



# Church of England (Miscellaneous Provisions) Measure 1992 (No. 1)

1992 No. 1

## PART I

### MISCELLANEOUS PROVISIONS

#### **1 Sequestration**

- (1) During the vacancy of a benefice and otherwise where the profits of a benefice are to be sequestered, the churchwardens of every parish comprised in the benefice and the rural dean and such other person as the bishop of the diocese concerned may appoint, if he considers it desirable to do so, shall be the sequestrators of the benefice, and any rule of law requiring the bishop of the diocese concerned to issue a writ of sequestration on a benefice becoming vacant shall cease to have effect.
- (2) A writ of sequestration in respect of the profits of a benefice shall not be issued by any court—
  - (a) for the purpose of obtaining satisfaction of a debt owed by the incumbent of the benefice; or
  - (b) by reason of the bankruptcy of the incumbent; or
  - (c) for the purpose of applying the profits where the incumbent is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to the benefice.

#### **2 Conduct of funeral services**

- (1) The performance of a funeral service in accordance with this section shall not require the consent or be subject to the control of the minister of the parish in which it is performed.
- (2) The minister of a parish may perform a funeral service in any crematorium or cemetery situated in another parish if—

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- (a) the deceased person dies in the first-mentioned parish; or
  - (b) the deceased person was resident in the first-mentioned parish immediately before his death; or
  - (c) the name of the deceased person was on the church electoral roll of the first-mentioned parish immediately before his death.
- (3) Without prejudice to section 2 of the Extra-Parochial Ministry Measure 1967, a person licensed for the time being under that section to perform funeral services on premises forming part of or belonging to a university, college, school, hospital or public or charitable institution may perform a funeral service in any crematorium or cemetery if the deceased person was resident in any such premises or was employed by or enrolled as a student at the institution in question immediately before his death.
- (4) The minister of a parish situated wholly or partly in an area—
- (a) which is chargeable with the expenses of a cemetery; or
  - (b) for the use of which a crematorium or cemetery has been designated by the bishop of the diocese concerned,
- shall, with respect to persons who are his own parishioners or who die in his parish or whose names are entered on the church electoral roll of his parish, where he is requested to do so, be under the same obligation to perform or arrange the performance of funeral services in the crematorium or cemetery as he has to perform or arrange the performance of funeral services in any churchyard of his parish.
- (5) Section 11 of the Cremation Act 1902 (incumbent not to be obliged to perform burial service) shall cease to have effect.
- (6) In this section—
- “minister”, in relation to a parish, means—
  - (a) the incumbent;
  - (b) in a case where the benefice to which the parish belongs is vacant (and paragraph (c) below does not apply), the rural dean;
  - (c) in a case where a suspension period applies to the benefice to which the parish belongs, the priest-in-charge (if any); and
  - (d) 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 Pastoral Measure 1983 or by his licence from the bishop, that vicar;
- “suspension period” has the same meaning as in the Pastoral Measure 1983.

### **3 Burial of cremated remains**

- (1) A person who has a right of burial in the churchyard or other burial ground of a parish shall have a right of burial therein of his cremated remains:
- Provided that a person shall not have a right of burial of his cremated remains by virtue of this section in a churchyard or burial ground which has been closed by an Order in Council except in accordance with a faculty authorising the burial or in an area which has been set aside by a faculty for the burial of cremated remains generally.
- (2) For the avoidance of doubt it is hereby declared that the bishop of a diocese may consecrate land in the diocese for the sole purpose of burying cremated remains.

#### **4 Amendment of Parochial Registers and Records Measure 1978**

- (1) The Parochial Registers and Records Measure 1978 shall have effect subject to the amendments specified in Schedule 1 to this Measure.
- (2) In the case of the first inspection carried out after the date of the coming into force of this section under section 9 of the said Measure as substituted by this section, the reference in subsection (3) of the said section 9 to the immediately preceding inspection shall be construed as a reference to the last inspection carried out under that section as originally enacted; and, if that last inspection was completed more than five years before that date, the reference in the said subsection (3) to five years shall be construed as a reference to six years.
- (3) The amendment specified in paragraph 11 of the said Schedule 1 (substitution of new burial register form) shall not apply in relation to entries made in register books of burial before the said date.

#### **5 Appointment of new patrons**

- (1) In this section “relevant instrument” means an instrument made in pursuance of the Church Building Acts 1818 to 1884 or otherwise under which the person who is for the time being the bishop of a diocese or the incumbent of a benefice or the holder of any other office has a right to be appointed a patron of a benefice in preference to any other person upon a vacancy occurring amongst the patrons.
- (2) Where any bishop of a diocese, incumbent of a benefice or holder of an office who is a patron of a benefice to which any relevant instrument relates by virtue of his office ceases to be the bishop of the diocese, incumbent of the benefice or holder of the office, as the case may be, he shall cease to be such a patron.
- (3) Where any bishop of a diocese, incumbent of a benefice or holder of an office has, by virtue of a relevant instrument, a right to be appointed a patron of a benefice in preference to any other person upon a vacancy occurring amongst the patrons he shall, upon such a vacancy occurring, without any deed of appointment or other process, become a patron of the benefice by virtue of his office unless he has previously resigned as patron of the benefice.

#### **6 Amendment of section 5 of the Church of England (Ecumenical Relations) Measure 1988**

In section 5 of the Church of England (Ecumenical Relations) Measure 1988 in subsection (2)(b) at the end there shall be inserted the words “or, in the case of a Church outside the United Kingdom, it is nominated by the General Synod for the purposes of this section by resolution”.

#### **7 Amendment of Ecclesiastical Jurisdiction Measure 1963**

The Ecclesiastical Jurisdiction Measure 1963 shall have effect subject to the following amendments—

- (a) in section 55 (deprivation of priest or deacon following certain proceedings in secular courts)—
  - (i) in subsection (2) the words from “, within twenty-eight days” to “conclusive,” shall be omitted;

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- (ii) in subsection (3) at the beginning there shall be inserted the words “Subject to the provisions of the following subsection” and the words “, within two months after the date mentioned in that subsection,” shall be omitted;
- (iii) after subsection (3) there shall be inserted the following subsection—
  - “(3A) A declaration shall not be made under this section after the expiry of the period of three years beginning with the date on which the sentence, decree, finding or order, as the case may be, becomes conclusive.”;
- (b) in section 56 (deprivation of bishop or archbishop following certain proceedings in secular courts)—
  - (i) in subsection (1) at the beginning there shall be inserted the words “Subject to the provisions of the following subsection” and the words from “, within two months” to “conclusive,” shall be omitted;
  - (ii) after subsection (1) there shall be inserted the following subsection—
    - “(1A) A declaration shall not be made under this section after the expiry of the period of three years beginning with the date on which the sentence, decree, finding or order, as the case may be, becomes conclusive.”.

## 8 Amendment of New Parishes Measure 1943

The New Parishes Measure 1943 shall have effect subject to the following amendments—

- (a) in section 13 (power of Ecclesiastical Commissioners to acquire land for churches, etc.) in subsection (1)—
  - (i) in paragraph (bb) after the words “to be used as a” there shall be inserted the words “place of worship (other than a church) or”;
  - (ii) in paragraph (e) after the words “such church” there shall be inserted the words “or other place of worship”;
  - (iii) at the end there shall be inserted the following paragraph—
    - “(f) any land required for providing vehicle parking space for use in connection with any such church or other place of worship, church hall, churchyard or burial ground”;
- (b) in section 16 (vesting of land acquired by the Commissioners)—
  - (i) after subsection (1) there shall be inserted the following subsection—
    - “(1A) Where at the passing of the Church of England (Miscellaneous Provisions) Measure 1992, any land or building is held by the Commissioners for any of the purposes mentioned in paragraph (a), (b) or (c) of subsection (1) of section 13 of this Measure (being land or a building acquired for that purpose before the passing of the Church Property (Miscellaneous Provisions) Measure 1960), the land or building shall vest in the incumbent for the time being of the parish in which the land or building is situated.”;
  - (ii) in subsection (3)—

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- (A) in paragraph (a) after the words “to be used as a” there shall be inserted the words “place of worship (other than a church) or”;
- (B) after paragraph (d) there shall be inserted the following paragraph—
  - “or
  - (e) land required for providing vehicle parking space for use in connection with a church or other place of worship, church hall, churchyard or burial ground”;
- (c) in section 17 (powers of dealing with land no longer required for purpose for which acquired) in subsection (1) for the words “or (e)” there shall be substituted the words “, (e) or (f)”.

## **9 Amendment of Cathedrals Measure 1976**

- (1) The Cathedrals Measure 1976 shall have effect subject to the following amendments.
- (2) In section 3 (confirmation of scheme by Order in Council)—
  - (a) in subsection (1) for the words from “to appeal” to the end there shall be substituted the words “, on obtaining the leave of the Judicial Committee of the Privy Council, to appeal to Her Majesty in Council and shall specify such date as may be determined by the Commission, being a date not less than twenty-eight days after the service of the notice, on or before which an application for such leave must be made.  
When submitting a scheme for confirmation by Her Majesty in Council the Commission shall inform the Clerk of the Privy Council of the date which is to be specified in notices under this subsection relating to the scheme.”;
  - (b) in subsection (2) for the words from “by lodging notice of appeal” to the end there shall be substituted the words “, but only with the leave of the Judicial Committee of the Privy Council”;
  - (c) for subsection (3) there shall be substituted the following subsection—
    - “(3) If—
      - (a) no application for leave to appeal is made on or before the date specified in notices under subsection (1) above; or
      - (b) the Judicial Committee refuses to grant such leave; or
      - (c) an appellant, having been granted leave to appeal under this section, fails to lodge his petition of appeal within a period of three months beginning with the date on which leave was granted or such extended period as the Registrar of the Privy Council may allow,  
Her Majesty may by Order in Council confirm the scheme.”;
  - (d) in subsection (4) for the words from the beginning to “Judicial Committee of the Privy Council” there shall be substituted the words “If leave to appeal is granted and a petition of appeal is lodged within the said period or extended period, the Judicial Committee of the Privy Council shall hear the appeal”.
- (3) In section 4 (publication of notice of confirmation of scheme)—
  - (a) subsection (1) shall be omitted;

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- (b) in subsection (2) for the words “such Order in Council” there shall be substituted the words “Order in Council by which a scheme is confirmed under section 3 of this Measure”.
- (4) In section 5 (supplementary provisions with respect to schemes) in subsection (1) for the words from “notice” to the end there shall be substituted the words “the Order in Council is made”.
- (5) Nothing in subsection (2) above shall affect any right of appeal under section 3 of the said Measure in respect of a scheme made under section 2 before the coming into force of this section, and the said section 3 shall continue to have effect in respect of such a scheme as if the said subsection (2) had not been enacted.

## **10 Advowsons—parochial church councils**

- (1) Subsection (1) of section 6 of the Parochial Church Councils (Powers) Measure 1956 (which relates, inter alia, to certain interests in land) shall not apply and shall be deemed never to have applied in relation to an advowson or share in an advowson.
- (2) Subsection (2) of the said section 6 shall not apply in relation to an advowson or share in an advowson; and any advowson or share in an advowson which is, at the coming into force of this section, held by a diocesan authority, having been vested in the diocesan authority pursuant to that subsection, shall, by virtue of this subsection and without any conveyance or other assurance, vest in the parochial church council concerned subject to all trusts affecting the same.
- (3) In this section, “diocesan authority” has the same meaning as in the said Measure of 1956.

## **11 Resignation of incumbents**

Where the incumbent of a benefice wishes to tender his resignation in writing it shall not be necessary for him to proceed by way of a deed, but any written resignation of a benefice shall be tendered to the diocesan bishop concerned in the form set out in Schedule 2 to this Measure and signed by the incumbent.

## **12 Tenure of office of diocesan chancellors and registrars**

The appointment of a person to be chancellor or registrar of a diocese shall not cease to have effect by reason only that a vacancy in the see is terminated and the appointment has not been previously confirmed by the dean and chapter or, as the case may be, the cathedral chapter of the cathedral church of the diocese.

In this section “chancellor” includes the commissary general of the diocese of Canterbury.

## **13 Archdeacons' visitations**

For the avoidance of doubt it is hereby declared that the registrar of an archdeacon has no duty to attend at a visitation of the archdeacon; and, accordingly, the registrar of a diocese has no duty, by virtue of section 7(2) of the Ecclesiastical Judges and Legal Officers Measure 1976, to attend at an archdeacon’s visitation.

**14 Appointment of deacon as rural dean**

For the avoidance of doubt it is hereby declared that it is lawful for a deacon to be appointed to the office of rural dean, notwithstanding anything in section 10 of the Act of Uniformity 1662.

**15 Appointment of deacon as residentiary canon**

It shall be lawful for a person who is in deacon's orders and who has been ordained for a period exceeding six years to be appointed to the office of a residentiary canon in any cathedral church with the appropriate style, title and dignity thereof, notwithstanding anything in section 10 of the Act of Uniformity 1662 or in the constitution and statutes of that cathedral church to the contrary; but nothing in the constitution and statutes of that cathedral church shall be construed as authorising or requiring a person in deacon's orders so appointed to preside at or celebrate the Holy Communion or pronounce the Absolution.

**16 Appointment of deacon as non-residentiary Canon**

It shall be lawful for a deacon to be appointed to the office of a non-residentiary canon in any cathedral church with the appropriate style, title and dignity thereof, notwithstanding anything in section 10 of the Act of Uniformity 1662 or in the constitution and statutes of that cathedral church to the contrary; but nothing in the constitution and statutes of that cathedral church shall be construed as authorising or requiring a person in deacon's orders so appointed to preside at or celebrate the Holy Communion or pronounce the Absolution.