



# Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (No. 1)

1991 No. 1

## PART IVV

### 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,

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

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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 Parochial Registers and Records Measure 1978 applies.

## **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;

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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 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 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.

### **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 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.

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

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

## 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;
  - (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

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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.

## **26 Functions of Rule Committee**

- (1) The Rule Committee may make rules for carrying into effect the provisions of—
- (a) this Measure;
  - (b) the 1963 Measure;
  - (c) the 1964 Measure;
  - (d) the 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 Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988) 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

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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 Parochial Registers and Records Measure 1978) which, in the opinion of such person as may be specified in the rules, are of historic interest to the Church of England, including provision for the appointment of persons with duties in that respect.

## 27 Supplementary provisions as to rules

- (1) Any rule made under—
  - (a) section 65 of the 1963 Measure; or
  - (b) section 14 of the 1964 Measure; or
  - (c) section 16 of the 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—
  - (a) 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
  - (b) 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 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.

## 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.

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## **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 Ecclesiastical Fees Measure 1986.

## **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 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.

## **31 Interpretation**

- (1) In this Measure, unless the context otherwise requires—
  - “the 1963 Measure” means the Ecclesiastical Jurisdiction Measure 1963;
  - “the 1964 Measure” means the Faculty Jurisdiction Measure 1964;
  - “the 1983 Measure” means the 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 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;
  - “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 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 Endowments and Glebe Measure 1976;
  - “high judicial office” has the meaning assigned to it by section 25 of the Appellate Jurisdiction Act 1876;

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

“land” includes buildings;

“listed building” has the same meaning as in the 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 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 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;

“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;



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- (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 Ancient Monuments and Archaeological Areas Act 1979, the Town and Country Planning Act 1990 or the Planning (Listed Buildings and Conservation Areas) Act 1990 or any instrument made thereunder.

## **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.