SCOTTISH STATUTORY INSTRUMENTS

2004 No. 538

ECCLESIASTICAL LAW

The Church of Scotland (Property and Endowments) (Amendment) Act 1933 Order 2004

Made - - - -	*9th December 2004*
Coming into force - -	*21st December 2004*

The Scottish Ministers in exercise of the powers conferred by section 9(5) and (6) of the Church of Scotland (Property and Endowments) (Amendment) Act 1933(**1**) and of all other powers enabling them in that behalf, hereby make the following Order:

Citation and commencement

1. This Order may be cited as the Church of Scotland (Property and Endowments) (Amendment) Act 1933 Order 2004 and shall come into force on 21st December 2004.

Interpretation

2. In this Order–

"adjoining owner" means any person to whom an opportunity to purchase land shall be offered as provided in subsection (3) of section 9 of the Church of Scotland (Property and Endowments) (Amendment) Act 1933;

"the General Trustees" has the same meaning as in the Church of Scotland (Property and Endowments) Act 1925(**2**);

"notice of opportunity to purchase" has the meaning given in article 3;

"notice of statement of terms" means a notice setting out a statement of terms and upset price;

"participating owner" means an adjoining owner who has confirmed a wish to proceed with the opportunity to purchase by sending a response notice to the General Trustees on or before the response date;

"response date" means the date prescribed in the notice of opportunity to purchase (which date shall be not less than 21 days from the date of sending of the notice of opportunity to purchase to the adjoining owner);

(**1**) 1933 c. 44. Section 9 was amended by section 76(1) and schedule 12, Part 1 paragraph 17(4) of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5) and section 108 of the Title Conditions (Scotland) Act 2003 (asp 9).
(**2**) 1925 c. 33.

"response notice" has the meaning given in article 4;

"send" shall be construed in accordance with article 17 (cognate expressions being construed accordingly);

"statement of terms" means a statement setting out the terms (other than price but including any title conditions to be imposed on the land) on which the General Trustees are willing to sell the land in question and where a statement of terms has been amended by agreement means the amended statement of terms and where a statement of terms has been determined by an arbiter means the statement of terms as so determined;

"upset price" means the General Trustees' estimate of the open market value of the land to be sold assessed on the basis of a sale by a willing seller to a willing purchaser on the same terms and conditions as set out in the statement of terms and where an upset price has been amended by agreement means the amended upset price and where the upset price has been determined by an arbiter means the upset price as so determined.

Provision of notice of opportunity to offer

3. Where the General Trustees are required under subsection (3) of section 9 of the Church of Scotland (Property and Endowments) (Amendment) Act 1933 to give to an adjoining owner an opportunity to purchase land, they shall do so by sending to each adjoining owner a notice ("a notice of opportunity to purchase") containing the particulars specified in Schedule 1 to this Order.

Response Notice

4. An adjoining owner who wishes to proceed with the opportunity to purchase the land shall, on or before the response date, send notice ("a response notice") to the General Trustees confirming:

(a) that the adjoining owner wishes to proceed with the opportunity to purchase the land; and

(b) whether or not the adjoining owner accepts the draft statement of terms and the upset price.

Notice of statement of terms

5. If all the response notices received by the General Trustees on or before the response date confirm acceptance by the participating owners of the draft statement of terms and upset price, the General Trustees shall, if the General Trustees intend to proceed with the sale of the land, send to the participating owners a notice of statement of terms containing the particulars specified in Part I of Schedule 2 to this Order.

Amendment of draft statement of terms and upset price

6. If a response notice received by the General Trustees on or before the response date states that a participating owner does not accept the draft statement of terms or the upset price, the General Trustees shall seek to reach agreement with all of the participating owners on the terms of the statement of terms and upset price.

7. If agreement with all of the participating owners is reached the General Trustees shall amend the draft statement of terms or upset price in accordance with such agreement and, if they intend to proceed with the sale of the land, the General Trustees shall send to participating owners a notice of statement of terms containing the particulars specified in Part II of Schedule 2 to this Order.

Arbitration

8.—(1) If agreement as to the draft statement of terms and upset price is not reached among the participating owners and the General Trustees within a period of three months commencing from

the latest response date, a participating owner or the General Trustees may, subject to paragraph (2), refer the draft statement of terms and the draft upset price to the arbiter to be appointed by the sheriff.

(2) Any referral to an arbiter by virtue of paragraph (1) must be made within a period of one year after the latest response date.

9. The arbiter may on the application of a participating owner or the General Trustees determine–

(a) such terms (including any title conditions to be imposed on the land) on which it is reasonable in all the circumstances for the General Trustees to give an opportunity to purchase the land; and

(b) the price which is a reasonable estimate of the open market value of the land assessed on the basis of a sale by a willing seller to a willing purchaser on such terms.

Notice of intention to refer to arbitration

10. Any participating owner who intends to refer the statement of terms or upset price to arbitration shall send to the General Trustees notice of such intention in writing and no reference to arbitration shall be valid unless such notice has been sent.

11. On receipt of such notice of intention, or if the General Trustees intend to refer the statement of terms or upset price to arbitration, the General Trustees shall send to participating owners notice of the proposed reference to arbitration and the terms of any actual reference.

Arbitration Procedure

12. The General Trustees and any participating owner may make representations to the arbiter in connection with the statement of terms or the upset price.

Procedure after arbitration

13. On determination of the arbitration the General Trustees shall, if the General Trustees intend to proceed with the sale of the land, send to the participating owners a notice of statement of terms containing the particulars specified in Part III of Schedule 2 to this Order.

Sale of land

14. The participating owners shall have until the date specified in the notice of statement of terms (which date shall be not less than 21 days from the latest date of sending of the notice of statement of terms to any participating owner) in which to make an offer to the General Trustees on the same terms as the statement of terms to buy the land at a price to be stated in the offer.

15. The General Trustees shall sell the land to the participating owner making the highest (or higher) offer within the time limit specified in the notice of statement of terms provided that the price offered is equal to or above the upset price and is on the same terms and conditions as set out in the statement of terms.

16. On any occasion when two or more offers are made at the same price and it is the highest (or higher) price, the General Trustees shall allow each participating owner who offered that price a further seven days in which to submit a revised offer and the General Trustees shall sell the land to the adjoining owner offering the highest (or higher) revised price.

Sending

17.—(1) Where a provision of this Order requires that a thing be sent–