



# Care of Churches and Ecclesiastical Jurisdiction Measure 1991

1991 No. 1

## PART I

### GENERAL PRINCIPLE

#### **1 Duty to have regard to church's purpose.**

Any person or body carrying out functions of care and conservation under this Measure or under any other enactment or rule of law relating to churches shall have due regard to the role of a church as a local centre of worship and mission.

## PART II

### CARE, INSPECTION AND ACCOUNTABILITY

#### **2 Diocesan advisory committees.**

- (1) In every diocese there shall continue to be an advisory committee for the care of churches, to be known as "the Diocesan Advisory Committee".
- (2) For each advisory committee there shall be a written constitution provided by the diocesan synod of the diocese concerned, containing the provisions set out in Schedule 1 to this Measure or provisions to the like effect.
- (3) The written constitution required by subsection (2) above may include such further provisions consistent with those set out in Schedule 1 to this Measure as the diocesan synod considers appropriate—
  - (a) in connection with its procedure; or
  - (b) for the establishment of sub-committees and the delegation thereto of any of its functions.

*Status: Point in time view as at 01/09/1994.*

*Changes to legislation: There are currently no known outstanding effects for the Care of Churches and Ecclesiastical Jurisdiction Measure 1991. (See end of Document for details)*

- (4) The written constitution required by subsection (2) above shall be provided as soon as practicable and in any event not later than the expiration of the period of three years immediately following the coming into operation of this section.
- (5) The advisory committee shall have the functions specified in Schedule 2 to this Measure and such other functions as may be determined by the diocesan synod of the diocese concerned by resolution; and in carrying out its functions the committee and sub-committees (if any) shall have regard to the rites and ceremonies of the Church of England.
- (6) Any expenses incurred for the purpose of giving the advisory committee a written constitution under this section and for enabling it to discharge its functions properly and effectively shall be paid by the Diocesan Board of Finance for the diocese concerned:  
 Provided that a Diocesan Board of Finance shall not be liable for any expenses by virtue of this subsection unless the expenses were approved by the Board before they were incurred.
- (7) As soon as practicable after the end of each year the advisory committee shall prepare a report of its work and proceedings during that year and cause it to be laid before the diocesan synod of the diocese concerned; and the secretary to the committee shall send a copy of the report to the Council for the Care of Churches.
- (8) Section 13 of the 1964 Measure shall cease to have effect, but until such time as the advisory committee is given a written constitution under this section it shall continue to be formed and act in accordance with the provisions contained in that section.

### 3 **Amendment of Inspection of Churches Measure 1955.**

The <sup>M1</sup>Inspection of Churches Measure 1955 shall have effect subject to the amendments specified in Schedule 3 to this Measure.

#### **Marginal Citations**

**M1** [1955 No.1](#)

### 4 **Duties of churchwardens as to recording of information about churches.**

- (1) In every parish it shall be the duty of the churchwardens—
  - (a) to compile and maintain—
    - (i) a full terrier of all lands appertaining to the church;
    - (ii) a full inventory of all articles appertaining to the church;
  - (b) to insert in a log-book maintained for the purpose a full note of all alterations, additions and repairs to, and other events affecting, the church and the lands and articles appertaining thereto and of the location of any other documents relating to such alterations, additions, repairs and events which are not kept with the log-book.
- (2) In carrying out their duty under subsection (1) above the churchwardens shall act in consultation with the minister.

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- (3) The form of the terrier, inventory and log-book shall accord with such recommendations as the Council for the Care of Churches may make.
- (4) The churchwardens shall send a copy of the inventory to such person as the bishop of the diocese concerned may designate from time to time for the purpose of this subsection as soon as practicable after it is compiled and shall notify that person of any alterations at such intervals as the bishop may direct from time to time.
- (5) This section applies in relation to each church in a parish containing more than one church.

## **5 Duties of churchwardens as to fabric etc. of churches.**

- (1) In every parish it shall be the duty of the churchwardens—
  - (a) at least once in every year, to inspect or cause an inspection to be made of the fabric of the church and all articles appertaining to the church;
  - (b) in every year, to deliver to the parochial church council and on behalf of that council to the annual parochial church meeting a report (referred to below as “the annual fabric report”) on the fabric of the church and all articles appertaining to the church, having regard to the inspection or inspections carried out under paragraph (a) above, including an account of all actions taken or proposed during the previous year for their protection and maintenance and, in particular, for the implementation of any recommendation contained in a report under a scheme made in pursuance of section 1 of the <sup>M2</sup>Inspection of Churches Measure 1955.
- (2) In carrying out their duty under subsection (1) above the churchwardens shall act in consultation with the minister.
- (3) The annual fabric report shall be delivered to the parochial church council at its meeting next before the annual parochial church meeting and, with such amendments as that council may make, to the ensuing annual parochial church meeting.
- (4) The churchwardens shall, as soon as practicable after the beginning of each year, produce to the parochial church council the terrier, the inventory and the log-book relating to events occurring in the previous year and such other records as they consider likely to assist the council in discharging its functions in relation to the fabric of the church and articles appertaining to the church.
- (5) Any terrier, inventory or log-book produced to the parochial church council in accordance with subsection (4) above shall be accompanied by a statement, signed by the churchwardens, to the effect that the contents thereof are accurate.
- (6) This section applies in relation to each church in a parish containing more than one church.
- (7) In this section “year” means calendar year.

### **Marginal Citations**

**M2** 1955 No. 1.

*Status: Point in time view as at 01/09/1994.*

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## 6 Provisions relating to trees in churchyards.

- (1) The powers, duties and liabilities of a parochial church council with respect to the care and maintenance of churchyards shall extend to trees therein, including those proposed to be planted.
- (2) Where a tree in a churchyard maintainable by a parochial church council is felled, lopped or topped the council may sell or otherwise dispose of the timber and the net proceeds of any sale thereof shall be paid to the council and applied for the maintenance of any church or churchyard maintainable by the council.
- (3) The chancellor of a diocese shall, after consultation with the advisory committee, give written guidance to all parochial church councils in the diocese as to the planting, felling, lopping and topping of trees in churchyards.
- (4) The provisions of section 20 of the <sup>M3</sup>Repair of Benefice Buildings Measure 1972 (which relates to the felling etc. of trees) in so far as they relate to trees in churchyards shall cease to have effect.
- (5) In this section “churchyard” includes a closed churchyard.

### Marginal Citations

**M3** 1972 No. 2.

## 7 Payment of expenses in connection with ruins.

Any expenses properly incurred by a parochial church council, with the prior approval in writing of the Diocesan Board of Finance for the diocese concerned, for the purpose of implementing a recommendation contained in a report made in respect of a ruin in pursuance of section 1A(b) of the <sup>M4</sup>Inspection of Churches Measure 1955 shall be paid by that Board.

### Marginal Citations

**M4** 1955 No. 1.

## PART III

### ECCLESIASTICAL JURISDICTION

## 8 Amendment of Ecclesiastical Jurisdiction Measure 1963.

- (1) The <sup>M5</sup>1963 Measure shall have effect subject to the amendments specified in Schedule 4 to this Measure.
- (2) The amendment made by paragraph 2(c)(ii) of that Schedule (which relates to the retirement age of chancellors) shall not have effect in relation to any appointment to the office of chancellor of a diocese made before the coming into operation of that amendment.

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**Marginal Citations**

M5 1963 No. 1.

**9 Amendment of Ecclesiastical Judges and Legal Officers Measure 1976.**

The <sup>M6</sup>Ecclesiastical Judges and Legal Officers Measure 1976 shall have effect subject to the amendments specified in Schedule 5 to this Measure.

**Marginal Citations**

M6 1976 No. 2.

**10 Amendment of Ecclesiastical Fees Measure 1986.**

The <sup>M7</sup>Ecclesiastical Fees Measure 1986 shall have effect subject to the amendments specified in Schedule 6 to this Measure.

**Marginal Citations**

M7 1986 No. 2.

**11 General provisions as to faculty jurisdiction.**

- (1) For the avoidance of doubt and without prejudice to the jurisdiction of consistory courts under any enactment or rule of law, it is hereby declared that the jurisdiction of the consistory court of a diocese applies to all parish churches in the diocese and the churchyards and articles appertaining thereto.
- (2) Except as provided by subsection (3) below, a building licensed by the bishop of a diocese after the coming into operation of this section for public worship according to the rites and ceremonies of the Church of England and all articles appertaining thereto shall be subject to the jurisdiction of the consistory court of the diocese as though the building were a consecrated church.
- (3) Where the bishop of a diocese, after consultation with the advisory committee, considers that any building in the diocese so licensed should not be subject to the faculty jurisdiction he may by order direct that subsection (2) above shall not apply to the building.
- (4) Where the bishop of a diocese, after consultation with the advisory committee, considers that any article appertaining to a building in the diocese so licensed in respect of which an order under subsection (3) above is in force should be subject to the faculty jurisdiction by reason of its being—
  - (a) of outstanding architectural, artistic, historical or archaeological value; or
  - (b) of significant monetary value; or
  - (c) at special risk of being stolen or damaged,he may by order direct that the article shall be subject to the jurisdiction of the consistory court of the diocese during such period as may be specified in the order.

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- (5) Any article in respect of which an order under subsection (4) above is in force shall, during the period specified in the order, be subject to the jurisdiction of the court specified in the order as though it were an article appertaining to a consecrated church.
- (6) An order under subsection (3) or (4) above may be varied or revoked by an order made by the bishop of the diocese concerned after consultation with the advisory committee.
- (7) An order under this section which has the effect of subjecting an article to the faculty jurisdiction shall not render unlawful any act done before the making of the order nor shall require the issue of faculties confirming such acts.
- (8) The chancellor of a diocese shall give written guidance to all parochial church councils, ministers and churchwardens in the diocese as to those matters within the jurisdiction of the consistory court which he for the time being considers, after consultation with the advisory committee, to be of such a minor nature that they may be undertaken without a faculty.

## 12 **Grant of faculties, etc.**

- (1) In any proceedings for obtaining a faculty, the court may grant the faculty subject to conditions, including in particular—
  - (a) a condition requiring the work authorised thereby or any part thereof to be carried out under the supervision of the archdeacon concerned or of any other person nominated by the court in that behalf;
  - (b) in the case of a faculty authorising the disposal of an article, a condition requiring a specified period to elapse before the disposal takes place.
- (2) Where the court grants a faculty to a person other than an archdeacon and considers that the work authorised thereby should be carried out (whether or not by that person), it may also order that, in default of that person carrying out the work, a faculty shall issue to the archdeacon concerned authorising him to carry out the work and, in that event, that the expenses incurred by the archdeacon in carrying out the work be paid by that person.

## 13 **Orders against persons responsible for defaults.**

- (1) Subject to subsection (7) below, if in any proceedings by any person for obtaining a faculty it appears to the court that any other person being a party to the proceedings was responsible wholly or in part for any act or default in consequence of which the proceedings were instituted the court may order the whole or any part of the costs and expenses of the proceedings or consequent thereon, including expenses incurred in carrying out any work authorised by the faculty (so far as such costs and expenses have been occasioned by that act or default), to be paid by the person responsible.
- (2) Subject to subsection (7) below, in any such proceedings the court may by way of special citation add as a further party to the proceedings any person alleged to be so responsible or partly responsible and not already a party and notwithstanding that such person resides outside the diocese concerned.
- (3) A special citation under subsection (2) above may require the person to whom it is issued to attend the court concerned at such time and place as may be specified in the citation.

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- (4) Where at any time (whether before or after faculty proceedings have been instituted) it appears to the consistory court of a diocese that a person intends to commit or continue to commit, or cause or permit the commission or continuance of, any act in relation to a church or churchyard in the diocese or any article appertaining to a church in the diocese, being an act which would be unlawful under ecclesiastical law, the court may issue an injunction restraining the first-mentioned person from committing or continuing to commit that act or from causing or permitting the commission or continuance of that act, as the case may be.
- (5) Where at any time (whether before or after faculty proceedings have been instituted) it appears to the consistory court of a diocese that a person has committed, or caused or permitted the commission of, any act in relation to a church or churchyard in the diocese or any article appertaining to a church in the diocese which was unlawful under ecclesiastical law, the court may make an order (a “restoration order”) requiring that person to take such steps as the court may consider necessary, within such time as the court may specify, for the purpose of restoring the position so far as possible to that which existed immediately before the act was committed.
- (6) An injunction under subsection (4) above may be issued and a restoration order under subsection (5) above may be made on an application made by the archdeacon concerned or any other person appearing to the court to have a sufficient interest in the matter or on its own motion.
- (7) In any proceedings for obtaining a faculty the court shall not make an order under subsection (1) above or issue a special citation under subsection (2) above in respect of any act unless the court is satisfied that the proceedings were instituted less than six years after the act was committed.
- (8) The court shall not make a restoration order under subsection (5) above in respect of any act unless the court is satisfied that less than six years have elapsed since the act was committed.
- (9) Where proceedings for obtaining a faculty are instituted by an archdeacon or an application for a restoration order under subsection (5) above is made by an archdeacon and any fact relevant to the institution of such proceedings or the making of such an application has been deliberately concealed from him the period of six years mentioned in subsection (7) above or, as the case may be, subsection (8) above, shall not begin to run until the archdeacon has discovered the concealment or could with reasonable diligence have discovered it.
- (10) For the purpose of subsection (9) above, deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in that breach of duty.
- (11) Failure to comply without reasonable excuse with any requirement of a special citation or injunction issued, or a restoration order made, under this section by any court shall be a contempt of the court.

#### **14 Delegation to archdeacons of power to grant faculties.**

- (1) Subject to the following provisions of this section the chancellor of a diocese shall confer upon the archdeacon of every archdeaconry in the diocese the jurisdiction of the consistory court of the diocese in such faculty matters relating to the archdeaconry, to such extent and in such manner as may be prescribed.

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- (2) An archdeacon upon whom such jurisdiction is conferred shall have power to grant a faculty in any cause of faculty falling to be considered by him which is unopposed.
- (3) Where, in any cause of faculty falling to be considered by an archdeacon—
  - (a) he declines to grant a faculty; or
  - (b) he considers that the matter should be dealt with as a matter of urgency without reference to the advisory committee for advice in accordance with section 15(2) below; or
  - (c) the grant of a faculty is opposed by any person,
 he shall cause the matter to be referred to the chancellor of the diocese concerned to be dealt with by him.
- (4) A faculty granted by an archdeacon under subsection (2) above shall have effect as if it had been granted by the chancellor of the diocese concerned.
- (5) Nothing in this section shall be construed as enabling an archdeacon to—
  - (a) order any costs or expenses to be paid by any person; or
  - (b) issue an injunction or make a restoration order against any person; or
  - (c) grant an interim faculty pending the final determination of the matter;
 and where an archdeacon considers that any question arises as to the payment of costs or expenses, the issue of an injunction, the making of a restoration order or the grant of an interim faculty, he shall cause the matter to be referred to the chancellor of the diocese concerned to be dealt with by him.
- (6) A certificate issued by an archdeacon under section 12 of the 1964 Measure before the coming into operation of this section shall continue in force and have effect as if it were a faculty granted under subsection (2) above.

## 15 Consultation with diocesan advisory committees.

- (1) The chancellor of a diocese shall seek the advice of the advisory committee before making a final determination in any cause of faculty or issuing a permanent injunction under section 13(4) above or making a restoration order under section 13(5) above, unless the action proposed relates exclusively to exhumation or the reservation of a grave space or he is satisfied that the matter is sufficiently urgent to justify the grant of a faculty or issue of an injunction without obtaining the committee's advice.
- (2) An archdeacon shall seek the advice of the advisory committee before making a final determination in any cause of faculty, unless the action proposed relates exclusively to exhumation or the reservation of a grave space.
- (3) In every diocese the secretary to the advisory committee shall compile and maintain a register of all petitions for a faculty referred to the committee for advice under this section, and shall ensure that the register is available for inspection by the public by prior appointment at such place in the diocese as the bishop of the diocese may designate for the purposes of this subsection.

## 16 Parties.

- (1) Proceedings for obtaining a faculty may be instituted by—
  - (a) the archdeacon of the archdeaconry in which the parish concerned is situated;
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- (b) the minister and churchwardens of the parish concerned; or
  - (c) any other person appearing to the court to have a sufficient interest in the matter.
- (2) For the purposes of any proceedings for obtaining a faculty the archdeacon shall be deemed to have an interest as such, and any person whose name is entered on the church electoral roll of the parish concerned but who does not reside therein shall be deemed to have an interest as though he were a parishioner of that parish.
- (3) If—
- (a) the archdeaconry is vacant; or
  - (b) the archdeacon is incapacitated by absence or illness from acting; or
  - (c) in the opinion of the bishop—
    - (i) the archdeacon is for any other reason unable or unwilling to act; or
    - (ii) it would be inappropriate for the archdeacon to act,
- such other person as the bishop shall appoint in that behalf in writing (either generally or in a particular case) shall have power to act in the place of the archdeacon for the purposes of this Measure or of any other enactment relating to the institution of, or participation in, proceedings in the court.
- (4) If the archdeacon or such other person as may be appointed under subsection (3) above institutes or intervenes in any proceedings for obtaining a faculty all costs and expenses properly incurred by him or which he is ordered by the court to pay shall be paid by the Diocesan Board of Finance for the diocese concerned:  
Provided that a Diocesan Board of Finance shall not be liable for any sum by virtue of this subsection unless the institution of proceedings or intervention is approved by the bishop of the diocese concerned in writing after consultation with the Board and, if such approval is duly given, any order in the proceedings that the costs or expenses of the archdeacon or other appointed person be paid by any other party may be enforced by the Board in the name of the archdeacon or other appointed person.
- (5) Anything done under or for the purposes of section 9 of the 1964 Measure and having effect immediately before the coming into force of this section shall continue to have effect and be deemed to have been done under or for the purposes of this section.

## **17 Faculties for demolition of churches.**

- (1) A court shall not grant a faculty for the demolition or partial demolition of a church except on the grounds specified in this section.
- (2) Subject to the following provisions of this section, a court may grant a faculty for the demolition of the whole or part of a church if it is satisfied that another church or part of a church will be erected on the site or curtilage of the church or part of a church in question or part thereof to take the place of that church or part of a church.
- (3) Subject to the following provisions of this section, a court may grant a faculty for the demolition of part of a church if it is satisfied that—
- (a) the part of the church left standing will be used for the public worship of the Church of England for a substantial period after such demolition; or
  - (b) such demolition is necessary for the purpose of the repair or alteration of the church or the reconstruction of the part to be demolished.
- (4) The court shall not grant a faculty under subsection (2) or (3)(a) above unless—

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- (a) the person bringing proceedings for the faculty has—
    - (i) obtained the written consent of the bishop of the diocese concerned to the proceedings being brought; and
    - (ii) within the prescribed time, caused to be published in “The London Gazette” and in such other newspapers as the court may direct a notice stating the substance of the petition for the faculty;
  - (b) the registrar has given notice in writing to the Council for the Care of Churches and the advisory committee of the diocese concerned of the petition;
  - (c) the judge of the court has thereafter considered such advice as the advisory committee has tendered to the court; and
  - (d) the judge has heard evidence in open court, after application for the purpose has been made to the court in the prescribed manner, from—
    - (i) a member of the said Council or some person duly authorised by the Council; and
    - (ii) any other person, unless in the opinion of the judge his application or the evidence which he gives is frivolous or vexatious.
- (5) Without prejudice to the requirements of subsection (4) above, the court shall not grant a faculty under subsection (2) or (3)(a) above in the case of a church which is a listed building or in a conservation area unless—
- (a) the registrar has given notice in writing to—
    - (i) the Secretary of State;
    - (ii) the local planning authority concerned;
    - (iii) the Historic Buildings and Monuments Commission for England; and
    - (iv) the national amenity societies;
  - (b) the judge of the court has thereafter considered such advice as any of those bodies may have tendered to the court;
  - (c) the registrar has given notice in writing to the Royal Commission on the Historical Monuments of England and thereafter either—
    - (i) for a period of at least one month following the giving of the notice reasonable access to the church has been made available to members or officers of the said Royal Commission for the purpose of recording it; or
    - (ii) the said Royal Commission have, by their Secretary or other officer of theirs with authority to act on their behalf for the purposes of this section, stated in writing that they have completed their recording of the church or that they do not wish to record it.
- (6) A court shall not grant a faculty under subsection (3)(b) above unless—
- (a) the court is satisfied, after consultation with the advisory committee, that when the proposed repair, alteration or reconstruction is completed the demolition will not materially affect the external or internal appearance of the church or the architectural, archaeological, artistic or historic character of the church; or
  - (b) the requirements of subsection (4) above and also, in the case of a church which is a listed building or in a conservation area, the requirements of subsection (5) above have been complied with.
- (7) Anything done under or for the purposes of section 2 of the 1964 Measure and having effect immediately before the coming into force of this section shall continue to have effect and be deemed to have been done under or for the purposes of this section.

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## **18 Emergency demolition of churches.**

- (1) Without prejudice to the powers exercisable under any rule of law by diocesan chancellors at the coming into operation of this section, where the chancellor of a diocese is satisfied—
- (a) that the demolition of the whole or part of a church in the diocese is necessary in the interests of safety or health or for the preservation of the church and, having regard to the urgency of the matter, there is insufficient time to obtain a faculty in respect of it; and
  - (b) in the case of a church which is a listed building or is in a conservation area—
    - (i) that it is not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter; and
    - (ii) that the works to be carried out are limited to the minimum measures immediately necessary,
- he may by an instrument under his hand authorise the carrying out of the demolition without a faculty.
- (2) An instrument under subsection (1) above—
- (a) may require the person to whom it is issued (subject to his obtaining any necessary faculty) to carry out such works for the restoration of the church following its demolition or partial demolition as may be specified in the instrument;
  - (b) in the case of partial demolition of a church which is a listed building or is in a conservation area, shall require the person to whom it is issued, as soon as practicable after the works have been carried out, to give to the local planning authority notice in writing describing the works carried out.
- (3) Where the chancellor of a diocese issues an instrument under subsection (1) above he shall send a copy of the instrument to the Council for the Care of Churches and the local planning authority.

## **19 Meaning of “church”.**

In this Part, unless the context otherwise requires, “church” includes any building which is licensed for public worship according to the rites and ceremonies of the Church of England and is subject to the faculty jurisdiction.

## **PART IV**

### **MISCELLANEOUS AND GENERAL**

## **20 Discussion and reporting of defaults.**

If it appears to an archdeacon that—

- (a) anything has been done in a parish in his archdeaconry which ought not to have been done without a faculty; or
- (b) anything which ought to have been done in connection with the care of any church in his archdeaconry or any article appertaining to any such church has not been done,

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he may convene an extraordinary meeting of the parochial church council, or an extraordinary parochial church meeting, of the parish concerned for the purpose of discussing the matter, and shall either take the chair himself or shall appoint a chairman to preside. The chairman, not being otherwise entitled to attend such meeting, shall not be entitled to vote upon any resolution before the meeting.

## 21 Deposit of articles in places of safety.

- (1) If it appears to an archdeacon that any article appertaining to a church in his archdeaconry, being an article which he considers to be of architectural, artistic, historical or archaeological value, is exposed to danger of loss or damage and ought to be removed to a place of safety, he may subject to subsection (2) below order that the article in question shall be removed from the church and deposited in such place of safety as may be specified in the order.
- (2) Unless the archdeacon is of the opinion that the article in question should be removed to a place of safety immediately, he shall notify the churchwardens and any other person having custody of the article and the parochial church council and advisory committee of the facts as they appear to the archdeacon and inform them that he will consider any written representations made to him by any of them before a date specified in the notice being a date not less than twenty-eight days after service of the notice; and in that event the archdeacon shall not make an order under this section before that date and shall before making such an order consider any representations duly made to him under this subsection.
- (3) Where the archdeacon makes an order under this section without giving the advisory committee an opportunity to make representations to him in connection with the making of the order, he shall, as soon as practicable after the removal of the article in question to a place of safety, notify the committee of the removal.
- (4) An order under this section shall be in such form as may be prescribed and shall be directed to, and served on, the churchwardens and any other person having custody of the article in question.
- (5) If any person on whom an order made by an archdeacon under this section is served refuses or fails to comply with the order, the archdeacon may apply to the consistory court of the diocese in which the article in question is for an order that that person shall deliver the article to the place of safety specified in the order made by the archdeacon, and the court, if satisfied that that order was made in accordance with the provisions of this section, may make an order accordingly.
- (6) Where an order is made by an archdeacon under this section the archdeacon shall, within twenty-eight days after the removal of the article in question to a place of safety, apply to the consistory court of the diocese concerned for a faculty authorising the retention of the article in the place of safety.
- (7) In this section “article” does not include a record or register to which section 10(1) of the <sup>M8</sup>Parochial Registers and Records Measure 1978 applies.

### Marginal Citations

M8 1978 No. 2.

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## **22 Power of bishop to remove legal effects of consecration.**

- (1) Where the bishop of a diocese, on the application of the archdeacon of an archdeaconry in the diocese in respect of any building or land in the archdeaconry which is subject to the legal effects of consecration, is satisfied that—
  - (a) the building or land is not held or controlled by any ecclesiastical corporation (that is to say, any corporation in the Church of England, whether sole or aggregate, which is established for spiritual purposes) or by any Diocesan Board of Finance; and
  - (b) no purpose will be served by its remaining subject to the legal effects of consecration,he may by order direct that the building or land or part of the building or land shall not be subject to the legal effects of consecration.
- (2) Subject to subsection (3) below, an order under subsection (1) above may impose such conditions and requirements as the bishop thinks fit as to—
  - (a) the preservation or disposal of any human remains believed to be buried in or beneath any building affected by the order or in any land so affected and of any tombstones, monuments or memorials commemorating the deceased persons; and
  - (b) the maintenance of orderly behaviour in or on the building or land so affected; and for the purposes of paragraph (a) above such an order may apply to the building or land such provisions of section 65 of and Schedule 6 to the 1983 Measure as may be specified in the order subject to such modifications and adaptations as may be so specified.
- (3) A condition or requirement as to a matter falling within paragraph (a) of subsection (2) above shall not be imposed by an order under subsection (1) above except with the consent of the Secretary of State.
- (4) Where an order is made under subsection (1) above in respect of any building or land then—
  - (a) the building or land shall not be subject to the legal effects of consecration; and
  - (b) in particular, the jurisdiction of any court or person with respect to the granting of faculties shall cease to extend to the building or land.
- (5) Any conditions or requirements imposed under subsection (2) above shall be enforceable as if the archdeacon of the archdeaconry in which the building or land affected is situated was the owner of adjacent land and the conditions or requirements were negative covenants expressed to be entered into for the benefit of that adjacent land.
- (6) For the purposes of subsection (5) above the enforcement of a condition or requirement shall be deemed to be for the benefit of the archdeacon concerned.
- (7) Section 84 (except subsection (2)) of the <sup>M9</sup>Law of Property Act 1925 (which enables the Lands Tribunal to discharge or modify restrictions affecting land) shall not apply in relation to conditions and requirements imposed under subsection (2) above.
- (8) A condition or requirement imposed by an order under subsection (1) above shall be a local land charge, and for the purposes of the <sup>M10</sup>Local Land Charges Act 1975 the bishop by whom the order was made shall be treated as the originating authority as respects the charge constituted by the condition or requirement.

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*Changes to legislation: There are currently no known outstanding effects for the Care of Churches and Ecclesiastical Jurisdiction Measure 1991. (See end of Document for details)*

**Marginal Citations**

**M9** 1925 c.20.

**M10** 1975 c. 76.

**23 Application of section 22 in relation to Crown land.**

- (1) Subject to subsection (2) below, section 22 above shall apply in relation to Crown land and to buildings situated on Crown land as it applies to other land and buildings.
- (2) A condition or requirement as to a matter falling within paragraph (b) of subsection (2) of section 22 above shall not be imposed by an order under subsection (1) of that section relating to Crown land or a building situated on Crown land except with the consent of the appropriate authority.
- (3) For the purposes of subsection (2) above any land which is used for the purposes of the Church of England and which will become Crown land on ceasing to be so used or on the exercise of a right of re-entry shall be treated as Crown land.
- (4) In this section “Crown land” and “the appropriate authority” have the same meanings as in section 293 of the<sup>M11</sup> Town and Country Planning Act 1990; and, if any question arises as to what authority is the appropriate authority in relation to any land or building, that question shall be referred to the Treasury, whose decision shall be final.

**Marginal Citations**

**M11** 1990 c. 8.

**24 Repeal of s.4 of Parish Notices Act 1837.**

Section 4 of the<sup>M12</sup> Parish Notices Act 1837 (decrees, etc. of ecclesiastical courts not to be read in churches) shall cease to have effect.

**Marginal Citations**

**M12** 7 Will 4 & 1 Vict c. 45.

**25 Rule Committee.**

- (1) There shall be a Rule Committee which shall consist of the following persons, namely—
  - (a) a diocesan bishop nominated by the Archbishops of Canterbury and York;
  - (b) the Dean of the Arches and Auditor;
  - (c) one archdeacon nominated by the Archbishops of Canterbury and York;
  - (d) two diocesan chancellors nominated by the Archbishops of Canterbury and York;
  - (e) two diocesan registrars nominated by the Archbishops of Canterbury and York;
  - (f) one person nominated by the Council for the Care of Churches;

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- (g) two persons nominated by the Standing Committee of the House of Laity from among the members of that House,  
together with six other persons nominated for particular purposes in accordance with subsection (2) below.
- (2) The members of the committee to be nominated for particular purposes shall be as follows—
- (a) for the purpose of making rules relating to proceedings in the Court of Ecclesiastical Causes Reserved or a Commission of Review appointed under section 11 of the 1963 Measure, one person nominated by the Lord Chancellor, being a person who holds or has held high judicial office;
- (b) for the purpose of making rules relating to cathedral churches—
- (i) one person nominated by the Standing Committee of the General Synod, being a person who is a member of the administrative body of a cathedral church;
- (ii) one person nominated by the Cathedrals Fabric Commission from among the members of that Commission, being a person having special knowledge of the conservation of cathedrals;
- (c) for the purpose of making rules relating to proceedings in respect of offences cognisable under section 14 of the 1963 Measure—
- (i) a diocesan bishop nominated by the Archbishops of Canterbury and York (in addition to the bishop nominated under subsection (1)(a) above);
- (ii) the Prolocutor of the Lower House of the Convocation of Canterbury or a member of that House nominated by him;
- (iii) the Prolocutor of the Lower House of the Convocation of York or a member of that House nominated by him.
- (3) The quorum of the committee shall be five members, but a member nominated for a particular purpose under subsection (2) above shall not be included in a quorum for any other purpose.
- (4) The chairman of the committee shall be the Dean of the Arches and Auditor, unless he declines or is unable to act as such in which case the chairman shall be such other member of the committee as may be nominated by the Dean of the Arches and Auditor after consultation with the Archbishops of Canterbury and York.
- (5) Subject to subsection (3) above, the committee may act notwithstanding any vacancy in its membership and may regulate its own procedure.

**Modifications etc. (not altering text)**

- C1** S. 25(2)(b): Functions of Standing Committee transferred (1.1.1999) to Appointments Committee by S.I. 1998/1715, arts. 1(2)(4), 2, **Sch. 1**; Instrument dated 14.10.1998 made by Archbishops of Canterbury and York

**26 Functions of Rule Committee.**

- (1) The Rule Committee may make rules for carrying into effect the provisions of—
- (a) this Measure;
- (b) the <sup>M13</sup>1963 Measure;

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- (c) the <sup>M14</sup>1964 Measure;
- (d) the <sup>M15</sup>Care of Cathedrals Measure 1990;
- (hereafter referred to in this section as “the relevant provisions”).
- (2) Rules made under subsection (1) above may in particular (so far as the same are not regulated by the relevant provisions or by rules made under section 4 of the [<sup>F1</sup>Church of England (Legal Aid Measure 1994)]) make provision for—
- (a) regulating the procedure and practice (including the mode and burden of proof and admissibility of evidence) of all courts, commissions, committees and examiners provided for in the 1963 Measure or the Care of Cathedrals Measure 1990, including courts of appellate jurisdiction (so far as rules made by the Judicial Committee of the Privy Council do not extend);
  - (b) the procedure and practice where archdeacons have jurisdiction in faculty matters under section 14 above;
  - (c) the appointment and duties of officers of the said courts, commissions and committees;
  - (d) the time within which any act required or permitted to be performed by the relevant provisions is to be performed;
  - (e) matters relating to the appointment of authorised complainants and prosecutors in connection with proceedings or contemplated proceedings under the relevant provisions;
  - (f) the forms of complaint instituting proceedings under the relevant provisions and of any answers to be made thereto;
  - (g) all other forms and notices required in connection with the relevant provisions;
  - (h) the mode of effecting service of complaints, articles or other documents including provision for substituted service;
  - (i) the fixing of the time and place of any hearing or trial and for notifying the parties thereof;
  - (j) the passing of censures and the forms of certificates of findings;
  - (k) matters relating to costs, fees and expenses in respect of any proceedings under the relevant provisions;
  - (l) enabling evidence to be obtained of compliance with the relevant provisions; and
  - (m) any matter which may be prescribed by virtue of the relevant provisions.
- (3) The Rule Committee may also make rules containing provision—
- (a) for enabling a parochial church council, after consultation with the advisory committee of the diocese concerned, to deposit (without a faculty) moveable articles appertaining to a church in the parish concerned for safekeeping in places approved for the purpose by such persons as may be specified in the rules, subject to such requirements, terms and conditions as may be so specified or as may be determined by persons so specified;
  - (b) for requiring parochial church councils to keep records of the location of burials carried out in churchyards in their parish and of reserved grave-spaces in respect of which a faculty has been granted;
  - (c) for the safe-keeping, care, inspection and preservation of books and other documents (not being register books or records within the meaning of section 25 of the <sup>M16</sup>Parochial Registers and Records Measure 1978) which, in the opinion of such person as may be specified in the rules, are of historic



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interest to the Church of England, including provision for the appointment of persons with duties in that respect.

#### Textual Amendments

- F1** Words in s. 26(2) substituted (1.9.1994) by 1994 No. 3, s. 7(2), **Sch. 2 para. 3**; Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

#### Marginal Citations

- M13** 1963 No. 1.  
**M14** 1964 No.5.  
**M15** 1990 No.2.  
**M16** 1978 No. 2.

## 27 Supplementary provisions as to rules.

- (1) Any rule made under—
- section 65 of the 1963 Measure; or
  - section 14 of the 1964 Measure; or
  - section 16 of the <sup>M17</sup>Care of Cathedrals Measure 1990,
- being a rule in force immediately before the coming into force of this section, shall continue in force and be deemed to have been made under section 26 above.
- (2) Any rules made under section 26 above shall be laid before the General Synod and shall not come into force until approved by the General Synod, whether with or without amendment.
- (3) Where the Standing Committee determines that the rules do not need to be debated by the General Synod then, unless—
- notice is given by a member of the General Synod in accordance with its Standing Orders that he wishes the rules to be debated, or
  - notice is so given by any such member that he wishes to move an amendment to the rules and at least twenty-five other members of the General Synod indicate when the amendment is called that they wish the amendment to be moved,
- the rules shall for the purposes of subsection (2) above be deemed to have been approved by the General Synod without amendment.
- (4) The <sup>M18</sup>Statutory Instruments Act 1946 shall apply to any rules approved by the General Synod under subsection (2) above as if they were statutory instruments and were made when so approved, and as if this Measure were an Act providing that any such rules should be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Marginal Citations

- M17** 1990 No.2.  
**M18** 1946 c.36.

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## 28 General provisions as to orders by bishops.

The bishop of a diocese shall send every order made by him under this Measure to the registrar of the diocese and the registrar shall register any order so made in the diocesan registry.

## 29 Diocesan registrars' fees.

There shall be payable to a diocesan registrar for registering any order under section 28 above and for permitting searches for and inspection and furnishing copies of any such order such fees as may from time to time be authorised by an order made under Part II of the <sup>M19</sup>Ecclesiastical Fees Measure 1986.

### Marginal Citations

M19 1986 No. 2.

## 30 Service of notices and orders.

- (1) Any notice, order or other document required or authorised by this Measure to be served on or sent or given to any person may be served, sent or given by delivering it to him, or by leaving it at his proper address, or by post.
- (2) For the purposes of this section and of section 7 of the <sup>M20</sup>Interpretation Act 1978 the proper address of the person on or to whom any such notice, order or other document is required or authorised to be served, sent or given shall be the last known address of that person.

### Marginal Citations

M20 1978 c. 30.

## 31 Interpretation.

- (1) In this Measure, unless the context otherwise requires—
    - “the 1963 Measure” means the <sup>M21</sup>Ecclesiastical Jurisdiction Measure 1963;
    - “the 1964 Measure” means the <sup>M22</sup>Faculty Jurisdiction Measure 1964;
    - “the 1983 Measure” means the <sup>M23</sup>Pastoral Measure 1983;
    - “administrative body”—
      - (a) in relation to a cathedral church in respect of which there is a corporate body known as the dean and chapter, means the body by which administrative functions in relation to the cathedral church are performed by virtue of paragraph (b) of section 7 of the <sup>M24</sup>Cathedrals Measure 1963;
      - (b) in relation to any other cathedral church, means the body by which administrative functions in relation to the cathedral church are performed by virtue of paragraph (b) of section 8 of that Measure;
- “advisory committee” in relation to a diocese or archdeaconry means the Diocesan Advisory Committee of the diocese or of the diocese in which the archdeaconry is situated, as the case may be;

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“article” includes part of an article and any thing affixed to land or a building;

“building” includes any structure or erection, and any part of a building as so defined;

“Cathedrals Fabric Commission” means the Cathedrals Fabric Commission for England;

“conservation area” has the same meaning as in the <sup>M25</sup>Planning (Listed Buildings and Conservation Areas) Act 1990;

“Council for the Care of Churches” means the body so named at the passing of this Measure or any body subsequently exercising the functions of that body under a different name or with a different constitution;

“Diocesan Board of Finance” has the same meaning as in the <sup>M26</sup>Endowments and Glebe Measure 1976;

“high judicial office” has the meaning assigned to it by section 25 of the <sup>M27</sup>Appellate Jurisdiction Act 1876;

“inventory” means the inventory maintained under section 4(1) above;

“land” includes buildings;

“listed building” has the same meaning as in the <sup>M28</sup>Planning (Listed Buildings and Conservation Areas) Act 1990;

“local planning authority” in relation to any area means the body exercising the functions of a local planning authority under section 8 of the <sup>M29</sup>Planning (Listed Buildings and Conservation Areas) Act 1990 in that area;

“log-book” means the log-book maintained under section 4(1) above;

“minister”, in relation to a parish, means—

- (a) in a case where a special cure of souls in respect of the parish has been assigned to a vicar in a team ministry by a scheme under the 1983 Measure or by his licence from the bishop, that vicar;
- (b) in any other case—
  - (i) the incumbent of the benefice comprising the parish; or
  - (ii) a curate licensed to the charge of the parish or a minister acting as priest-in-charge of the parish, where rights of presentation are suspended;

“national amenity society” means any of the following, the Ancient Monuments Society, the Council for British Archaeology, the Georgian Group, the Society for the Protection of Ancient Buildings, the Victorian Society and such other body as may from time to time be designated by the Dean of the Arches and Auditor as a national amenity society for the purpose of this Measure;

“parish” means—

- (a) an ecclesiastical parish; and
  - (b) a district which is constituted a “conventional district” for the cure of souls; “parish church” does not include a parish church cathedral to which the <sup>M30</sup>Care of Cathedrals Measure 1990 applies;
- “place of worship” includes the curtilage of a place of worship;
- “prescribed” means prescribed by rules made under section 26 above;
- “Rule Committee” means the Rule Committee established under section 25 above;

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“terrier” means the terrier maintained under section 4(1) above.

- (2) In Parts I, II and IV of this Measure “church” means—
- (a) any parish church;
  - (b) any other church or chapel (not being a cathedral church to which the Care of Cathedrals Measure 1990 applies or chapel which is not subject to the jurisdiction of the bishop of a diocese or the Cathedral Church of Christ in Oxford) which has been consecrated for the purpose of public worship according to the rites and ceremonies of the Church of England; and
  - (c) any building licensed for public worship according to the rites and ceremonies of the Church of England other than—
    - (i) a building which is in a university, college, school, hospital or public or charitable institution but which has not been designated under section 29(2) of the 1983 Measure as a parish centre of worship;
    - (ii) a building which has been excluded from the provisions of Parts II and IV of this Measure by direction of the bishop of the diocese concerned with the approval of the advisory committee; and
    - (iii) a building used solely for the purpose of religious services relating to burial or cremation.
- (3) In this Measure references to work authorised by a faculty shall be construed as including a reference to work ordered by a faculty.
- (4) In this Measure references to the consistory court of a diocese and to the chancellor of a diocese shall, in their application to the diocese of Canterbury, be construed as references to the commissary court thereof and to the commissary general of such court respectively.
- (5) Any reference in any enactment to an advisory committee for the care of churches appointed under section 13 of the 1964 Measure shall be construed as including a committee constituted under section 2 above.
- (6) Nothing in this Measure shall be construed as prejudicing or affecting the provisions of the <sup>M31</sup>Ancient Monuments and Archaeological Areas Act 1979, the <sup>M32</sup>Town and Country Planning Act 1990 or the <sup>M33</sup>Planning (Listed Buildings and Conservation Areas) Act 1990 or any instrument made thereunder.

#### **Marginal Citations**

- M21** 1963 No. 1.  
**M22** 1964 No. 5.  
**M23** 1983 No. 1.  
**M24** 1963 No.2.  
**M25** 1990 c. 9.  
**M26** 1976 No. 4.  
**M27** 39 & 40 Vict. c. 59.  
**M28** 1990 c. 9.  
**M29** 1990 c. 9.  
**M30** 1990 No.2.  
**M31** 1979 c. 46.  
**M32** 1990 c. 8.  
**M33** 1990 c. 9.

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### **32 Amendments and repeals.**

- (1) The enactments specified in Schedule 7 to this Measure shall have effect subject to the amendments specified in that Schedule, being minor amendments or amendments of a consequential nature.
- (2) The enactments specified in Schedule 8 to this Measure are hereby repealed to the extent specified in the third column of that Schedule.

### **33 Citation, commencement and extent.**

- (1) This Measure may be cited as the Care of Churches and Ecclesiastical Jurisdiction Measure 1991.
- (2) This Measure shall come into operation on such date as the Archbishops of Canterbury and York may jointly appoint, and different dates may be appointed for different provisions.
- (3) This Measure shall extend to the whole of the provinces of Canterbury and York except the Channel Islands and the Isle of Man, but the provisions thereof may be applied to the Channel Islands as defined in the Channel Islands (Church Legislation) Measures 1931 and 1957, or either of them, in accordance with those Measures and if an Act of Tynwald or an instrument made under an Act of Tynwald so provides, shall extend to the Isle of Man subject to such modifications, if any, as may be specified in such Act of Tynwald or other instrument.

**Status:**

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**Changes to legislation:**

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