



# Ecclesiastical Jurisdiction Measure 1963

1963 No. 1

## PART I

### THE ECCLESIASTICAL JUDICIAL SYSTEM

#### *The Courts*

#### **1 The ecclesiastical courts.**

- (1) For each diocese there shall be a court of the bishop thereof (to be called the consistory court of the diocese or, in the case of the court for the diocese of Canterbury, the commissary court thereof) which shall have the original jurisdiction conferred on it by this Measure.
- (2) For each of the provinces of Canterbury and York—
  - (a) there shall be a court of the archbishop thereof (to be called, in the case of the court for the province of Canterbury, the Arches Court of Canterbury, and, in the case of the court for the province of York, the Chancery Court of York) which shall have the appellate jurisdiction conferred on it by this Measure; and
  - (b) there may, in accordance with the provisions in that behalf of Part V of this Measure, be appointed by the Upper House of the Convocation of the province commissions which shall have the original jurisdiction conferred on them by this Measure with respect to the trial of bishops;
- (3) For both of the said provinces—
  - (a) there may, in accordance with the provisions of Part V of this Measure, be appointed by the Upper House of the Convocations of both the said provinces commissions which shall have the original jurisdiction conferred on them by this Measure with respect to the trial of archbishops;
  - (b) there shall be a court (to be called the Court of Ecclesiastical Causes Reserved) which shall have the original and appellate jurisdiction conferred on it by this Measure;

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*Changes to legislation: There are currently no known outstanding effects for the Ecclesiastical Jurisdiction Measure 1963, Part I. (See end of Document for details)*

- (c) there may, in accordance with the provisions in that behalf of this Measure, be appointed by Her Majesty commissioners who shall have such jurisdiction as is conferred on them by this Measure with respect to the review of findings of any commission of Convocation appointed under paragraph (b) of the last foregoing subsection and paragraph (a) of this subsection, and also of the Court of Ecclesiastical Causes Reserved; and
- (d) Her Majesty in Council shall have such appellate jurisdiction as is conferred on Her by this Measure.

*The Judges of the Courts constituted by this Measure*

**2 Judge of consistory court.**

(1) Subject to the following provisions of this Measure, the consistory court of a diocese shall be presided over by a single judge who shall be styled the chancellor of the diocese or, in the case of the diocese of Canterbury, the commissary general, and appointed by the bishop thereof by letters patent.

(2) A person appointed to be chancellor of a diocese shall be at least thirty years old and either a <sup>F1</sup>person who has a 7 year general qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990,] or a person who has held high judicial office, and, before appointing a layman, the bishop shall satisfy himself that the person to be appointed is a communicant.

<sup>F2</sup>(3) .....

(4) Subject to the provisions of the last foregoing subsection, the appointment of a person to be chancellor of a diocese shall be [<sup>F3</sup>for the period beginning with the date of the appointment and ending with the date on which he attains the age of seventy-five years], but he—

- (a) may resign his office by instrument in writing under his hand addressed to, and served on, the bishop of the diocese;
- (b) may be removed by that bishop if the Upper House of the Convocation of the relevant province resolves that he is incapable of acting or unfit to act.

<sup>F4</sup>(c) may continue to act as chancellor for the purpose of any proceedings or cause of faculty in the consistory court of the diocese during the course of which he attains the age of seventy-five years as if the date of the conclusion in that court of those proceedings or that cause, as the case may be, were the date on which he attains that age.]

(5) The chancellor of a diocese shall, before he enters on the execution of his office,—

- (a) take and subscribe, either before the bishop of the diocese in the presence of the diocesan registrar, or in open court in the presence of that registrar, the oaths set out in Part I of the First Schedule to this Measure; . . . <sup>F5</sup>

(b) ..... <sup>F6</sup>

and the diocesan registrar shall record the taking and subscription of the said oaths . . . <sup>F5</sup>

**Textual Amendments**

**F1** Words substituted by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\)](#), s. 71(2), **Sch. 10 para. 17**

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- F2** S. 2(3) repealed (1.6.1992) by Church of England (Miscellaneous Provisions) Measure 1992 (No. 1), s. 17(2), **Sch. 4 Pt.II**; Instrument dated 27.5.1992 made by the Archbishops of Canterbury and York.
- F3** Words substituted by Ecclesiastical Judges and Legal Offices Measure 1976 (No. 2), s. **1(1)(3)** except in relation to a person who holds the office of chancellor of a diocese, or, in the case of the diocese of Canterbury, commissary general on 25.4.1976
- F4** S. 2(4)(c) added by Ecclesiastical Judges and Legal Officers Measure 1976 (No. 2), s. **1(1)**
- F5** Word repealed by Church of England (Worship and Doctrine) Measure 1974 (No. 3), **Sch. 2**
- F6** S. 2(5)(b) repealed by Church of England (Worship and Doctrine) Measure 1974 (No. 3), **Sch. 2**

[<sup>F7</sup>**2A** **Number of chancellorships to be held by one person may be limited.**

- (1) Regulations made by the House of Bishops of the General Synod may make provision with respect to the maximum number of chancellorships of dioceses which any one person may hold.
- (2) Nothing in any regulation made under this section shall be taken as prohibiting any person who at the date on which the regulation comes into force holds more than the maximum number of chancellorships prescribed by the regulation from continuing to hold such offices.
- (3) Regulations made under this section shall be laid before the General Synod and shall not come into operation until they have been approved by the General Synod.
- (4) The <sup>M1</sup>Statutory Instruments Act 1946 shall apply to any regulations approved under subsection (3) of this section as if they were a statutory instrument and were made when so approved, and as if this Measure were an Act providing that any such regulations should be subject to annulment in pursuance of a resolution of either House of Parliament.]

**Textual Amendments**

- F7** S. 2A inserted by Ecclesiastical Judges and Legal officers Measure 1976 (No. 2), s. 2

**Marginal Citations**

- M1** 1946 c. 36.

**3 Judges of the Arches and Chancery Courts.**

- (1) The judges of the Arches Court of Canterbury and the Chancery Court of York respectively shall be five in number, but proceedings which, by virtue of the following provisions of this Measure, are cognisable by either of those Courts shall be heard and disposed of by such of the judges thereof as may be determined in accordance with those provisions.
- (2) Of the judges of each of the said Courts—
  - (a) one, who shall be a judge of both Courts (and, in respect of his jurisdiction in the province of Canterbury shall be styled Dean of the Arches and, in respect of his jurisdiction in the province of York, shall be styled Auditor, and is hereinafter referred to in this Measure as the Dean of the Arches and Auditor), shall be appointed by the archbishops of Canterbury and York jointly with the approval of Her Majesty signified by warrant under the sign manual;

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- (b) two shall be persons in holy orders appointed by the prolocutor of the Lower House of the Convocation of the relevant province;
  - (c) two shall be laymen appointed by the Chairman of the House of Laity after consultation with the Lord Chancellor and possessing such judicial experience as the Lord Chancellor shall think appropriate;
- (3) A person appointed to be Dean of the Arches and Auditor shall be either a <sup>F8</sup>person who has a 10 year High Court qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990, or a person who has held high judicial office, and, before appointing a layman, the archbishops of Canterbury and York shall satisfy themselves that he is a communicant.
- (4) Before the Chairman of the House of Laity appoints a person to be a judge of either of the said Courts, he shall satisfy himself that that person is a communicant.
- (5) The appointment of any person to be a judge of either of the said Courts shall be <sup>F9</sup>for a period beginning with the date of the appointment and ending with the date on which that person attains the age of seventy-five years], but—
- (a) the Dean of the Arches and Auditor—
    - (i) may resign his office by instrument in writing under his hand addressed to, and served on, the archbishops of Canterbury and York;
    - (ii) may be removed by the archbishops of Canterbury and York jointly if the Upper Houses of the Convocations of the provinces of Canterbury and York each resolve that he is incapable of acting or unfit to act;
  - (b) any other judge of either of the said Courts—
    - (i) may resign his office by instrument in writing under his hand addressed to, and served on, the archbishop of the relevant province;
    - (ii) may be removed by the archbishop of that province if the Upper House of its Convocation resolves that he is incapable of acting or unfit to act;
  - <sup>F10</sup>(c) any judge of either of the said Courts may continue to act as a judge thereof for the purpose of any proceedings in that Court during the course of which he attains the age of seventy-five years as if the date of the conclusion in that Court of those proceedings were the date on which he attains that age.]
- (6) The Dean of the Arches and Auditor shall, before he enters on the execution of his office,—
- (a) take and subscribe,—
    - (i) before the archbishop of Canterbury in the presence of the registrar of the province of Canterbury and before the archbishop of York in the presence of the registrar of the province of York; or
    - (ii) in open court in both of those provinces in the presence of the registrar of the province;
 the oaths set out in Part I of the First Schedule to this Measure; . . . <sup>F11</sup>
  - (b) . . . . . <sup>F12</sup>
- (7) A person (other than the Dean of the Arches and Auditor) appointed to hold the office of judge of either of the said Courts shall, before he enters on the execution of his office,—
- (a) take and subscribe the said oaths either before the archbishop of the relevant province and in the presence of the registrar of that province or in open court in the presence of that registrar; . . . <sup>F11</sup>

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(b) . . . <sup>F12</sup>

- (8) A provincial registrar shall record the taking . . . <sup>F11</sup> and subscription, of an oath . . . <sup>F11</sup> in his presence in pursuance of either of the two last foregoing subsections.

#### Textual Amendments

**F8** Words substituted by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\)](#), s. 71(2), **Sch. 10 para. 18(1)**

**F9** Words substituted by [Ecclesiastical Judges and Legal Officers Measure 1976 \(No. 2\)](#), s. 1(2)(3) except in relation to any person who holds the office of judge of either of the courts mentioned in this subsection on 25.4.1976

**F10** [S. 3\(5\)\(c\)](#) inserted by [Ecclesiastical Judges and Legal Officers Measure 1976 \(No. 2\)](#), s. 1(2)

**F11** Words repealed by [Church of England \(Worship and Doctrine\) Measure 1974 \(No. 3\)](#), **Sch. 2**

**F12** [S. 3\(6\)\(b\)\(7\)\(b\)](#) repealed by [Church of England \(Worship and Doctrine\) Measure 1974 \(No. 3\)](#), **Sch. 2**

#### 4 Appointment of deputy judges.

- (1) In the event of the illness or temporary incapacity of the Dean of the Arches and Auditor or of any chancellor, the archbishops of Canterbury and York in the former case, and the bishop of the diocese concerned in the latter, may appoint a fit and proper person to act as deputy Dean of the Arches and Auditor or deputy chancellor of such diocese as the case may be during such illness or incapacity, and every person so appointed shall have all the powers and perform all the duties of the person for whom he is appointed to act.
- (2) Every deputy judge appointed to act pursuant to the provisions of the foregoing subsection shall be qualified as hereinbefore provided with respect to the person whose functions he is appointed to perform and, before he enters on the execution of his office, such deputy shall take and subscribe such oaths . . . <sup>F13</sup> as are required to be taken, . . . <sup>F13</sup> and subscribed by the Dean of the Arches and Auditor or by a chancellor of a diocese, as the case may be, under the preceding provisions of this Measure in manner thereby appointed, and such oaths . . . <sup>F13</sup> shall be recorded in the like manner.

#### Textual Amendments

**F13** Words repealed by [Church of England \(Worship and Doctrine\) Measure 1974 \(No. 3\)](#), **Sch. 2**

#### 5 Judges of the Court of Ecclesiastical Causes Reserved.

The Court of Ecclesiastical Causes Reserved shall be constituted of five judges appointed by Her Majesty, and of them two shall be persons who hold, or have held, high judicial office and who make a declaration that they are communicants and three shall be persons who are, or have been, diocesan bishops.

#### *Jurisdiction of the Courts*

#### 6 Jurisdiction of the consistory court.

- (1) Subject to the provisions of the following subsection the consistory court of a diocese has original jurisdiction to hear and determine—

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- (a) proceedings upon articles charging an offence under this Measure committed by a priest or deacon who when the offence was alleged to have been committed or when the proceedings were instituted, held preferment in the diocese or resided therein, not being an offence involving matter of doctrine, ritual or ceremonial;
  - (b) a cause of faculty for authorising—
    - (i) any act relating to land within the diocese, or to anything on or in such land, being an act for the doing of which the decree of a faculty is requisite;
    - (ii) the sale of books comprised in a library within the diocese, being a library to which the <sup>M2</sup>Parochial Libraries Act 1708 applies;
  - (c) proceedings upon any *jus patronatus* awarded by the bishop of the diocese;
  - (d) proceedings for the recovery of any penalty or forfeiture incurred under section thirty-two . . . <sup>F14</sup> of the <sup>M3</sup>Pluralities Act 1838 in relation to a benefice in the diocese or under section twenty-eight of that Act by a spiritual person holding a benefice in the diocese, any proceedings in respect of an offence committed under section twenty-nine of that Act by a person who holds any cathedral preferment, benefice, curacy or lectureship in the diocese or is licensed or otherwise allowed to perform duties therein and any proceedings consequent upon the return into the court of a monition in pursuance of section one hundred and twelve of that Act;
  - (e) any proceedings (other than as aforesaid) which, immediately before the passing of this Measure, it had power to hear and determine, not being proceedings jurisdiction to hear and determine which is expressly abolished by this Measure.
- (2) Nothing contained in the foregoing subsection shall extend, or be construed as extending, the jurisdiction of the consistory court in faculty matters to any land or to anything on or in such land in respect of which such court had no jurisdiction immediately before the passing of this Measure.

#### Textual Amendments

**F14** Words repealed by [Repairs of Benefice Buildings Measure 1972 \(No. 2\)](#), [Sch. 2](#)

#### Marginal Citations

**M2** 1708 c. 14.

**M3** 1838 c. 106.

## 7 Jurisdiction of Arches and Chancery Courts.

- (1) The Arches Court of Canterbury and the Chancery Court of York each have jurisdiction to hear and determine appeals from judgments, orders or decrees of consistory courts of dioceses within the provinces for which they are constituted respectively, being judgments, orders or decrees given, made or pronounced—
- (a) in such proceedings as are mentioned in paragraphs (a), (d) and (e) of subsection (1) of the last foregoing section, or
  - (b) in causes of faculty not involving matter of doctrine, ritual or ceremonial.
- (2) An appeal which, by virtue of this section, either of the said Courts has jurisdiction to entertain lies—

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- (a) in a civil suit, at the instance of any party to the proceedings;
  - (b) in a criminal suit, at the instance of any party to the proceedings on a question of law and the defendant on a question of fact.
- (3) Appeals under this section shall be lodged and conducted in such manner as may be prescribed.

## **8 Appellate jurisdiction of Her Majesty in Council.**

- (1) Her Majesty in Council has jurisdiction to hear and determine appeals from judgments of the Arches Court of Canterbury and the Chancery Court of York in proceedings which, by virtue of paragraph (b) of subsection (1) of the last foregoing section, those Courts have jurisdiction to entertain.
- (2) An appeal which, by virtue of this section, Her Majesty in Council has jurisdiction to entertain lies at the instance of any party to the proceedings.

## **9 Jurisdiction of commissions of convocation.**

- (1) A commission appointed in accordance with the provisions of Part V of this Measure by the Upper Houses of the Convocations of the provinces of Canterbury and York has jurisdiction to hear and determine proceedings upon articles charging an offence against the laws ecclesiastical other than an offence involving matter of doctrine, ritual or ceremonial committed by an archbishop.
- (2) A commission appointed by the Upper House of the Convocation of either of the said provinces in accordance with the provisions referred to in the last foregoing subsection has jurisdiction to hear and determine proceedings upon articles charging an offence against the laws ecclesiastical committed by a bishop who, when the offence was alleged to have been committed or when the proceedings were instituted, was a diocesan bishop whose diocese was within the relevant province, a suffragan bishop commissioned by any such diocesan bishop or a bishop (other than as aforesaid) who resided in such a diocese or held preferment therein, not being an offence involving matter of doctrine, ritual or ceremonial.

## **10 Jurisdiction of Court of Ecclesiastical Causes Reserved.**

- (1) The Court of Ecclesiastical Causes Reserved has original jurisdiction to hear and determine—
- (a) proceedings upon articles charging an offence against the laws ecclesiastical involving matter of doctrine ritual or ceremonial committed by—
    - (i) a priest or deacon who when the offence was alleged to have been committed or when the proceedings were instituted, held preferment in a diocese or resided therein;
    - (ii) an archbishop or a bishop who, at one of those times, was a diocesan or a suffragan commissioned by a diocesan or (not being either a diocesan or a suffragan) held preferment in a diocese or resided therein
  - (b) all suits of *duplex querela*;

and also has jurisdiction to hear and determine appeals from judgments, orders or decrees of consistory courts of dioceses given, made or pronounced in causes of faculty involving matter of doctrine, ritual or ceremonial.

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- (2) An appeal which, by virtue of this section, the Court of Ecclesiastical Causes Reserved has jurisdiction to entertain lies at the instance of any party to the proceedings.
- (3) For the purpose of determining whether an appeal from a judgment, order or decree of a consistory court in a cause of faculty lies to the Arches Court of Canterbury or the Chancery Court of York under paragraph (b) of subsection (1) of section seven of this Measure or to the Court of Ecclesiastical Causes Reserved by virtue of this section, it shall be the duty of the chancellor to certify upon the application of the party desiring to appeal whether or not a question of doctrine, ritual or ceremonial is involved and such certificate shall be conclusive.

## **11 Jurisdiction of Her Majesty with respect to review of findings of commissions of convocation or of Court of Ecclesiastical Causes Reserved.**

- (1) A petition addressed to Her Majesty praying that She will be pleased to cause a finding of any commission of convocation appointed under Part V of this Measure to be reviewed may be lodged with the Clerk of the Crown in Chancery by any party to the proceedings on a question of law, and by the defendant on a question of fact.
- (2) A petition addressed to Her Majesty praying that she will be pleased to cause a finding of the Court of Ecclesiastical Causes Reserved to be reviewed may be lodged with the Clerk of the Crown in Chancery—
  - (a) in a case where the finding of the Court was in exercise of the jurisdiction it has by virtue of paragraph (a) of subsection (1) of the last foregoing section, by any party to the proceedings on a question of law and the defendant on a question of fact;
  - (b) in any other case, by any party to the proceedings.
- (3) Any such petition must be in the prescribed form and must be lodged as aforesaid within the prescribed period after the finding to which it relates.
- (4) Upon a petition being duly lodged under this section, a commission shall be directed under the Great Seal to such five persons as Her Majesty may be pleased to nominate, of whom three shall be Lords of Appeal (within the meaning of the <sup>M4</sup>Appellate Jurisdiction Act 1876) who make a declaration that they are communicants and two shall be lords spiritual sitting as Lords of Parliament, to review the finding to which the petition relates.
- (5) A commission appointed under this section shall be called a Commission of Review.

### **Marginal Citations**

**M4** 1876 c. 59.

### *Miscellaneous Provisions relating to the Courts and the Judges*

## **12 Consistory, Arches and Chancery Courts to be unaffected by vacation of sees.**

The vacation of the see of Canterbury or of the see of York shall not render the Arches Court of Canterbury or the Chancery Court of York unable to exercise their respective jurisdictions nor shall the vacation of those sees or the see of the bishop of any other diocese render any consistory court unable to exercise its jurisdiction, and subject to



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the provisions of subsection (3) of section two of this Measure no such vacancy shall affect the discharge by the judges or officers of any such court as aforesaid of their functions.

**13 Certain judges to be ex officio officials principal.**

- (1) The Dean of the Arches and Auditor shall, by virtue of his office, be the Official Principal of the archbishop of Canterbury and the Official Principal of the archbishop of York in their respective capacities of Metropolitans and shall also be Master of the Faculties to the archbishop of Canterbury.
- (2) The chancellor of a diocese shall by virtue of his office be the Official Principal of the bishop of that diocese.

**Status:**

Point in time view as at 01/06/1992.

**Changes to legislation:**

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