Ecclesiastical Jurisdiction and Care of Churches Measure 2018

2018 No. 3

PART 1

THE ECCLESIASTICAL COURTS

The consistory courts

1 The consistory courts: continuation

(1) For each diocese there is to continue to be a court of the bishop of the diocese.

(2) The court is to continue to be known as the consistory court of the diocese or, in the case of the diocese of Canterbury, the commissary court of that diocese.

(3) Accordingly, a reference in this Measure to the consistory court of a diocese is, in the case of the diocese of Canterbury, to be read as a reference to the commissary court of that diocese.

2 Judge: appointment

(1) The consistory court of a diocese is to be presided over by a single judge, appointed by the bishop of the diocese by letters patent.

(2) The judge is to continue to be known as the chancellor of the diocese or, in the case of the diocese of Canterbury, the commissary general.

(3) Accordingly, a reference in this Measure to the chancellor of a diocese is, in the case of the diocese of Canterbury, to be read as a reference to the commissary general.

(4) A person may be appointed as chancellor of a diocese only if the person—

(a) holds or has held high judicial office, or

(b) holds or has held the office of circuit judge or has the qualifications required for holding that office.

(5) A lay person may be appointed as chancellor of a diocese only if the bishop is satisfied that the person is a communicant.

(6) Before appointing a person as chancellor of a diocese, the bishop must consult—
(a) the Lord Chancellor, and
(b) the Dean of the Arches and Auditor.

3 Judge: term of office

(1) The term of a person's appointment as chancellor of a diocese—
(a) begins with the date of the appointment, and
(b) subject to the following provisions of this section, ends with the day on which the person reaches the age of 70.

(2) The chancellor of a diocese may resign the office by instrument in writing signed by him or her and addressed to, and served on, the bishop of the diocese.

(3) The bishop of a diocese may remove the chancellor of the diocese from office if the Upper House of the Convocation of the province concerned resolves that he or she is incapable of acting or unfit to act; and such a resolution must be filed in the registry of the province concerned.

(4) Where, during the course of proceedings in the consistory court, the chancellor of the diocese reaches the age of 70, he or she may continue to act as chancellor for the purposes of the proceedings as if the day on which the proceedings concluded in that court were the day on which he or she reached that age.

(5) Where the bishop of a diocese considers that it would be desirable in the interests of the diocese to retain the chancellor in office after the date on which he or she would otherwise retire under subsection (1) or (4), the bishop may authorise the continuance in office of the chancellor after that date for a period of up to two years.

(6) The bishop of a diocese may authorise the further continuance in office of the chancellor of the diocese for periods of up to one year at a time.

(7) The period during which a person remains in office as chancellor may not be continued under subsection (5) or (6) beyond the date on which the person reaches the age of 75.

(8) Before authorising a period of continuance under subsection (5) or (6), the bishop must consult the Dean of the Arches and Auditor.

(9) Where the chancellor of a diocese is continuing in office under subsection (5) or (6) and, during the course of proceedings in the consistory court, the period of continuance under that subsection expires, he or she may continue to act as chancellor for the purposes of the proceedings as if the day on which the proceedings concluded in that court were the day on which the period of continuance expired.

(10) The references in subsections (1) and (4) to reaching the age of 70 apply only in the case of a person appointed as chancellor on or after 31 March 1995; in the case of a person appointed as chancellor before that date, the references are to be read as references to reaching the age at which a circuit judge appointed on the day on which the person was appointed as chancellor would be obliged to vacate office.

4 Deputy judge: appointment and term of office

(1) The chancellor of a diocese, with the consent of the bishop of the diocese, may in writing appoint a fit and proper person to act as deputy chancellor of the diocese.

(2) Where the chancellor of a diocese is for any reason unable to act, the bishop of the diocese may in writing appoint a fit and proper person to act as deputy chancellor of the diocese during the period in which the chancellor is unable to act.

(3) Where the chancellor of a diocese notifies the bishop of the diocese that it would be inappropriate for him or her or for a deputy chancellor appointed under subsection (1) to act for the purposes of the proceedings to which the notification relates, the bishop of the diocese may in writing appoint a fit and proper person to act as deputy chancellor for those purposes.

(4) Where the office of chancellor of a diocese is vacant, the bishop of the diocese may in writing appoint a fit and proper person to act as deputy chancellor of the diocese during the vacancy.

(5) A deputy chancellor has the same powers and duties as the chancellor for whom he or she is deputy.

(6) The qualifications for an appointment under this section are the same as those for the appointment of a chancellor under section 2; accordingly, subsections (4) and (5) of that section apply to an appointment under this section as they apply to an appointment under that section.

(7) The appointment of a person as a deputy under subsection (1) continues—

(a) for so long as the chancellor who made the appointment continues in office and then for a period of three months beginning with the date on which the chancellor ceases to hold office, or

(b) if before the end of that period the deputy reaches the age at which the chancellor would be required to vacate office under section 3(1), until the day on which the deputy reaches that age.

(8) A deputy chancellor appointed under subsection (1) may resign the office by notice in writing addressed to the chancellor.

(9) The chancellor of a diocese may, after consultation with the bishop of the diocese, remove a deputy chancellor appointed under subsection (1) from office if the chancellor considers that he or she is incapable of acting or unfit to act.

(10) Where, during the course of proceedings in the consistory court in which the deputy chancellor of the diocese is acting as chancellor, the person's appointment as deputy chancellor would (but for this subsection) end under subsection (7), the person may continue to act as chancellor for the purposes of the proceedings as if the day on which the proceedings concluded in that court were the day on which the appointment ends under subsection (7).

5 Regulations as to maximum number of offices held

(1) The House of Bishops may by regulations make provision with respect to the maximum number of chancellorships or deputy chancellorships which any one person may hold.

(2) Regulations under subsection (1) may not include provision to prohibit a person who, at the time the provision comes into force, holds more than the specified maximum number of chancellorships or deputy chancellorships from continuing to do so.

(3) Regulations under subsection (1)—
- (a) must be laid before the General Synod, and
- (b) may not come into force unless they have been approved by the Synod.

6 Judge and deputy judge: oaths

(1) The chancellor or deputy chancellor of a diocese must, before entering on the execution of the office, take the following oaths—

"I, ... , do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her Heirs and successors, according to law.

So help me God."

"I, ... , do swear that I will, to the uttermost of my understanding, deal uprightly and justly in my office, without respect of favour or reward.

So help me God."

(2) The oaths must be taken—
- (a) before the bishop of the diocese in the presence of the diocesan registrar, or
- (b) in open court in the presence of the diocesan registrar.

(3) The diocesan registrar must record the taking of the oaths and file the record in the diocesan registry.

7 Jurisdiction

(1) The consistory court of a diocese has jurisdiction to hear and determine—
- (a) proceedings for obtaining a faculty to authorise an act relating to land in the diocese, or to something on, in or otherwise appertaining to land there, for which a faculty is required;
- (b) proceedings for an order under section 53(8) (delivery of article to place of safety);
- (c) proceedings for obtaining a faculty under section 67 (sale of books in parochial library);
- (d) proceedings for an injunction under section 71 or a restoration order under section 72;
- (e) proceedings under section 68(7) or (12) of the Mission and Pastoral Measure 2011 (enforcement or interpretation of leases);
- (f) proceedings under section 71(9) of that Measure (compensation for loss of burial rights);
- (g) proceedings upon a jus patronatus awarded by the bishop of the diocese;
- (h) any other proceedings which, immediately before the passing of the Ecclesiastical Jurisdiction Measure 1963 on 31 July 1963, the court had power to determine (except proceedings the jurisdiction for which was expressly abolished by that Measure).

(2) Criminal proceedings may not be brought in the consistory court of a diocese.

(3) "Land" includes messuages, tenements and hereditaments, houses and buildings of any tenure.

8 Proceedings

Proceedings in the consistory court of a diocese are to be heard and disposed of by the chancellor of the diocese.