



# Ecclesiastical Jurisdiction and Care of Churches Measure 2018

2018 No. 3

## PART 4

### FACULTY JURISDICTION

#### *Application of jurisdiction*

#### 56 Churches, churchyards and articles

For the avoidance of doubt and without prejudice to the jurisdiction of consistory courts under this Measure or under any other enactment or any rule of law, it is hereby declared that the jurisdiction of the consistory court of a diocese applies to every parish church in the diocese and every churchyard and article appertaining to it.

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**Commencement Information**

**11** [S. 56](#) in force at 1.9.2018 by [S.I. 2018/720](#), [art. 2](#)

#### 57 Curtilages of churches

For the avoidance of doubt, it is hereby declared that, where unconsecrated land forms or is part of the curtilage of a church within the jurisdiction of the consistory court, that court has the same jurisdiction over that land as over the church.

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**Commencement Information**

**12** [S. 57](#) in force at 1.9.2018 by [S.I. 2018/720](#), [art. 2](#)

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## **58 Buildings licensed for public worship on or after 1 March 1993**

- (1) A building licensed by the bishop of a diocese on or after 1 March 1993 for public worship according to the rites and ceremonies of the Church of England and the articles appertaining to the building are subject to the jurisdiction of the consistory court of the diocese as though the building were a consecrated church.
- (2) But where the bishop of a diocese, after consultation with the advisory committee, considers that a building in the diocese licensed as mentioned in subsection (1) should not be subject to the faculty jurisdiction, the bishop may by order direct that subsection (1) is not to apply to the building.
- (3) Subsection (4) applies where, in the case of a building in relation to which an order under subsection (2) is in force, the bishop of the diocese, after consultation with the advisory committee, considers that an article appertaining to the building should be subject to the faculty jurisdiction because it is—
  - (a) of outstanding architectural, artistic, historical or archaeological value,
  - (b) of significant monetary value, or
  - (c) at special risk of being stolen or damaged.
- (4) The bishop may by order direct that the article is to be subject to the jurisdiction of the consistory court of the diocese during such period as the order specifies.
- (5) An article in relation to which an order under subsection (4) is in force is, during the period specified in the order, subject to the jurisdiction of the court as though it were an article appertaining to a consecrated church.
- (6) The bishop of a diocese, after consulting with the advisory committee, may by order vary or revoke an order made under subsection (2) or (4) in relation to the diocese.
- (7) The bishop of a diocese must send each order he or she makes under this section to the registrar of the diocese; and the registrar must file each order in the diocesan registry.
- (8) The registrar is entitled to such fees as may be authorised by an order under section 86 for—
  - (a) filing an order under subsection (7);
  - (b) permitting a search for and inspection of an order filed under that subsection;
  - (c) providing a copy of an order filed under that subsection.
- (9) An order under this section which has the effect of subjecting an article to the faculty jurisdiction does not—
  - (a) make unlawful any act done before the order was made, or
  - (b) require the grant of a faculty to confirm such an act.

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### **Commencement Information**

**I3** [S. 58](#) in force at 1.9.2018 by [S.I. 2018/720](#), [art. 2](#)

## **59 Buildings licensed for public worship before 1 March 1993**

- (1) This section applies where the bishop of a diocese considers that circumstances have arisen which make it desirable that a building which was licensed for public worship before 1 March 1993 should be subject to the faculty jurisdiction.

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- (2) The bishop may by order direct that the building is to be subject to the jurisdiction of the consistory court of the diocese during such period as the order may specify.
- (3) Where an order under this section is made, the building and its furnishings and contents are, during the period specified in the order, to be subject to the jurisdiction of the consistory court of the diocese as though the building were a consecrated church.
- (4) An order under this section does not—
  - (a) make unlawful any act done before the order was made, or
  - (b) require the grant of a faculty to confirm such an act.
- (5) The bishop of a diocese may by order vary or revoke an order made under this section in relation to the diocese.
- (6) The bishop of a diocese must send each order he or she makes under this section to the registrar of the diocese; and the registrar must file each order in the diocesan registry.
- (7) The registrar is entitled to such fees as may be authorised by an order under section 86 for—
  - (a) filing an order under subsection (6);
  - (b) permitting a search for and inspection of an order filed under that subsection;
  - (c) providing a copy of an order filed under that subsection.

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**Commencement Information**

**I4** S. 59 in force at 1.9.2018 by S.I. 2018/720, art. 2

*Procedure*

**60 Parties to faculty proceedings**

- (1) Proceedings for obtaining a faculty may be brought by—
  - (a) the archdeacon of the archdeaconry in which the parish concerned is situated,
  - (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 purpose of proceedings for obtaining a faculty—
  - (a) the archdeacon is to be regarded as having an interest as such;
  - (b) a person whose name is entered on the church electoral roll of the parish concerned but who does not live in the parish is to be regarded as having an interest as if he or she were a parishioner of that parish.
- (3) Subsection (4) applies if—
  - (a) the archdeaconry is vacant,
  - (b) the archdeacon is incapacitated by absence or illness, or
  - (c) in the opinion of the bishop, the archdeacon is for any other reason unable or unwilling to act or it would be inappropriate for the archdeacon to act.
- (4) Such other person as the bishop appoints in writing (whether generally or for a particular case) may act in the place of the archdeacon for the purposes of this Measure

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or of any other enactment relating to the bringing of, or participation in, proceedings in court.

- (5) If the archdeacon or a person appointed under subsection (4) brings or intervenes in proceedings for obtaining a faculty, the costs and expenses properly incurred by him or her or which he or she is ordered by the court to pay are to be paid by the diocesan board of finance for the diocese concerned.
- (6) But a diocesan board of finance is not liable for any sum under subsection (5) unless the bringing of or intervention in the proceedings is approved by the bishop of the diocese in writing after consultation with the diocesan board of finance.
- (7) An order in the proceedings that the costs or expenses of the archdeacon or appointed person are to be paid by another party may be enforced by the diocesan board of finance in the name of the archdeacon or appointed person.
- (8) “Diocesan board of finance” has the same meaning as in the Endowments and Glebe Measure 1976 (see section 45 of that Measure).

**Commencement Information**

**I5** S. 60 in force at 1.9.2018 by S.I. 2018/720, art. 2

*Subject-matter of faculty*

**61 Vesting of privately owned parts of church**

- (1) The consistory court of a diocese may grant a faculty to vest a building forming part of, and physically connected with, a church in the diocese in the person in whom the church is vested.
- (2) Proceedings for obtaining a faculty under this section may be brought only by—
  - (a) the incumbent of the benefice to which the parish in which the church is situated belongs, or
  - (b) the PCC for that parish.
- (3) The court may grant a faculty under this section only if it is satisfied of the following four matters.
- (4) The first matter is that—
  - (a) the person in whom the church is vested is not the owner entitled to possession of the building, or
  - (b) there is reasonable doubt as to who has a right of ownership or possession over the building.
- (5) The second matter is that the incumbent or PCC, or some other person, has taken all reasonable steps since, or shortly before, the commencement of the proceedings to communicate with every person who may reasonably be supposed to have a right of ownership or possession (whether absolute or limited) over the building.
- (6) The third matter is that—
  - (a) despite the steps mentioned in subsection (5) being taken, there has been no communication with any such person as is mentioned in that subsection, or

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- (b) every such person with whom communication has been made and who, on reasonable grounds, claims a right of ownership or possession over the building consents to the grant of the faculty.
- (7) The fourth matter is that, during the seven years immediately before the commencement of the proceedings, no works of repair, redecoration or reconstruction have been carried out on the building by or on behalf of a person claiming title to the building that is adverse to the title of the person in whom the church is vested.
- (8) In proceedings for obtaining a faculty under this section, the court may appoint a solicitor to represent all the persons, known or unknown, who—
  - (a) may have a right of ownership or possession over the building, but
  - (b) are not represented.
- (9) The proper costs of a solicitor appointed under subsection (8) in the proceedings are to be paid by the person bringing the proceedings, unless the court orders otherwise.
- (10) Where a faculty is granted under this section, the building specified in it is, by virtue of the faculty itself and without any further or other assurance or conveyance, to vest in the person in whom the church is vested as part of the church for all purposes; and any rights of property of any other person in the building terminate on the grant of the faculty.
- (11) The reference in subsection (8) to a solicitor includes a reference to a body which—
  - (a) is recognised under section 9 of the Administration of Justice Act 1985, or
  - (b) holds a licence in force under Part 5 of the Legal Services Act 2007.

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**Commencement Information**

**I6** S. 61 in force at 1.9.2018 by S.I. 2018/720, art. 2

## 62 Demolition of church

- (1) The consistory court of a diocese may not grant a faculty for the demolition or partial demolition of a church otherwise than in accordance with subsection (2), (3) or (4).
- (2) A court may grant a faculty for the demolition or partial demolition of a church if—
  - (a) the court is satisfied that another church or part of a church will be erected on the site or curtilage of the church or part in question, or on part of the site or curtilage, to take the place of the church or part, and
  - (b) the person bringing the proceedings has obtained the written consent of the bishop of the diocese.
- (3) A court may grant a faculty for the partial demolition of a church if—
  - (a) the court is satisfied that the part of the church left standing will be used for public worship according to the rites and ceremonies of the Church of England for a substantial period after the demolition, and
  - (b) the person bringing the proceedings has obtained the written consent of the bishop of the diocese.
- (4) A court may grant a faculty for the partial demolition of a church if it is satisfied that the demolition is necessary for the purposes of the repair or alteration of the church or the reconstruction of the part to be demolished.

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- (5) A reference in this section to the partial demolition of a church—
- (a) is a reference to removal of such part of the church as would, in the opinion of the court, significantly affect its external appearance, and
  - (b) does not include a reference to the destruction or removal of minor or ancillary structures forming part of the building.

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**Commencement Information**

**I7** S. 62 in force at 1.9.2018 by S.I. 2018/720, art. 2

### **63 Emergency demolition of church**

- (1) The chancellor of a diocese may by an instrument in writing signed by him or her authorise the demolition of the whole or part of a church in the diocese if the chancellor is satisfied that—
  - (a) the demolition is urgently necessary in the interests of health or safety or for the preservation of the church,
  - (b) it is not practicable to secure health or safety or (as the case may be) the preservation of the church by works of repair or works for affording temporary support or shelter, and
  - (c) the works to be carried out are limited to the minimum measures immediately necessary.
- (2) An instrument under this section may require the person to whom it is issued (subject to the person obtaining any faculty required) to carry out such works for the restoration of the church following its demolition or partial demolition as the instrument may specify.
- (3) In the case of partial demolition of a church which is a listed building or is in a conservation area, an instrument under this section must require the person to whom it is issued, as soon as practicable after the works have been carried out, to give the local planning authority notice in writing describing the works.
- (4) Where the chancellor of a diocese issues an instrument under this section, he or she must send a copy of the instrument to—
  - (a) the Church Buildings Council, and
  - (b) the local planning authority.
- (5) “Listed building” and “conservation area” each have the same meaning as in the Planning (Listed Buildings and Conservation Areas) Act 1990 (see section 91 of that Act); and “local planning authority”, in relation to an area, means the body exercising the functions of the local planning authority under section 8 of that Act in that area.
- (6) The power conferred by this section does not affect any power of a chancellor which was exercisable under a rule of law on 1 March 1993 and is still exercisable on the commencement of this section.

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**Commencement Information**

**I8** S. 63 in force at 1.9.2018 by S.I. 2018/720, art. 2

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## 64 Erection of building on disused burial ground

- (1) The consistory court of a diocese may, in spite of section 3 of the Disused Burial Grounds Act 1884 (which prohibits the erection of a building on a disused burial ground except for the purpose of enlarging a place of worship), grant a faculty permitting the erection of a building on a disused burial ground in the diocese otherwise than for the purpose specified by that section, if either of the following conditions is satisfied.
- (2) The first condition is that no interments have taken place in the land on which the building is to stand during the period of 50 years preceding the date of the petition for the faculty.
- (3) The second condition is that—
  - (a) no personal representative or relative of a person whose remains have been interred in the land during that period has objected to the grant of the faculty, or
  - (b) any such objection has been withdrawn.
- (4) The power conferred by this section does not affect any other power which the court has to authorise the erection of a building on a burial ground.
- [<sup>F1</sup>(5) Relative”, in relation to a person, means—
  - (a) a spouse or civil partner, parent or grandparent or child or grandchild of the person, or
  - (b) a person who is, or is the child of, a brother, sister, uncle or aunt of the person.
- (6) The reference in subsection (5)(a) to a person's spouse includes a reference to a spouse of the same sex as that person.]

### Textual Amendments

- F1** S. 64(5)(6) inserted (1.9.2020) by [Church of England \(Miscellaneous Provisions\) Measure 2020 \(No. 1\)](#), **ss. 6(11)**, 16(3); S.I. 2020/835, art. 2

### Commencement Information

- I9** S. 64 in force at 1.9.2018 by [S.I. 2018/720](#), **art. 2**

## 65 Exclusive right to burial places

- (1) Where an exclusive right to a burial place was granted or acquired before 15 April 1964 (the day on which the Faculty Jurisdiction Measure 1964 was passed), the right is to cease on 15 April 2064 or, if the terms of the grant or acquisition provide for the right to cease before that date, in accordance with the provision made by those terms, unless—
  - (a) it has been enlarged or continued by a faculty granted on or after 15 April 1964, but before the commencement of this section, in accordance with section 8 of the Faculty Jurisdiction Measure 1964, or
  - (b) it is enlarged or continued by a faculty granted after the commencement of this section.
- (2) The reference in subsection (1) to an exclusive right to a burial place acquired before 15 April 1964 includes a reference to an exclusive right of burial reserved before that date under section 9 of the Consecration of Churchyards Act 1867.

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- (3) Where an exclusive right to a burial place was granted by a faculty granted on or after 15 April 1964 but before the commencement of this section, the right is to cease at the end of the period of 100 years beginning with the date of the faculty or, if the faculty provides for the right to cease before the end of that period, in accordance with the provision made by the faculty, unless—
  - (a) it has been enlarged or continued by a faculty granted before the commencement of this section in accordance with section 8 of the Faculty Jurisdiction Measure 1964, or
  - (b) it is enlarged or continued by a faculty granted after the commencement of this section.
- (4) An exclusive right to a burial place may not be granted or acquired after the commencement of this section otherwise than by—
  - (a) the grant of a faculty, or
  - (b) the reservation of an exclusive right of burial under section 90(2).
- (5) The period for which an exclusive right to a burial place may be granted, enlarged or continued by a faculty granted after the commencement of this section must not exceed 100 years beginning with the date of the faculty.
- (6) A reference in this section to an exclusive right to a burial place is a reference to a right, whether absolute or limited, to the exclusive use of a particular part of a churchyard, burial ground or other consecrated land for the purposes of sepulture.
- (7) This section does not apply to a burial ground or cemetery provided under the Local Government Act 1972.

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**Commencement Information**

**110** S. 65 in force at 1.9.2018 by S.I. 2018/720, art. 2

## 66 Monuments

- (1) The consistory court of a diocese may grant a faculty for the moving, demolition, alteration or carrying out of other work to a monument erected in or on, or on the curtilage of, a church or other consecrated building or on consecrated ground, even if the owner of the monument—
  - (a) withholds consent to the faculty, or
  - (b) cannot be found after reasonable efforts to find him or her have been made.
- (2) The monuments in relation to which a power to grant a faculty under this section is exercisable include a monument erected under or affected by a faculty, whenever granted.
- (3) If the court is satisfied that the matter is of such urgency that it would not be reasonable to require the petitioner to seek the consent of the owner of the monument or to take the steps referred to in subsection (1)(b), it may grant the faculty (even though the consent has not been obtained and those steps have not been taken).
- (4) “Monument” includes a tomb, gravestone or other memorial, and any kerb or setting forming part of it; and a reference to a monument includes a reference to a monument erected after the passing of this Measure.



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- (5) “Owner”, in relation to a monument, means—
  - (a) the person who erected the monument, or
  - (b) after that person's death, the heir or heirs at law of the person or persons in whose memory the monument was erected.
- (6) The reference in subsection (1) to consecrated ground does not include a reference to a consecrated burial ground to which section 11 of the Open Spaces Act 1906 applies.
- (7) In proceedings to which section 3 of the Faculty Jurisdiction Measure 1964 applies which were pending on 1 January 2015 (the date on which the substitution of subsection (3) of that section came into force) and which are still pending on the commencement of this section, the court may exercise the power under subsection (3) of this section.
- (8) But subsection (7) of this section does not prevent the continuing application to such proceedings of subsection (3) of that section as originally enacted (which prevents the grant of a faculty affecting a monument if the owner does not consent).

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**Commencement Information**

**111** S. 66 in force at 1.9.2018 by S.I. 2018/720, art. 2

## **67 Sale of books in a parochial library**

- (1) A faculty may be granted for the sale of a book remaining in or belonging to a parochial library.
- (2) The proceeds from the sale of a book under a faculty under this section must be applied for such ecclesiastical purposes of the parish in which the library is situated as may be specified in the faculty.
- (3) Before granting a faculty under this section, the consistory court of the diocese concerned must seek advice from the advisory committee.
- (4) Any question as to whether a particular library is, or is not, a parochial library is to be determined by the Charity Commission.

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**Commencement Information**

**112** S. 67 in force at 1.9.2018 by S.I. 2018/720, art. 2

### *Powers of court*

## **68 Conditions etc. on grant of faculty**

- (1) The conditions subject to which a faculty may be granted include in particular a condition requiring the work authorised or ordered by the faculty (or part of that work) to be carried out under the supervision of the archdeacon or another person nominated by the court granting the faculty.

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- (2) In the case of a faculty authorising the disposal of an article, the conditions subject to which the faculty may be granted include in particular a condition requiring a specified period to elapse before the disposal takes place.
- (3) Where the court grants a faculty to a person other than an archdeacon and considers that the work authorised or ordered by the faculty should be carried out (whether or not by that person), it may also order—
  - (a) that, in default of that person carrying out the work, a faculty is to be granted to the archdeacon authorising him or her to carry out the work, and
  - (b) that, in that event, the expenses incurred by the archdeacon in carrying out the work are to be paid by that person.

**Commencement Information**

**I13** S. 68 in force at 1.9.2018 by S.I. 2018/720, art. 2

**69 Costs orders against person responsible for act or default**

- (1) This section applies if, in proceedings brought by a person for obtaining a faculty, it appears to the court that another person who is party to the proceedings was responsible wholly or partly for an act or default in consequence of which the proceedings were brought.
- (2) The court may order the whole or part of the costs and expenses of or consequent on the proceedings to be paid by the person responsible.
- (3) The costs and expenses which may be included in an order under this section include costs and expenses incurred in carrying out any work authorised or ordered by the faculty, so far as such costs and expenses have been occasioned by the act or default concerned.
- (4) The court may make an order under this section only if it is satisfied that the proceedings were brought no later than six years after the act or default was committed.

**Commencement Information**

**I14** S. 69 in force at 1.9.2018 by S.I. 2018/720, art. 2

**70 Special citation to add party to proceedings**

- (1) In proceedings for obtaining a faculty, the court may issue a special citation to add as a party to the proceedings a person alleged to be responsible wholly or in part for an act or default in consequence of which the proceedings were brought, even if the person lives outside the diocese concerned.
- (2) A special citation issued by the court under this section may require the person to whom it is issued to attend the court at the time and place specified in the citation.
- (3) The court may issue a citation under this section only if it is satisfied that the proceedings were brought no later than six years after the act or default was committed.

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- (4) A failure to comply without a reasonable excuse with a requirement of a special citation issued by the court under this section is a contempt of that court.

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**Commencement Information**

**I15** S. 70 in force at 1.9.2018 by S.I. 2018/720, art. 2

## 71 Injunction

- (1) This section applies where at any time, whether before or after proceedings for obtaining a faculty have been brought, it appears to the consistory court of a diocese that a person intends—
- (a) to commit or continue to commit a relevant act, or
  - (b) to cause or permit the commission or continuance of a relevant act.
- (2) A relevant act is an act in relation to a church or churchyard in the diocese or an article appertaining to a church in the diocese which would be unlawful under ecclesiastical law.
- (3) The court may issue an injunction restraining the person from committing or continuing to commit, or from causing or permitting the commission or continuance of, the relevant act.
- (4) An injunction under this section may be issued—
- (a) on an application by the archdeacon of the archdeaconry concerned,
  - (b) on an application by any other person appearing to the court to have sufficient interest in the matter, or
  - (c) on the court's own motion.
- (5) A failure to comply without a reasonable excuse with an injunction issued by the court under this section is a contempt of that court.

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**Commencement Information**

**I16** S. 71 in force at 1.9.2018 by S.I. 2018/720, art. 2

## 72 Restoration order

- (1) This section applies where at any time, whether before or after proceedings for obtaining a faculty have been brought, it appears to the consistory court of a diocese that a person—
- (a) has committed a relevant act, or
  - (b) has caused or permitted the commission of a relevant act.
- (2) A relevant act is an act in relation to a church or churchyard in the diocese or an article appertaining to a church in the diocese which is unlawful under ecclesiastical law.
- (3) The court may make an order (a “restoration order”) requiring the person to take such steps as the court considers necessary, within such time as the court specifies, for the purpose of restoring the position so far as possible to what it was immediately before the act was committed.

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- (4) A restoration order may be made—
  - (a) on an application by the archdeacon of the archdeaconry concerned,
  - (b) on an application by any other person appearing to the court to have sufficient interest in the matter, or
  - (c) on the court's own motion.
- (5) The court may make a restoration order only if it is satisfied that the proceedings for the order were brought no later than six years after the relevant act was committed.
- (6) A failure to comply without a reasonable excuse with a restoration order made by the court under this section is a contempt of that court.

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**Commencement Information**

**I17** S. 72 in force at 1.9.2018 by S.I. 2018/720, art. 2

**73 Sections 69, 70 and 72: deliberate concealment of facts**

- (1) This section applies where, in proceedings brought by an archdeacon for obtaining a faculty or for a restoration order, a fact relevant to the bringing of the proceedings has been deliberately concealed from him or her.
- (2) The period of six years referred to in each of sections 69(4), 70(3) and 72(5) does not begin to run until the time when the archdeacon discovered the concealment or could with reasonable diligence have discovered it.
- (3) A deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts for the purposes of this section to deliberate concealment of the facts involved in the breach of duty.

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**Commencement Information**

**I18** S. 73 in force at 1.9.2018 by S.I. 2018/720, art. 2

*Role of archdeacon*

**74 Exercise of faculty jurisdiction**

- (1) The archdeacon of every archdeaconry in a diocese is to exercise 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 rules may specify.
- (2) An archdeacon who exercises jurisdiction under subsection (1) may grant a faculty in any cause of faculty to be considered by him or her which is unopposed.
- (3) A faculty granted by an archdeacon under subsection (2) has effect as if it had been granted by the chancellor of the diocese.
- (4) Subsection (5) applies where, in a cause of faculty to be considered by an archdeacon—
  - (a) he or she declines to grant a faculty,

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- (b) he or she considers that the matter should be dealt with as a matter of urgency without reference to the advisory committee for advice under section 79(2), or
  - (c) the grant of the faculty is opposed.
- (5) The archdeacon must cause the matter to be referred to the chancellor of the diocese for him or her to deal with it.
- (6) This section does not give an archdeacon power—
- (a) to order a person to pay costs or expenses,
  - (b) to issue an injunction or make a restoration order, or
  - (c) to grant an interim faculty pending the final determination of the matter.
- (7) Where an archdeacon considers that a 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, the archdeacon must cause the matter to be referred to the chancellor of the diocese for him or her to deal with it.

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**Commencement Information**

**I19** S. 74 in force at 1.9.2018 by S.I. 2018/720, art. 2

**75 Grant of licence for temporary minor re-ordering**

- (1) The archdeacon of every archdeaconry may grant a licence authorising, without a faculty, the minor re-ordering of a church in his or her archdeaconry for a temporary period to such extent and in such manner as rules may specify.
- (2) The archdeacon may amend or revoke a licence granted under this section in relation to the archdeaconry.

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**Commencement Information**

**I20** S. 75 in force at 1.9.2018 by S.I. 2018/720, art. 2

**76 Convening meeting in a case of default**

- (1) Where it appears to an archdeacon that something has been done in a parish in the archdeaconry which ought not to have been done without a faculty, the archdeacon may convene an extraordinary meeting of the PCC, or an extraordinary parochial church meeting, in order to discuss the matter.
- (2) The archdeacon must either take the chair or appoint a person to chair the meeting.
- (3) The chair of the meeting, unless otherwise entitled to attend the meeting, is not entitled to vote on any resolution before the meeting.

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**Commencement Information**

**I21** S. 76 in force at 1.9.2018 by S.I. 2018/720, art. 2

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### *Cases where faculty not required*

#### **77 Power to specify matters in rules**

- (1) Rules may specify matters within the jurisdiction of a consistory court which may be undertaken without a faculty; but this is subject to subsection (7).
- (2) The rules may specify conditions which may be imposed on the undertaking of such a matter; and different conditions may be specified in relation to different matters.
- (3) The conditions may in particular include—
  - (a) a condition that the archdeacon is consulted on the proposal to undertake the matter and that it may be undertaken without a faculty only if the archdeacon gives notice in writing that it may be undertaken without a faculty, and
  - (b) a condition that, if the archdeacon gives notice as mentioned in paragraph (a), the archdeacon may make the undertaking of the matter subject to such additional conditions as he or she may specify in the notice.
- (4) The rules may require that, where the archdeacon is consulted as mentioned in subsection (3)(a), he or she must seek the advice of the advisory committee or such of its members or officers as he or she thinks fit before deciding whether to give notice as mentioned in subsection (3)(a).
- (5) Where the archdeacon decides not to give notice as mentioned in subsection (3)(a)—
  - (a) the decision must be recorded in writing, and
  - (b) the matter in question may not be undertaken without a faculty.
- (6) Where the archdeacon is the incumbent or priest in charge of the benefice in which it is proposed to undertake the matter, references in subsections (3) to (5) to the archdeacon are to be read as references to the chancellor.
- (7) Subsection (1) does not apply to the following matters—
  - (a) works which involve alteration to or the extension of a listed building to such an extent as would be likely to affect its character as a building of special architectural or historic interest;
  - (b) works which are likely to affect the archaeological importance of a building or any archaeological remains within a building or its curtilage;
  - (c) works for all or part of which scheduled monument consent is required under the Ancient Monuments and Archaeological Areas Act 1979;
  - (d) works which involve the extension, demolition or partial demolition of a building or the erection of a new building;
  - (e) a matter which gives rise to a question of law or doctrine, ritual or ceremonial or which would, if undertaken, affect a person's legal rights;
  - (f) the exhumation or other disturbance of human remains;
  - (g) the reservation of a grave space;
  - (h) the sale or other disposal of an article of architectural, archaeological, artistic or historic interest;
  - (i) the sale of a book remaining in or belonging to a parochial library;
  - (j) the introduction of an aumbry or another receptacle used for the reservation of the sacrament of Holy Communion;

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- (k) the introduction of a monument, or the carrying out of work to a monument erected in or on, or on the curtilage of, a church or other consecrated building or on consecrated ground.
- (8) “Listed building” has the same meaning as in the Planning (Listed Buildings and Conservation Areas) Act 1990 (see section 1(5) of that Act).
- (9) The reference in subsection (7)(e) to a matter affecting a person's legal rights does not include a reference to the grant of a licence for the grazing of a churchyard by livestock.
- (10) Any question as to whether a particular matter is, or is not, a matter that is specified by virtue of subsection (1) is to be determined by the consistory court of the diocese concerned.
- (11) Section 62(5) (which defines references to partial demolition in relation to a church) applies for the purposes of this section in relation to any building.

**Commencement Information**

**I22** S. 77 in force at 1.9.2018 by S.I. 2018/720, art. 2

**78 Power of chancellor to specify matters**

- (1) The chancellor of a diocese may by order provide that a matter specified in the order may be undertaken without a faculty (in addition to the matters that are specified in rules by virtue of section 77(1)).
- (2) An order under subsection (1)—
  - (a) may specify a matter only if it could be specified in rules by virtue of section 77(1);
  - (b) may specify such conditions as may be specified in rules by virtue of section 77(2);
  - (c) may apply to the whole or a specified part of the diocese.
- (3) Where the chancellor of a diocese considers that there are special circumstances affecting a parish or church, churchyard or other building or place in the diocese which justify doing so, he or she may by order provide that a matter specified in the order may not be undertaken without a faculty even though it is a matter that is specified by virtue of section 77(1).
- (4) The chancellor of a diocese must seek the advice of the advisory committee before making an order under subsection (1) or (3), unless he or she is satisfied that the matter is sufficiently urgent to justify making an order without obtaining the committee's advice.
- (5) The chancellor of a diocese must send each order he or she makes under subsection (1) or (3) to the registrar of the diocese; and the registrar must file each order in the diocesan registry.
- (6) Where an order is made under subsection (3), the registrar must serve a copy of the order on—
  - (a) the minister and churchwardens of every parish affected by the order,

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- (b) the archdeacon of every archdeaconry in which a parish affected by the order is situated, and
  - (c) the secretary of the advisory committee.
- (7) Any churchwardens on whom a copy of an order is served under subsection (6) must—
- (a) keep it with the inventory maintained under section 49(1), and
  - (b) insert a copy of it in the log-book maintained under section 49(2).
- (8) The chancellor of a diocese may by order vary or revoke an order made under subsection (1) or (3) in relation to the diocese; and a reference in this section to an order under subsection (1) or (3) includes a reference to an order varying or revoking the order.

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**Commencement Information**

**I23** S. 78 in force at 1.9.2018 by S.I. 2018/720, art. 2

*Supplementary*

**79 Consultation with advisory committee**

- (1) The chancellor of a diocese must seek the advice of the advisory committee before making a final determination in proceedings for obtaining a faculty, issuing a permanent injunction under section 71 or making a restoration order unless—
- (a) the action proposed relates exclusively to exhumation or the reservation of a grave space, or
  - (b) the chancellor is satisfied that the matter is sufficiently urgent to justify granting a faculty, issuing an injunction or making a restoration order without obtaining the committee's advice.
- (2) An archdeacon must seek the advice of the advisory committee before making a final determination in proceedings for obtaining a faculty, unless the action proposed relates exclusively to exhumation or the reservation of a grave space.
- (3) In each diocese, the secretary to the advisory committee—
- (a) must compile and maintain a register of all petitions for a faculty referred to the committee for advice under this section, and
  - (b) must 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.
- (4) Rules may specify further circumstances in which, or further matters in respect of which, the duty imposed on a chancellor by subsection (1) does not apply.

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**Commencement Information**

**I24** S. 79 in force at 1.9.2018 by S.I. 2018/720, art. 2



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## Interpretation

### 80 Interpretation of Part 4

- (1) In this Part, unless otherwise indicated—
- “advisory committee” means—
    - (a) in relation to a diocese, the Diocesan Advisory Committee of that diocese;
    - (b) in relation to an archdeaconry, the Diocesan Advisory Committee of the diocese in which the archdeaconry is situated;
  - “article” includes anything affixed to land or a building, and a reference to an article includes a reference to part of an article;
  - “building” includes a structure or erection, and a reference to a building includes a reference to part of a building;
  - “church” includes a 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;
  - “land” includes buildings but, subject to that, the definition of that word in Schedule 1 to the Interpretation Act 1978 does not apply;
  - “minister”, in the case of a parish in which a special cure of souls has been assigned to a vicar in a team ministry by a scheme under the Mission and Pastoral Measure 2011 or by licence from the bishop, means that vicar;
  - “minister”, in the case of a parish not of that description, means—
    - (a) the incumbent of the benefice comprising the parish, or
    - (b) 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;
  - “parish” means—
    - (a) an ecclesiastical parish, or
    - (b) a district which is constituted as a conventional district for the cure of souls;
  - “parish church” does not include a parish church which is a cathedral to which the Care of Cathedrals Measure 2011 applies;
  - “restoration order” has the meaning given in section 72.
- (2) A notice, order or other document required by this Part to be served on or sent or given to a person may be served, sent or given by post, by delivering it to the person, or by leaving it at the person's proper address; and for that purpose and the purposes of section 7 of the Interpretation Act 1978, a person's proper address is that person's last known address.
- (3) Nothing in this Part prejudices or affects the provisions of—
- (a) the Ancient Monuments and Archaeological Areas Act 1979,
  - (b) the Town and Country Planning Act 1990,
  - (c) the Planning (Listed Buildings and Conservation Areas) Act 1990, or
  - (d) an instrument made under an Act referred to in paragraph (a), (b) or (c).

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#### Commencement Information

**I25** S. 80 in force at 1.9.2018 by S.I. 2018/720, art. 2

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Measure associated Parts and Chapters:**

Whole provisions yet to be inserted into this Measure (including any effects on those provisions):

- s. 21A inserted by [2024 No. 1 s. 10\(1\)](#)
- s. 35(b) and word inserted by [2024 No. 1 s. 13\(1\)\(b\)](#)
- s. 37(7A) inserted by [2024 No. 1 s. 13\(2\)](#)
- s. 78(2A) inserted by [2024 No. 1 s. 13\(5\)](#)
- s. 93A and cross-heading inserted by [2024 No. 1 s. 12](#)
- s. 94(1)(aa) inserted by [2024 No. 1 s. 10\(2\)](#)
- Sch. 2 para. 2(4)(e) and word inserted by [2024 No. 1 s. 13\(3\)\(b\)](#)
- Sch. 2 para. 2(4A) inserted by [2024 No. 1 s. 13\(4\)](#)