



# Ecclesiastical Jurisdiction Measure 1963

1963 No. 1

## PART XII

### MISCELLANEOUS AND GENERAL

#### 66 Interpretation.

(1) In this Measure unless the context otherwise requires the following expressions have the meanings hereby assigned to them respectively, namely:—

“authorised complainant” means a person authorised by a bishop to lay a complaint under Part III of this Measure or, in the case of proceedings against a bishop, a person authorised by the archbishop of the province;

“benefice” includes all rectories with cure of souls vicarages perpetual curacies endowed public chapels and parochial chapelries and chapelries or districts belonging or reputed to belong or annexed or reputed to be annexed to any church or chapel or districts formed for ecclesiastical purposes by virtue of statutory authority and includes benefices in the patronage of the Crown or of the Duchy of Cornwall but does not extend to any Royal peculiar nor to any cathedral or capitular preferment or dignity, nor to any chapel belonging to any college school hospital inn of court asylum or public or charitable institution nor to any private chapel;

“the Central Board” means the Central Board of Finance of the Church of England;

“the Commissioners” means the Church Commissioners for England;

“communicant” means a person who has received communion according to the use of the Church of England or of a church in communion therewith at least once within the twelve months preceding the date of his declaration that he fulfils that requirement, or if a declaration is not required of him, at least once within the twelve months preceding the date upon which he is offered the appointment or requested to act in a capacity for which that qualification is required;

“diocese” means a diocese in the province of Canterbury or a diocese . . .  
<sup>F1</sup>in the province of York and “diocesan” shall be construed accordingly;

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“high judicial office” has the meaning assigned to it by section twenty-five of the <sup>M1</sup>Appellate Jurisdiction Act 1876;

“preferment” includes an archbishopric, a bishopric, archdeaconry, dignity or office in a cathedral or collegiate church, and a benefice, and every curacy, lectureship, readership, chaplaincy, office or place which requires the discharge of any spiritual duty;

“prescribed” means prescribed by rules made under this Measure;

“relevant province” in relation to—

- (a) a House of Convocation;
- (b) a diocese comprised in a province;
- (c) a court having jurisdiction in a province; and
- (d) a person holding any office or preferment or residing in any such diocese or province at any time;

means, according to the context, the province of Canterbury or the province of York as the case may be.

- (2) In this Measure, except and where the context otherwise requires, references to the consistory court of a diocese and to the chancellor of a diocese shall, in their application to the diocese of Canterbury, be construed as references to the commissary court thereof and to the commissary general of such court respectively.
- (3) For the purposes of this Measure an extra-diocesan place (including any place exempt or peculiar other than a Royal Peculiar) which is surrounded by one diocese shall be deemed to be situate within that diocese, and an extra-diocesan place which is surrounded by two or more dioceses shall be deemed to be situate within such one of them as the archbishop of the relevant province may direct.
- (4) Nothing in this section shall prejudice or affect the provisions of subsection (2) of section six of this Measure.

#### **Textual Amendments**

**F1** Words repealed by virtue of s. 85 of this Measure and Church Act 1969 (an Act of Tynwald)

#### **Marginal Citations**

**M1** 1876 c. 59.

## **67 Rules for determining seniority of diocesan bishops.**

For the purposes of this Measure the seniority of diocesan bishops (other than archbishops) shall be determined in accordance with the following rules:—

- (a) the bishops of London and Winchester (in that order) shall be treated as senior to all their comprovincial dioceses;
- (b) the bishop of Durham shall be treated as senior to all his comprovincial dioceses;
- (c) subject to the two foregoing rules the seniority of comprovincial dioceses as between each other shall be determined by reference to the length of time that each of them has held office as diocesan in either province without interruption from any cause.

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**68 Exercise of powers of diocesans during vacation of sees.**

- (1) Subject to the following provisions of this section during the vacation of the see of the bishop of a diocese anything required or authorised by this Measure to be done by, to or before him shall be done or, as the case may be, may be done, by, to or before the person to whom the guardianship of the spiritualities of the diocese belongs during the vacation.
- (2) Where during the vacation of a see the guardianship of the spiritualities is vested in a dean and chapter, the powers and duties invested in or imposed on such guardian under the foregoing subsection shall be exercised and carried out by a commissary appointed by the dean and chapter for that purpose.
- (3) The foregoing subsection shall not apply to anything required or authorised to be done by virtue of paragraph (a) of subsection (1) of section twenty of this Measure or the proviso to subsection (1) of section forty-six thereof.

**69 Criminal proceedings in ecclesiastical courts to be taken only in accordance with this Measure.**

No proceedings by way of a criminal suit, other than those authorised by Parts IV, V and VI of this Measure, shall be instituted against a person in the consistory court of a diocese or in the Court of Ecclesiastical Causes Reserved, and no proceedings so authorised shall be instituted except in accordance with those Parts of this Measure: Provided that when at the coming into force of this Measure proceedings are pending against any person under any Act or Measure repealed by this Measure such proceedings shall not abate by reason only of such repeal and shall continue as if this Measure had not been passed nor shall any right of appeal in such proceedings be affected by such repeal.

**70 Nominated persons to have exclusive right to promote complaint.**

A person nominated under Part IV, V or VI of this Measure to promote a complaint against an accused person shall have the right to do so to the exclusion of all others.

**71 Performance of ecclesiastical duties during suspension or inhibition.**

- (1) Where a censure of suspension or inhibition is pronounced against an archbishop the archbishop of the other province shall perform the functions which the archbishop against whom the censure of suspension or inhibition has been pronounced is unable to perform on account of such censure.
- (2) Where a censure of suspension or inhibition is pronounced against a diocesan bishop, the archbishop of the relevant province may appoint another bishop to perform during the period of suspension or inhibition the functions the performance of which the diocesan bishop against whom the censure of suspension or inhibition has been pronounced is unable to perform on account of such censure.
- (3) Where a censure of suspension or inhibition is pronounced against a suffragan bishop, the diocesan bishop by whom he is commissioned may appoint another bishop to perform during the period of suspension or inhibition the functions which the suffragan bishop against whom the censure of suspension or inhibition has been pronounced is unable to perform on account of such censure.

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- (4) When a censure of suspension or inhibition is pronounced against any priest or deacon, it shall be lawful for the bishop in whose diocese such person holds preferment to appoint some person or persons to perform the duties of the preferment; and in all such cases the bishop may assign such part of <sup>F2</sup>any one or more of the following, that is to say, the guaranteed annuity payable in respect of the benefice under section 1 of the <sup>M2</sup>Endowments and Glebe Measure 1976, the personal grant, if any, to which such person is entitled under section 2 of that Measure and the profits of the benefice, as he thinks fit and may, if necessary, sequester the said profits for the payment of the part thereof so assigned.]

#### Textual Amendments

**F2** Words substituted by [Endowments and Glebe Measure 1976 \(No. 4\), s. 49\(2\) Sch. 5 para. 2](#)

#### Marginal Citations

**M2** [1976 No. 4](#)

## 72 Occupation of parsonage house by person appointed by bishop.

- (1) A bishop who has appointed a person to perform the duties of any benefice under subsection (4) of section seventy-one of this Measure may require such person to reside in the parsonage house belonging thereto, and may assign to him the use of such parsonage house, together with the offices, gardens and appurtenances thereto belonging, or any part or parts thereof, without payment of any rent.
- (2) A person residing in the parsonage house under the provisions of this section shall be liable to pay the rates payable in respect of such house, . . . <sup>F3</sup>, and any sequestrator appointed during any suspension or inhibition under this Measure shall have power to deduct from the stipend of such person any payments for which he shall be liable under this subsection.
- (3) The bishop shall have power in any case in which possession of the premises allocated to any person under the provisions of this section is not given up to him, and until such possession shall be given up, to direct that the profits of the benefice arising from the sequestration thereof under this Measure be applied subject to the provisions thereof as if the same arose under a sequestration for non-residence.
- (4) A right of residence and any other right vested in a person under the provisions of this section shall determine upon the determination of his appointment.

#### Textual Amendments

**F3** Words repealed by [Repairs of Benefice Buildings Measure 1972 \(No. 2\), Sch. 2](#)

## 73 Suspension of censure pending appeal.

In any case in which pursuant to the provisions of this Measure, an appeal is lodged against a judgment order or decree of any court or commission constituted under this Measure in proceedings charging an offence or claiming a penalty or forfeiture against a clergyman, the censure or award of the court or commission from whose judgment order or decree the appeal is made shall be suspended until the appeal is determined,

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but an appeal shall not affect an inhibition *pendente lite* under section seventy-seven of this Measure.

#### **74 Restrictions during a period of suspension or inhibition.**

- (1) In any case in which by reason of a censure pronounced against him a person is suspended or inhibited under this Measure from discharging all or any of the duties attached to any office held by him:—
  - (a) he shall not interfere with any other person who may be appointed to discharge any of the said duties;
  - (b) subject to the provisions of the following subsection he shall not reside in or occupy any house of residence belonging to his office; and
  - (c) he shall not be liable under any penalty or forfeiture for non-residence.
- (2) In the case of an incumbent of a parochial benefice the bishop may for special reasons permit him to reside in or occupy such house of residence or some part thereof.
- (3) In the case of such an incumbent, subject to any direction to the contrary given by the bishop, he shall not receive any part of the income of the benefice while he remains resident within a distance of ten miles from the parish or other principal church of the parish or other area in which, prior to the commencement of the period of inhibition, he had the cure of souls.

#### **75 Provisions as to lapse on avoidance of preferment.**

Where by virtue of anything in or done under this Measure any preferment is vacant the time for lapse shall run from the date on which the prescribed notice of the vacancy is given.

#### **76 Rights of patronage during suspension or inhibition.**

- (1) In any case in which by virtue of a censure pronounced against him a person is suspended or inhibited under this Measure from discharging all or any of the duties attaching to his preferment, any right of patronage vested in him by virtue of his preferment shall, during the period of suspension or inhibition, and subject to the provisions of the following subsection, vest in the person entitled to appoint to such preferment and so that in the case of a diocesan bishop, any such right of patronage shall vest in the archbishop of the relevant province, and in the case of an archbishop, shall vest in the archbishop of the other province.
- (2) In any case in which an incumbent is himself the patron of his benefice, the right of patronage of such benefice shall, so long as the period of suspension or inhibition remains in force, vest in the archbishop of the relevant province.

#### **77 Inhibition *pendente lite*.**

- (1) In every case in which a priest or deacon is accused of an offence under this Measure, or in a temporal court, of any criminal offence or any act constituting an ecclesiastical offence, and it shall appear to any bishop in whose diocese the accused holds any preferment that from the nature of the offence charged it is desirable in the interests of the Church that he should take action under this section, it shall be lawful for such bishop at any time during which proceedings in respect of any such charge are pending to cause a notice to be served on such clerk inhibiting him from performing

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any services of the Church within his diocese from and after the date specified in such notice, and such inhibition shall extend until the said proceedings are concluded.

- (2) When a notice in accordance with the foregoing subsection is served upon a priest who is the incumbent of a benefice, it shall be lawful for such priest within fourteen clear days after service of the said notice to nominate to the bishop a fit person or persons to perform all such services of the Church during the period in which he shall be inhibited as aforesaid, and if the bishop shall deem the person or persons so nominated fit for the performance of such services, he shall grant his licence to him or them accordingly.
- (3) During any period before a person is nominated pursuant to the last foregoing subsection or in case a person shall not be so nominated, or in case the bishop shall not deem the person or persons so nominated fit for the performance of such services, the bishop shall make such provision for the services of the Church as to him shall seem necessary.
- (4) The bishop may at any time revoke a notice of inhibition or a licence granted by him under the powers conferred on him by this section, and if he revokes such licence he shall forthwith serve a notice of such revocation on the person to whom the licence was granted, and on the incumbent of the benefice, and subsections (2) and (3) of this section shall apply as if such notice were a notice served under subsection (1) of this section.
- (5) Where a priest or deacon is inhibited under the provisions of this section he shall not interfere with any person performing the services of the Church under the provisions of subsection (2) or (3) of this section.

## **78 Recording of declarations, resolutions and censures.**

Any declaration or resolution made by a bishop, or by an archbishop, or by an Upper House of Convocation or any censure pronounced by any court, pursuant to the provisions of this Measure shall be recorded in the diocesan registry concerned or in the provincial registry of the relevant province as the case may be.

## **79 When convictions, orders or findings are to be deemed conclusive.**

- (1) A conviction, [<sup>F4</sup>sentence, decree, finding or order] shall become conclusive for the purposes of this Measure—
  - (a) where there has been an appeal, upon the date on which the appeal is dismissed or abandoned or the proceedings on appeal are finally concluded, but, if varied on appeal, shall be conclusive only as so varied, and so far as it is reversed on appeal shall cease to have effect;
  - (b) if there is no such appeal, upon the expiration of the time limited for such appeal, or where no time is so limited, of two months from the date of the conviction, [<sup>F4</sup>sentence, decree, finding or order]; and
  - (c) in the case of a conviction [<sup>F5</sup>decree] or order against which there is no right of appeal from the date of the conviction [<sup>F5</sup>decree] or order.
- (2) After the conviction of a clerk in Holy Orders or [<sup>F4</sup>decree, finding or order] against such a person by or of a temporal court becomes conclusive a certificate of such conviction [<sup>F4</sup>decree, finding or order] shall be conclusive proof in an ecclesiastical court that he has committed the act therein specified.

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- (3) In the event of any such conviction by or [<sup>F4</sup>decree, finding or order] by or before a temporal court as makes a clerk in Holy Orders subject to removal from any preferment, or renders him liable to prosecution under this Measure, the court shall cause the prescribed certificate of the conviction [<sup>F4</sup>decree, finding or order] to be sent to the bishop of the diocese in which the court sits, and such certificate shall be preserved in the registry of the diocese, or of any other diocese to which it may be sent by the direction of the bishop.

#### Textual Amendments

- F4** Words substituted by [Ecclesiastical Jurisdiction \(Amendment\) Measure 1974 \(No. 2\), s. 2\(2\)](#)  
**F5** Words inserted by [Ecclesiastical Jurisdiction \(Amendment\) Measure 1974 \(No. 2\), s. 2\(2\)](#)

### **80 Place where courts, &c. are to sit.**

Any court, commission, committee or inquiry established or held by or under the provisions of this Measure may be held in any place convenient to the court, commission, committee or person holding the inquiry, due regard being paid to the convenience of parties and witnesses.

### **81 Evidence and general powers and rights of courts and commissions.**

- (1) Any court or commission established under this Measure shall have the same powers as the High Court in relation to the attendance and examination of witnesses and the production and inspection of documents.
- (2) Subject to the provisions of the next following subsection any act or omission in connection with proceedings before any such court or commission which if occurring in connection with proceedings in the High Court would have been a contempt of the High Court shall be a contempt of such court or commission.
- (3) Any proceedings in respect of such contempt shall be brought in the High Court, and the High Court shall have in relation thereto the same jurisdiction and powers as if the contempt had been a contempt of the High Court.

### **82 Abolition of obsolete jurisdictions, courts, &c.**

- (1) The power of Her Majesty in Council to hear and determine a suit of *duplex querela* and the powers of the archbishop of Canterbury to cite a bishop for an offence against the laws ecclesiastical and to cite any other person for heresy are hereby determined.
- (2) There are hereby abolished—
- the Courts of Audience and, subject to the provisions of the next following section, archdeacons courts,
  - all original jurisdiction exercisable by the Arches Court of Canterbury and the Chancery Court of York, and
  - the jurisdiction of consistory courts to hear and determine proceedings for the recovery of tithe or against lay officers of a church or by way of suit for perturbation of seat.
- (3) Mortuaries (or corse-presents), synodals, procurations and pentecostals shall cease to be exigible.

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- (4) No person shall be liable to suffer imprisonment in consequence of being excommunicated.

### **83 Savings.**

- (1) Any judge or registrar of an ecclesiastical court appointed to office before the commencement of this Measure shall continue in his office as if he had been appointed under this Measure and nothing contained in this Measure shall affect the terms and conditions on and subject to which his appointment was made.
- (2) Nothing in this Measure affects—
- (a) any prerogative of Her Majesty the Queen; or
  - (b) the existing procedure relating to the confirmation of the election of bishops; or
  - (c) any power of the High Court to control the proper exercise by ecclesiastical courts of their functions; or
  - (d) the mode of appointment, office, and duties of vicars general of provinces or dioceses; or
  - (e) the visitatorial powers of archdeacons; or
  - (f) the mode of appointment, office and duties of the official principal of an archdeacon; or
  - (g) the jurisdiction of the Master of the Faculties.
- (3) Subject to the provisions of section twenty-nine of the <sup>M3</sup>Ecclesiastical Commissioners Act 1840, nothing in this Measure shall authorise proceedings against a holder of an office in a Royal Peculiar.

#### **Marginal Citations**

**M3** 1840 c. 113.

### **84 Exclusion of Channel Islands.**

For the purposes of this Measure, the diocese of Winchester shall be deemed not to include the Channel Islands.

### **85 Provisions as to diocese of Sodor and Man.**

If an Act of Tynwald so provides, this Measure shall extend to the Isle of Man subject to such modifications, if any, as may be specified in such Act of Tynwald, and in that event this Measure shall then have effect with the omission, in the definition of “diocese” in subsection (1) of section sixty-six of the words “(other than Sodor and Man)”.

### **86 Amendments of other enactments.**

The enactments specified in the Fourth Schedule to this Measure shall have effect subject to the amendments respectively specified in relation thereto in that Schedule (being amendments consequential on the provisions of this Measure).



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**Modifications etc. (not altering text)**

- C1** The text of S. 86 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

**87 Repeals.**

The enactments specified in the first and second columns of the Fifth Schedule to this Measure are hereby repealed to the extent specified in the third column of that Schedule, and any canon, constitution, decretal or other like instrument forming part of the law ecclesiastical which is inconsistent with the provisions of this Measure shall, to the extent of the inconsistency, cease to have effect.

**88 Commencement.**

- (1) This Measure shall come into force on the appointed day which shall be such day as the Archbishops of Canterbury and York shall jointly determine.
- (2) The determination by the Archbishops of Canterbury and York of the appointed day shall be notified in the London Gazette.

**Modifications etc. (not altering text)**

- C2** 1.3.1965 appointed under s. 88(1)

**89 Short title.**

This Measure may be cited as the Ecclesiastical Jurisdiction Measure 1963.

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**Changes to legislation:**

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