know if there are any areas that you would like us to cover in future editions.

## 2 **Marriage in the Church of England and the Effect of Brexit**

There continues to be much uncertainty surrounding Brexit. However, the Home Office has recently confirmed that it does not intend to make any immediate changes to the way in which nationals of countries within the European Economic Area (**EEA**) and Switzerland can marry in the Church of England.

Therefore, at least until early 2020, clergy can continue to advise relevant couples that, depending on the specific circumstances, they may marry in a Church of England church following the publication of banns or by common licence.

While the longer term position regarding marriage preliminaries is currently unclear, the Registry understands that, before any changes are made to the current regime, the Home Office will consult with interested parties, which will include the Church of England, Church in Wales and others.

If you are contacted by couples wishing to marry on a date after early 2020, and one of the couple is a national of a country in the EEA or Switzerland, we recommend that you direct the couple to the Registry for further advice.

### 3 Baptism - Rules Regarding Consent

An issue that is being encountered by clergy increasingly frequently is where only one parent presents their child for baptism. The question that arises in such circumstances is whether the consent of the other parent must also be obtained?

The Canons of the Church of England do not expressly require the consent of a parent before a child is baptised. However, save in the case of an emergency, Canon B22 envisages the involvement of both parents (or those who have "parental responsibility") as the minister is required to instruct the "parents or guardians" in their responsibilities.

#### Parental Responsibility

Parental responsibility is a key concept of the Children Act 1989. It is held automatically by the birth mother, a married father (whether or not divorced) or an adoptive parent.

However an unmarried father can only acquire such responsibility by being named on the child's birth certificate, by formal agreement with the mother or by order of the court.

Others, for example step-parents, can also acquire parental responsibility by formal written agreement or order of the court, but not through marriage to a parent with parental responsibility for the child.

#### What Should You Do?

Baptism is undoubtedly a profound and irreversible act so that the presentation of a child for baptism without the consent of the other parent is a serious breach of parenting obligations (and if done in the face of a prohibition of the court, would amount to a contempt of court, punishable with imprisonment). It is of course undesirable for members of the clergy to be involved in such circumstances.

If as a member of clergy you are faced with a situation where only one parent presents their child for baptism, we recommend that you:

- a) always obtain the details of the other parent and ascertain whether he or she remains in contact (either directly or indirectly) with the child;
- b) unless satisfied that an absent parent:
  - i. does not have parental responsibility; and
  - ii. is not in regular contact with the child;

ascertain the other parent's view (i.e. the non-presenting parent) about the proposed baptism, bearing in mind your obligations under Canon B22 to instruct both parents in their responsibilities;

- c) take any views so expressed carefully into account in deciding how to proceed, bearing in mind that you:
  - i. have the power to delay the baptism or refuse; and
  - ii. can always seek advice from others, for example an Rural Dean or Archdeacon, or apply to the Bishop for guidance and directions under Canon C18;
- d) if there is a real objection to the baptism, you do not proceed unless and until the presenting parent has obtained either:
  - i. the consent of the other parent (and you are satisfied that such consent has genuinely been given); or

- ii. a "Specific Issue Order" from the court specifically authorising presentation for baptism.

### **What About Baptising a Young Person?**

Although it is highly likely that the court would regard a young person who is 16 or 17 years old as having the necessary legal competence to make their own decision regarding baptism, parental responsibility remains in place until they have reached their majority at the age of 18. You should therefore not assume that simply because a child who presents for baptism is a "young person" i.e. 16 or 17 years old, that their decision will automatically override any parental responsibility considerations.

If you have any questions or concerns in respect of a particular situation you are faced with, please speak with the Archdeacon in the first instance who should be able to guide you regarding the best course of action.

#### **4 A Reminder About Closed Churchyards**

The Registry has received a number of recent enquiries which would indicate that not everyone who is involved in dealing with requests for burials in churchyards or associated consecrated burial grounds, is aware of the effects of a closure order on future burials.

It is quite understandable that a member of clergy who is new to a benefice may not know whether the churchyard of a particular parish church remains open or is formally subject to a closure order made by Order In Council under the Burial Acts. The position is not always clear given that churchyards may not always appear to be full. For example, there may be areas where headstones have not been erected or have been removed over time giving the impression that there is still space for additional burials. However, if anyone is in any doubt as to whether their churchyard remains open, then they should check the position with the Diocesan Advisory Committee or the Registry.

The importance of getting this right cannot be overstated. If a minister authorises a burial of a body in a churchyard where a closure order has been made then they are potentially committing a criminal offence. Further burials may be possible depending on the precise terms of the closure order so, for example, the closure order may permit further burials in family graves provided that there is still room. Such exemptions are unlikely to apply, however, where the churchyard was closed (as many were) in the 19th century.

We are also aware of instances where clergy have mistakenly thought that it is permissible to continue to inter cremated remains after the coming into force of a closure order. Again this may be possible under the terms of the closure order or in circumstances where the Chancellor has granted a faculty for a Garden of Remembrance for the purpose of such interments. Similarly a faculty for the interment of cremated remains can be granted on a one-off basis but a faculty can never be permitted for the burial of a body once the churchyard has been closed.

This is a complex area of law and can result in difficult negotiations with individual families if a mistake is made. If in doubt, please do not hesitate to Sue Thorold at the DAC or the Registry.

## 5 Funding Provided by Parish Councils

PCCs may find themselves in the fortunate position that their parish council wishes to provide money to the PCC. However, PCCs should approach such scenarios with caution as there is some ambiguity in respect of whether local authorities (i.e. county, district or parish level) are able to use their funds to support the church.

The Local Government Act 1894 expressly prohibits local authorities from applying its funds for the maintenance or improvement of church property (including churchyards and church halls). However, later legislation (the Local Government Act 1972) allows local authorities to incur expenditure which is in the interests of, and brings benefit to, their area or any part of it or all or some of the inhabitants of the relevant area. This could include, for example, to provide funding to the local parish church.

Later local government legislation also permits the maintenance of closed churchyards (in certain circumstances).

Despite the flexibility brought in by the later legislation, there is some difference of opinion in respect of whether parish councils may spend money on churches.

In 2018, the Church Buildings Council sought legal advice on the subject, which concluded that all local authorities could contribute to the upkeep of church property in certain circumstances i.e. if it is in the interests of and benefits part or all of the area in question or all or some of its inhabitants. This view is supported by HM Government's 2017 English Cathedral and Church Buildings Sustainability review. However, it is not supported by the National Association of Local Councils, which issued a briefing note confirming that local authorities are prevented from spending money on churches.

Notwithstanding the ambiguous legal position, the Church Buildings Council encourages churches to work with their local councils for the benefit of the church, congregation and wider parish. However, if you have concerns regarding the receipt (or the withholding) of funding from a local authority, please contact the Registry for further advice.



## 6 Simplifying the Administration of Small Parochial Charities

A parish will often have various small charities associated with it, of which the vicar and the churchwardens are often the trustees. Where there are a lot of these associated charities, it can cause administrative difficulties for the trustees, who will also be members of the PCC and have other duties and responsibilities to fulfil.

It is prudent for parishes to firstly, understand the small charities associated with the parish and the assets they hold and secondly, to consider whether any steps can be taken to amalgamate or rationalise the charities in order to simplify their administration.

The Charities Act 2011 makes various powers available to trustees of small charities which, either used independently or together, can allow trustees to simplify arrangements. These powers are:

- to transfer property (section 268 of the 2011 Act)
- to replace the charity's purposes (section 275 of the 2011 Act)
- to modify powers or procedures (section 280 of the 2011 Act)
- to spend capital (section 281/282 of the 2011 Act)

### **Transferring Property**

In order to exercise the power to transfer property, the charity must meet the following criteria:

- the gross income in the charity's last financial year does not exceed £10,000
- the charity does not hold any designated land (i.e. land subject to permanent trusts)
- it is not a charitable company or other body corporate

If the criteria is fulfilled, the trustees may pass a resolution to transfer the charity's property, provided that they are satisfied that:

- it is expedient in the interests of the charity for the property to be transferred
- the purposes (or any of them) of the receiving charity are substantially similar to the charity's own purposes

The resolution must be approved by at least two thirds of the trustees.

### **Power to Replace Purposes**

In order for the trustees to exercise the power to replace the charity's purposes, the initial criteria outlined above must be met. If fulfilled, the trustees must pass a resolution confirming they are satisfied that:

- it is expedient in the interests of the charity for the purposes to be replaced
- so far as reasonably practicable, the new purposes consist of or include purposes that are similar in character to those that are to be replaced

The resolution must be approved by at least two thirds of the trustees.

A copy of the trustees' resolution must be sent to the Charity Commission, together with the reasons for passing it. The Commission then has 60 days to object to the resolution. During this time, the Commission may ask questions or request further information from the trustees. If the Commission does not respond within the 60 day period, it is deemed not to object and the resolution will take effect.

### **Modifying Powers or Procedures**

The power to modify administrative procedures (contained in section 280 of the 2011 Act) can be used by any charity that is not a company or body corporate.

In order to exercise this power, the trustees must pass a resolution confirming the provisions to be modified. The resolution must be passed by a majority of trustees.

### **Spending Capital**

For charities with permanent endowment which does not constitute a 'larger fund' (ie a fund with an income exceeding £1,000 and market value of £10,000), the trustees can pass a resolution to release the restrictions on the expenditure on capital without the Charity Commission's consent.

The trustees must pass a resolution confirming that they are satisfied that the purposes of the charity can be carried out more effectively if the capital of the fund, or a part of it, could be spent (as well as the income accruing to it). A majority of the trustees must approve the resolution.

However, where there is a larger fund, once the trustees have passed the resolution referred to above, they must send a copy of the resolution, together with the reasons for passing it, to the Charity Commission. The Commission must concur with the resolution before it is to take effect. The Commission has three months to confirm to the trustees whether it concurs with the resolution or does not concur. The Commission may also ask questions and request further information from the trustees. If the Commission does not respond within three months, the resolution is deemed to take effect.

In practical terms, these powers provide the trustees of small charities with the ability to simplify and modernise the governance arrangements, or more effectively apply the charity's assets.

**Please contact the Registry if you have any questions in relation to use of these powers.**

## **7 Legislation Update**

### **Church of England (Miscellaneous Provisions) Measure 2018**

This Measure covers a range of issues which did not justify the production of separate pieces of legislation. Amongst the wide-ranging issues covered are provisions relating to the conduct of funerals (elsewhere than in a church or churchyard) and clergy terms of service, which come into force on 1 May 2019.

### **The Mission and Pastoral etc (Amendment) Measure 2018**

This Measure makes various amendments to the Mission and Pastoral Measure 2011 including in relation to giving oral notice at services of draft pastoral schemes and orders. The Measure also makes amendments to the Endowments and Glebe Measure 1976 (removing the requirement for the Church Commissioners to consider representations made in respect of dealings with glebe land) and the Patronage (Benefices) Measure 1986 (amending the provisions relating to the right of patronage where a vacancy in a benefice has not been filled within 9 months of the vacancy arising).

### **The Church Property Measure 2018**

This Measure consolidates various pieces of legislation relating to church property, including the Parsonages Measure 1938, the New Parishes Measure 1943 and the Endowments and Glebe Measure 1976.

The Measure deals with parsonage houses, dealings with and the management of glebe land and the acquisition of new land for church purposes, which were previously dealt with under the separate pieces of legislation listed above.

### **The Ecumenical Relations Measure 2018**

This Measure widens the scope for ecumenical co-operation by the Church of England. It includes a power for General Synod to make provision by Canon to allow for the participation of members of other churches in services of the Church of England. The Measure also requires the House of Bishops to publish a code of practice on co-operation by the Church of England with other churches.

### **Church Representation Rules**

At the February session of General Synod, the Synod approved proposed changes to the Church Representation Rules. The changes, which will come into effect on a future date to be appointed, are relatively extensive. The Registry proposes to report on the changes in a future edition of this newsletter.

## 8 Changes to the Gift Aid Small Donations Scheme

Many churches will rely on the Gift Aid Small Donations Scheme (**GASDS**) to claim top-up payments on donations received by way of collections.

Until 6 April 2019, a "small donation" has been a gift made by an individual of £20 or less in cash or by contactless payment. However, due to a recent change in the law, the amount of small donations has increased from £20 to £30. Therefore from 6 April, individuals can donate more at one time and those churches who are members of the GASDS can claim an increased top-up payment.

For more information regarding the GASDS, please contact the Registry.

## 9 Mobile Telephone Masts and Churches

Following the introduction of the new Electronic Communications Code (**New Code**), introduced under the Digital Economy Act 2017, it is important for all landowners (including PCCs) to be aware of its effects before entering into an agreement with an Operator.

The New Code replaces the old code contained in the Telecommunications Act 1984. It has been introduced with the purpose of ensuring that telecommunications infrastructure is in place to improve coverage across the UK, to assist with a faster roll out of future technology and to ensure the UK can remain competitive in the wider global marketplace.

The New Code will automatically apply to all new agreements entered into with Operators (organisations who have received a specific designation from OFCOM). It is compulsory and it cannot be opted out of, even if by agreement.

It has a very pro Operator stance and it is likely that Operators will see church buildings as prime locations to install new electronic communications apparatus due to the prominence of the buildings and their locations.

### Reaching an agreement

Landowners can reach an agreement with an Operator voluntarily. However, if an Operator makes a request to a landowner to install apparatus on its land and the landowner does not reply within 28 days or refuses the request, the Operator can apply to Tribunal for an agreement to be imposed.

The Tribunal can only make an order if it considers that certain conditions are met, including a public benefit test, but those conditions are not difficult for an Operator to satisfy.

### Code rights, assignments, upgrading and sharing

The New Code gives Operators a series of rights which are automatically implied into the agreement. Amongst others, these include the right to install and keep the apparatus on land, a right of access and to carry out works, a right to alter, repair, upgrade and operate the apparatus and a right to lop trees. A landowner does have the ability to condition these rights, but the extent to which they can be conditioned is unknown.

Importantly the New Code also allows Operators, without obtaining the landowners consent, to:

- **Automatically assign the agreement to other Operators** - any conditions concerning the assignment are void (other than the requirement for an Authorised Guarantee Agreement);
- **Share the site with other Operators** – meaning that landowners will lose the ability to receive a "payaway" or use "tariff cards"; and
- **Upgrade the apparatus** – provided there is only a minimal adverse impact on its appearance and there is no additional burden on the landowner.

These changes will cause concern because the landowner will lose control over who their tenant is, will inevitably lose the right to ask for further money on an amendment to the arrangement allowing third parties to share the site and will no longer be able to charge an Operator additional amounts for upgrades.

### Termination

When seeking to terminate an agreement, the landowner has limited rights and must follow a 2 stage process, which includes giving the Operator a minimum of 18 months' notice period.

The New Code affords Operators various rights through which the Operator can apply to the Tribunal if it does not want the agreement to end. There are limited grounds under which the landowner can seek to terminate the agreement.

### **Summary**

If you are approached by an Operator who is proposing that you enter into an agreement, it is important that you seek legal advice quickly in order to consider the long term implications.

These implications could include a potential diminution in the value of the land as any successors in title, tenants and other occupiers of the land will be bound by the agreement and the rights.

Further, as with certain works to church buildings, if an agreement is to be entered into with an Operator, a Faculty for such works must be applied for prior to the agreement being completed.

## 10     **About the Registry Team**

Jos Moule is the Registrar of the Diocese of Truro. Jos is supported by a team of lawyers and paralegals who together form the "Registry Team". Each individual within the team has a particular specialism, which allows us to deal with enquires more quickly and efficiently.

The Registry Team can be contacted by email or telephone using the details below. The Registry Team is always happy to help with enquiries, but as a first step, we would encourage you to consider the "Pathway Referral System" to check whether there is someone else in the Diocese that should be contacted initially. For more information in relation to the Pathway Referral System, please contact Church House.

The Diocese has arranged with the Registry Team to provide up to two hours of advice to parishes in respect of any enquiry. For example this could include, advice in relation to the sale of PCC property or advice in relation to spending permanent endowment funds. Please contact the Registry Team directly if your PCC requires advice on any matter.

Diocese of Truro Registry Team:

Email: [truroregistry@vww.co.uk](mailto:truroregistry@vww.co.uk)

Telephone: 0117 314 5420