



# Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988

1988 No. 1

A Measure passed by the General Synod of the Church of England to make further provision concerning legal aid; to enable marriages of housebound and detained persons to be solemnized by persons licensed under the Extra-Parochial Ministry Measure 1967; to make provision for the change of name of a see; to enable further provision to be made by Canon with respect to licences granted to ministers, deaconesses, lay workers and readers; to make provision with respect to the appointment of organists and choirmasters; to amend section 31 of the Leasehold Reform Act 1967, section 7 of the Parochial Church Councils (Powers) Measure 1956, section 7 of the Church Property (Miscellaneous Provisions) Measure 1960, and section 3 of the Pastoral Measure 1983; to amend provisions of the Clergy Pensions Measure 1961 relating to the Clergy (Widows and Dependants) Fund; and for connected purposes. [9th February 1988]

## PART I

### LEGAL AID

#### **1 Legal Aid Fund and Legal Aid Commission**

- (1) The General Synod shall continue to maintain the Legal Aid Fund to which the General Synod and the Church Commissioners may contribute such sums as each shall from time to time decide.
- (2) After every ordinary election to the General Synod the Standing Committee of the General Synod shall appoint a commission, to be known as the Legal Aid Commission, which shall be charged with the duty of administering the Legal Aid Fund.
- (3) The Legal Aid Fund shall be held by the Central Board of Finance on behalf of the General Synod, and the Board may, subject to and in accordance with the provisions of this Part of this Measure, make such payments out of the Fund as may be authorised

by a certificate in writing issued by the Legal Aid Commission under section 2 of this Measure.

- (4) The members of the Legal Aid Commission shall be entitled to hold office until their successors, who may be the same persons, come into office; and if a member of the Commission dies, resigns or otherwise vacates his office, the Standing Committee shall appoint another person to hold office for the unexpired portion of the term of office of the person in whose place he is appointed.
- (5) Until a commission is appointed under subsection (2) above, the committee appointed under section 59 of the Ecclesiastical Jurisdiction Measure 1963 shall exercise the functions of the Legal Aid Commission under this Measure.

## **2 Applications for legal aid.**

- (1) Where any proceedings mentioned in the first column of Schedule 1 to this Measure are taken or are proposed to be taken in the province of Canterbury or the province of York, any person mentioned in the second column of that Schedule in relation to those proceedings may apply to the Legal Aid Commission for financial assistance in respect of costs incurred in connection with those proceedings.
- (2) On an application under subsection (1) above, the Commission may, subject to and in accordance with the provisions of this Part of this Measure, issue a certificate authorising the payment out of the Legal Aid Fund of the whole or part of the costs incurred by the applicant, after the date of the issue of the certificate, in or in relation to or directly or indirectly arising out of the proceedings concerned; and any payment made or authorised under this subsection is in this Part of this Measure referred to as “legal aid”.
- (3) Where on an application under subsection (1) above the Commission considers that legal aid should be granted in respect of some but not all of the costs incurred by the applicant, in or in relation to or directly or indirectly arising out of the proceedings concerned, the Commission may issue a certificate for—
  - (a) the payment of a contribution towards those costs of an amount specified in the certificate, or
  - (b) the payment of those costs subject to a contribution from the applicant of an amount so specified, or
  - (c) the payment of such proportion of those costs as may be so specified, or
  - (d) the payment of the costs of, or a specified proportion of the costs of, such part of the proceedings as may be so specified, whether by reference to issues in or stages of those proceedings.
- (4) Before deciding whether to grant any legal aid under this section and, if so, to what extent, the Commission shall consider the financial resources of the applicant (including the financial resources of the wife or husband of the applicant), and legal aid shall not be granted if it appears to the Commission that the applicant could afford to proceed without legal aid.
- (5) Except as expressly provided by rules made under this Part of this Measure, the Commission shall not grant legal aid to any person in connection with any proceedings unless that person shows that he has reasonable grounds for taking or defending the proceedings or being a party thereto.

### **3 Supplementary provisions as to legal aid.**

- (1) Subject to the provisions of this Part of this Measure, where a certificate is issued under section 2 of this Measure for the payment out of the Legal Aid Fund of the costs or part of the costs of any person, that payment shall be made to the solicitor who has acted for that person.
- (2) Where a certificate is issued under section 2 of this Measure for the payment of the costs, or part of the costs, incurred by any person, the solicitor who has acted for that person shall not be entitled to receive from, or on behalf of, that person more than the amount (if any) by which the total amount of those costs, as taxed or assessed in accordance with rules made under section 4 of this Measure, exceeds the amount payable to that solicitor out of the Legal Aid Fund under that certificate.
- (3) Except as expressly provided by rules made under this Part of this Measure—
  - (a) the fact that legal aid is granted in respect of the services of counsel or a solicitor shall not affect the relationship between or rights of counsel, solicitor and client or any privilege arising out of that relationship; and
  - (b) the fact that any person is granted legal aid shall not affect the rights or liabilities of other parties to the proceedings or the principles on which the discretion of any court or tribunal is normally exercised.

### **4 Rules.**

- (1) The Standing Committee of the General Synod may make such rules as it considers necessary or desirable for giving effect to, or for preventing abuses of, this Part of this Measure, and rules made under this subsection may in particular—
  - (a) make provision as to the procedure to be observed in relation to an application for legal aid;
  - (b) make provision as to the information to be furnished by any person applying for or receiving legal aid and as to the provision of information by any solicitor or counsel acting for any such person;
  - (c) make provision for the circumstances in which the Legal Aid Commission may amend, revoke or discharge a certificate issued by the Commission and as to the effect of such amendment, revocation or discharge;
  - (d) make provision for regulating the procedure in proceedings in respect of which legal aid is granted and in particular make provision—
    - (i) as to the taxation of costs in respect of which legal aid is granted, including any such costs incurred in connection with proceedings not actually begun;
    - (ii) as to the assessment of those costs, without taxation, by such person as may be specified in the rules, but with a view to allowing as nearly as may be the same amount as on taxation;
    - (iii) as to the cases in which and the extent to which a person to whom legal aid is granted may be required to give security for costs, and the manner in which it may be given;
  - (e) make provision for the enforcement for the benefit of the Legal Aid Fund of any order or agreement for costs made in favour of a person to whom legal aid is granted.
- (2) The Standing Committee of the General Synod may by rules vary the provisions of Schedule 1 to this Measure so as to add to or exclude from the proceedings therein

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mentioned any proceedings specified in the rules (being proceedings under a provision of a Measure of the General Synod or of rules or regulations made under such a Measure), and any such rules may make any consequential changes in the second column of that Schedule; except that the provisions of that Schedule shall not be varied so as to enable legal aid to be granted in connection with proceedings before any court or tribunal before which persons have no right, and are not normally allowed, to be heard by counsel or solicitor.

- (3) Any rules made under subsection (1) above may make different provision in relation to different proceedings.
- (4) Any rules made under this section shall be laid before the General Synod and shall not come into force until they have been approved by the General Synod, whether with or without amendment.
- (5) Where the Standing Committee determines that rules made under this section do not need to be debated by the General Synod then, unless—
  - (a) notice is given by a member of the General Synod in accordance with its Standing Orders that he wishes the rules to be debated, or
  - (b) notice is so given by any such member that he wishes to move an amendment to the rules and at least twenty-five other members of the Synod indicate when the amendment is called that they wish the amendment to be moved,
 the rules shall for the purposes of subsection (4) above be deemed to have been approved by the General Synod without amendment.
- (6) The Statutory Instruments Act 1946 shall apply to any rules approved by the General Synod under this section as if they were a statutory instrument and as if this Measure were an Act providing that any such rules shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## PART II

### MISCELLANEOUS PROVISIONS

#### 5 Solemnization of marriages of housebound and detained persons.

In section 2 of the Extra-Parochial Ministry Measure 1967 (ministry at institutions) the proviso at the end of subsection (1) shall be omitted and there shall be inserted the following subsection—

“(1A) Where—

- (a) a clergyman of the Church of England is licensed under subsection (1) above to perform at an institution offices and services specified in the licence; and
- (b) the marriage of a person who is housebound or is a detained person is to be solemnized at the institution in question in pursuance of section 26(1)(dd) of the Marriage Act 1949, and
- (c) that marriage is intended to be solemnized according to the rites of the Church of England,

the offices and services which the clergyman is licensed under subsection (1) above to perform shall be treated as including the solemnization of that marriage; but, except as provided by the preceding provision of this subsection,

no licence granted under subsection (1) above shall extend to the solemnization of marriage.

A person is housebound or is a detained person for the purposes of this subsection if he is housebound or a detained person for the purposes of the Marriage Act 1949.”

## **6 Change of name of see.**

- (1) Without prejudice to any other powers of Her Majesty in Council in relation to sees, Her Majesty in Council, on receipt of a petition under this section, shall have power to change the name of any diocesan or suffragan see.
- (2) Where any petition for the change of name of a see is approved by the diocesan synod of the diocese concerned, the bishop of the diocese shall lay the petition before the General Synod.
- (3) Where, before the end of the group of sessions at which it is laid, notice is given of a motion directing that the petition be not forwarded to Her Majesty, the petition shall not be so forwarded until the motion has been disposed of or is withdrawn and if the motion is carried no further proceedings shall be taken in relation to that petition.
- (4) Where—
  - (a) no such notice is given before the end of the group of sessions at which the petition is laid, or
  - (b) the motion is defeated or withdrawn,the bishop of the diocese may forward the petition to Her Majesty in Council.
- (5) Nothing in this section shall confer power to alter the boundaries of a see.

## **7 Provisions as to licences of ministers, deaconesses, lay workers and readers.**

- (1) It shall be lawful for the General Synod to make provision by Canon with respect to the revocation by the bishop of a diocese of licences granted to ministers, deaconesses, lay workers and readers, and with respect to appeals from any such revocation.
- (2) The following provisions for the Pluralities Act 1838 shall cease to have effect—
  - (a) in section 97 (penalty for licensed curate who quits curacy without notice) the words from “upon pain of paying to the bishop” to the end of the section; and
  - (b) section 98 (licences of curates employed by non-resident incumbents and revocation of such licences).

## **8 Appointment of organists and choirmasters.**

It shall be lawful for the General Synod by Canon to make provision with respect to the appointment of persons to act as organists and choirmasters (by whatever name called) and with respect to the termination of such appointments.

## **9 Powers to deal with church land during vacancy in benefice.**

In section 7 of the Church Property (Miscellaneous Provisions) Measure 1960 (powers in relation to land granted under the Gifts for Churches Act 1803, the Gifts for

Churches Act 1811 or the Consecration of Churchyards Act 1867) there shall be added at the end the following subsection—

“(6) During a vacancy in a benefice any powers under this section which, but for the vacancy, would have been exercisable by the incumbent shall be exercisable by the bishop.”

## **10 Amendment of s. 31 of Leasehold Reform Act 1967.**

Section 31 of the Leasehold Reform Act 1967 (tenancies of ecclesiastical property) shall have effect subject to the following amendments—

- (a) in subsection (1) for the words “an ecclesiastical benefice” there shall be substituted the words “a diocesan board of finance as diocesan glebe land” and for the word “incumbent” there shall be substituted the words “diocesan board of finance”;
- (b) in subsection (4)—
  - (i) for the words “an ecclesiastical benefice” there shall be substituted the words “a diocesan board of finance”;
  - (ii) in paragraph (a) for the words “incumbent’s interest” there shall be substituted the words “interest of the diocesan board of finance”;
  - (iii) paragraph (b) shall be omitted;
  - (iv) in paragraph (c) for the word “incumbent” there shall be substituted the words “diocesan board of finance”;
  - (v) paragraph (d) shall be omitted;
- (c) for subsection (5) there shall be substituted the following subsection—

“(5) In this section “diocesan board of finance” and “diocesan glebe land” have the same meaning as in the Endowments and Glebe Measure 1976.”

## **11 Persons to be consulted under s. 3 of Pastoral Measure 1983.**

In section 3(3) of the Pastoral Measure 1983 (definition of “interested parties” for purposes of consultation) there shall be inserted at the end the following paragraph—

“Where a team ministry is established for the area of a benefice, the reference in paragraph (b) to the incumbents of benefices shall in relation to that benefice be construed as a reference to all the persons who constitute the team under section 20(1).”

## **12 Clergy (Widows and Dependants) Pension Fund.**

The Clergy Pensions Measure 1961 shall have effect subject to the following amendments—

- (a) in section 18(3) (use of surplus of Clergy (Widows and Dependants) Pensions Fund) the words “subject to the approval of the Church Assembly given by resolution” shall be omitted; and
- (b) in section 34(4) (valuation of that Fund) the words “and a report thereon shall be presented to the Church Assembly” shall be omitted.

**13 Amendment of s. 7 of Parochial Church Councils (Powers) Measure 1956.**

In paragraph (iv) of section 7 of the Parochial Church Councils (Powers) Measure 1956 (which confers power on a parochial church council to determine, jointly with the minister, the objects for which moneys collected in church are to be given) the words “subject to the directions contained in the Book of Common Prayer as to the disposal of money given at the offertory” shall be omitted.

**PART III**

GENERAL

**14 Minor and consequential amendments and repeals.**

- (1) The enactments mentioned in Schedule 2 to this Measure shall have effect subject to the minor and consequential amendments specified in that Schedule.
- (2) The enactments mentioned in Schedule 3 to this Measure are hereby repealed to the extent specified in the third column of that Schedule.

**15 Short title, extent and commencement.**

- (1) This Measure may be cited as the Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988.
- (2) This Measure shall come into force on such date as the Archbishops of Canterbury and York may jointly appoint; and different dates may be appointed for different provisions.
- (3) This Measure shall extend to the whole of the provinces of Canterbury and York except the Channel Islands and the Isle of Man, but may be applied to the Channel Islands as defined in the Channel Islands (Church Legislation) Measures 1931 and 1957, or either of them, in accordance with those Measures and may be extended to the Isle of Man by or under Act of Tynwald.

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## SCHEDULE 1

Section 2.

### PROCEEDINGS FOR WHICH LEGAL AID MAY BE GIVEN

<i>Description of proceedings</i>	<i>Description of applicants</i>
1. Proceedings in any ecclesiastical court or before any commission, committee or examiner in respect of an offence under the Ecclesiastical Jurisdiction Measure 1963.	Any complainant or accused person.
2. Proceedings on an enquiry under Part I of the Incumbents (Vacation of Benefices) Measure 1977 conducted by a provincial tribunal.	The incumbent concerned in the proceedings and any of the persons mentioned in paragraphs (b), (c) or (d) of section 7(5) of that Measure.
3. Proceedings under Schedule 4 to the Pastoral Measure 1983 (including any interview by a pastoral committee).	Any person having a right to compensation conferred by paragraphs 1, 2, 3, or 4 of the said Schedule 4.
4. Proceedings under Schedule 4 to the Pastoral Measure 1983 as extended by subsection (3) of section 13 of the Incumbents (Vacation of Benefices) Measure 1977 (including any interview by a pastoral committee).	Any incumbent having a right to compensation conferred by subsection (1) of the said section 13.

## SCHEDULE 2

Section 14.

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### *Ecclesiastical Jurisdiction Measure 1963*

- 1 In section 60 of the Ecclesiastical Jurisdiction Measure 1963 (which relates to costs)
  - (a) in subsection (1) there shall be inserted at the beginning the words "Subject, in the case of any party to whom legal aid is granted under Part I of the Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988, to rules made under section 4 of that Measure";
  - (b) in subsection (2) for the words "Fund established under the preceding section" there shall be substituted the words "Fund maintained under Part I of the Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988";
  - (c) in subsection (4) after the words "taxed costs" there shall be inserted the words "in relation to costs incurred by any person to whom legal aid is granted under the Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988, means costs taxed or assessed in accordance with rules made under section 4 of that Measure and in relation to costs incurred by any other person".
- 2 In section 65(1) of that Measure (rules made by the Rule Committee) after the words "so far as the same are not regulated by this Measure" there shall be inserted the



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words "or by rules made under section 4 of the Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988".

*Incumbents (Vacation of Benefices) Measure 1977*

3 In section 13(3) of the Incumbents (Vacation of Benefices) Measure 1977 (compensation of incumbents)—

(a) for the words "paragraphs 5 to 14, 16 and 17 of Schedule 4 to the Pastoral Measure 1968" there shall be substituted the words "paragraphs 6 to 15 and paragraph 18 of Schedule 4 to the Pastoral Measure 1983"; and

(b) for paragraphs (b) and (c) there shall be substituted the following paragraph—

“(b) in paragraph 13(1) for the words "any benefice archdeaconry or office is dissolved, abolished, vacated or resigned in the circumstances mentioned in paragraphs 1 to 4" of the words "any benefice is resigned or vacated in the circumstances mentioned in section 4 or 10 of the Incumbents (Vacation of Benefices) Measure 1977."”

*Pastoral Measure 1983*

4 In paragraph 16(1) of Schedule 4 to the Pastoral Measure 1983 (rules made by Church Commissioners) for the words from "and in proceedings before the Appeal Tribunal" to end of the sub-paragraph there shall be substituted the words "and also (except so far as it is regulated by rules made under Part I of the Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988) the procedure in proceedings before the Appeal Tribunal and in any other proceedings under this Schedule."

SCHEDULE 3

Section 14.

REPEALS

ACT

Chapter	Short title	Extent of repeal
1 & 2 Vict. c. 106.	<a href="#">The Pluralities Act 1838.</a>	In section 97 the words from "upon pain of" to the end of the section.
Section 98.		

MEASURES

Number	Short title	Extent of repeal
1956 No. 3.	<a href="#">The Parochial Church Councils (Powers) Measure 1956.</a>	In section 7, in paragraph (iv) the words from "subject to" to the end of the paragraph.

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Number	Short title	Extent of repeal
1963 No. 1.	The Ecclesiastical Jurisdiction Measure 1963.	Section 59.
1964 No. 6. In section 12 the words "in subsection (1) of section 10 or" and the words "subsection (2) of section 10 and".	The Clergy (Ordination and Miscellaneous Provisions) Measure 1964.	Section 10.
1977 No. 1.	The Incumbents (Vacation of Benefices) Measure 1977.	Section 15.
1983 No. 1.	The Pastoral Measure 1983.	In Schedule 4, paragraph 17.