



Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (No. 1)

1991 No. 1

PART III

ECCLESIASTICAL JURISDICTION

8 Amendment of Ecclesiastical Jurisdiction Measure 1963

- (1) The 1963 Measure shall have effect subject to the amendments specified in Schedule 4 to this Measure.
- (2) The amendment made by paragraph 2(c)(ii) of that Schedule (which relates to the retirement age of chancellors) shall not have effect in relation to any appointment to the office of chancellor of a diocese made before the coming into operation of that amendment.

9 Amendment of Ecclesiastical Judges and Legal Officers Measure 1976

The Ecclesiastical Judges and Legal Officers Measure 1976 shall have effect subject to the amendments specified in Schedule 5 to this Measure.

10 Amendment of Ecclesiastical Fees Measure 1986

The Ecclesiastical Fees Measure 1986 shall have effect subject to the amendments specified in Schedule 6 to this Measure.

11 General provisions as to faculty jurisdiction

- (1) For the avoidance of doubt and without prejudice to the jurisdiction of consistory courts under any enactment or rule of law, it is hereby declared that the jurisdiction of the consistory court of a diocese applies to all parish churches in the diocese and the churchyards and articles appertaining thereto.

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- (2) Except as provided by subsection (3) below, a building licensed by the bishop of a diocese after the coming into operation of this section for public worship according to the rites and ceremonies of the Church of England and all articles appertaining thereto shall be subject to the jurisdiction of the consistory court of the diocese as though the building were a consecrated church.
- (3) Where the bishop of a diocese, after consultation with the advisory committee, considers that any building in the diocese so licensed should not be subject to the faculty jurisdiction he may by order direct that subsection (2) above shall not apply to the building.
- (4) Where the bishop of a diocese, after consultation with the advisory committee, considers that any article appertaining to a building in the diocese so licensed in respect of which an order under subsection (3) above is in force should be subject to the faculty jurisdiction by reason of its being—
 - (a) of outstanding architectural, artistic, historical or archaeological value; or
 - (b) of significant monetary value; or
 - (c) at special risk of being stolen or damaged,
 he may by order direct that the article shall be subject to the jurisdiction of the consistory court of the diocese during such period as may be specified in the order.
- (5) Any article in respect of which an order under subsection (4) above is in force shall, during the period specified in the order, be subject to the jurisdiction of the court specified in the order as though it were an article appertaining to a consecrated church.
- (6) An order under subsection (3) or (4) above may be varied or revoked by an order made by the bishop of the diocese concerned after consultation with the advisory committee.
- (7) An order under this section which has the effect of subjecting an article to the faculty jurisdiction shall not render unlawful any act done before the making of the order nor shall require the issue of faculties confirming such acts.
- (8) The chancellor of a diocese shall give written guidance to all parochial church councils, ministers and churchwardens in the diocese as to those matters within the jurisdiction of the consistory court which he for the time being considers, after consultation with the advisory committee, to be of such a minor nature that they may be undertaken without a faculty.

12 Grant of faculties, etc

- (1) In any proceedings for obtaining a faculty, the court may grant the faculty subject to conditions, including in particular—
 - (a) a condition requiring the work authorised thereby or any part thereof to be carried out under the supervision of the archdeacon concerned or of any other person nominated by the court in that behalf;
 - (b) in the case of a faculty authorising the disposal of an article, a condition requiring a specified period to elapse before the disposal takes place.
- (2) Where the court grants a faculty to a person other than an archdeacon and considers that the work authorised thereby should be carried out (whether or not by that person), it may also order that, in default of that person carrying out the work, a faculty shall issue to the archdeacon concerned authorising him to carry out the work and, in that

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event, that the expenses incurred by the archdeacon in carrying out the work be paid by that person.

13 Orders against persons responsible for defaults

- (1) Subject to subsection (7) below, if in any proceedings by any person for obtaining a faculty it appears to the court that any other person being a party to the proceedings was responsible wholly or in part for any act or default in consequence of which the proceedings were instituted the court may order the whole or any part of the costs and expenses of the proceedings or consequent thereon, including expenses incurred in carrying out any work authorised by the faculty (so far as such costs and expenses have been occasioned by that act or default), to be paid by the person responsible.
- (2) Subject to subsection (7) below, in any such proceedings the court may by way of special citation add as a further party to the proceedings any person alleged to be so responsible or partly responsible and not already a party and notwithstanding that such person resides outside the diocese concerned.
- (3) A special citation under subsection (2) above may require the person to whom it is issued to attend the court concerned at such time and place as may be specified in the citation.
- (4) Where at any time (whether before or after faculty proceedings have been instituted) it appears to the consistory court of a diocese that a person intends to commit or continue to commit, or cause or permit the commission or continuance of, any act in relation to a church or churchyard in the diocese or any article appertaining to a church in the diocese, being an act which would be unlawful under ecclesiastical law, the court may issue an injunction restraining the first-mentioned person from committing or continuing to commit that act or from causing or permitting the commission or continuance of that act, as the case may be.
- (5) Where at any time (whether before or after faculty proceedings have been instituted) it appears to the consistory court of a diocese that a person has committed, or caused or permitted the commission of, any act in relation to a church or churchyard in the diocese or any article appertaining to a church in the diocese which was unlawful under ecclesiastical law, the court may make an order (a “restoration order”) requiring that person to take such steps as the court may consider necessary, within such time as the court may specify, for the purpose of restoring the position so far as possible to that which existed immediately before the act was committed.
- (6) An injunction under subsection (4) above may be issued and a restoration order under subsection (5) above may be made on an application made by the archdeacon concerned or any other person appearing to the court to have a sufficient interest in the matter or on its own motion.
- (7) In any proceedings for obtaining a faculty the court shall not make an order under subsection (1) above or issue a special citation under subsection (2) above in respect of any act unless the court is satisfied that the proceedings were instituted less than six years after the act was committed.
- (8) The court shall not make a restoration order under subsection (5) above in respect of any act unless the court is satisfied that less than six years have elapsed since the act was committed.

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- (9) Where proceedings for obtaining a faculty are instituted by an archdeacon or an application for a restoration order under subsection (5) above is made by an archdeacon and any fact relevant to the institution of such proceedings or the making of such an application has been deliberately concealed from him the period of six years mentioned in subsection (7) above or, as the case may be, subsection (8) above, shall not begin to run until the archdeacon has discovered the concealment or could with reasonable diligence have discovered it.
- (10) For the purpose of subsection (9) above, deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in that breach of duty.
- (11) Failure to comply without reasonable excuse with any requirement of a special citation or injunction issued, or a restoration order made, under this section by any court shall be a contempt of the court.

14 Delegation to archdeacons of power to grant faculties

- (1) Subject to the following provisions of this section the chancellor of a diocese shall confer upon the archdeacon of every archdeaconry in the diocese the jurisdiction of the consistory court of the diocese in such faculty matters relating to the archdeaconry, to such extent and in such manner as may be prescribed.
- (2) An archdeacon upon whom such jurisdiction is conferred shall have power to grant a faculty in any cause of faculty falling to be considered by him which is unopposed.
- (3) Where, in any cause of faculty falling to be considered by an archdeacon—
 - (a) he declines to grant a faculty; or
 - (b) he considers that the matter should be dealt with as a matter of urgency without reference to the advisory committee for advice in accordance with section 15(2) below; or
 - (c) the grant of a faculty is opposed by any person,
 he shall cause the matter to be referred to the chancellor of the diocese concerned to be dealt with by him.
- (4) A faculty granted by an archdeacon under subsection (2) above shall have effect as if it had been granted by the chancellor of the diocese concerned.
- (5) Nothing in this section shall be construed as enabling an archdeacon to—
 - (a) order any costs or expenses to be paid by any person; or
 - (b) issue an injunction or make a restoration order against any person; or
 - (c) grant an interim faculty pending the final determination of the matter;
 and where an archdeacon considers that any question arises as to the payment of costs or expenses, the issue of an injunction, the making of a restoration order or the grant of an interim faculty, he shall cause the matter to be referred to the chancellor of the diocese concerned to be dealt with by him.
- (6) A certificate issued by an archdeacon under section 12 of the 1964 Measure before the coming into operation of this section shall continue in force and have effect as if it were a faculty granted under subsection (2) above.

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15 Consultation with diocesan advisory committees

- (1) The chancellor of a diocese shall seek the advice of the advisory committee before making a final determination in any cause of faculty or issuing a permanent injunction under section 13(4) above or making a restoration order under section 13(5) above, unless the action proposed relates exclusively to exhumation or the reservation of a grave space or he is satisfied that the matter is sufficiently urgent to justify the grant of a faculty or issue of an injunction without obtaining the committee's advice.
- (2) An archdeacon shall seek the advice of the advisory committee before making a final determination in any cause of faculty, unless the action proposed relates exclusively to exhumation or the reservation of a grave space.
- (3) In every diocese the secretary to the advisory committee shall compile and maintain a register of all petitions for a faculty referred to the committee for advice under this section, and shall ensure that the register is available for inspection by the public by prior appointment at such place in the diocese as the bishop of the diocese may designate for the purposes of this subsection.

16 Parties

- (1) Proceedings for obtaining a faculty may be instituted by—
 - (a) the archdeacon of the archdeaconry in which the parish concerned is situated; or
 - (b) the minister and churchwardens of the parish concerned; or
 - (c) any other person appearing to the court to have a sufficient interest in the matter.
- (2) For the purposes of any proceedings for obtaining a faculty the archdeacon shall be deemed to have an interest as such, and any person whose name is entered on the church electoral roll of the parish concerned but who does not reside therein shall be deemed to have an interest as though he were a parishioner of that parish.
- (3) If—
 - (a) the archdeaconry is vacant; or
 - (b) the archdeacon is incapacitated by absence or illness from acting; or
 - (c) in the opinion of the bishop—
 - (i) the archdeacon is for any other reason unable or unwilling to act; or
 - (ii) it would be inappropriate for the archdeacon to act,such other person as the bishop shall appoint in that behalf in writing (either generally or in a particular case) shall have power to act in the place of the archdeacon for the purposes of this Measure or of any other enactment relating to the institution of, or participation in, proceedings in the court.
- (4) If the archdeacon or such other person as may be appointed under subsection (3) above institutes or intervenes in any proceedings for obtaining a faculty all costs and expenses properly incurred by him or which he is ordered by the court to pay shall be paid by the Diocesan Board of Finance for the diocese concerned:

Provided that a Diocesan Board of Finance shall not be liable for any sum by virtue of this subsection unless the institution of proceedings or intervention is approved by the bishop of the diocese concerned in writing after consultation with the Board and, if such approval is duly given, any order in the proceedings that the costs or expenses of

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the archdeacon or other appointed person be paid by any other party may be enforced by the Board in the name of the archdeacon or other appointed person.

- (5) Anything done under or for the purposes of section 9 of the 1964 Measure and having effect immediately before the coming into force of this section shall continue to have effect and be deemed to have been done under or for the purposes of this section.

17 Faculties for demolition of churches

- (1) A court shall not grant a faculty for the demolition or partial demolition of a church except on the grounds specified in this section.
- (2) Subject to the following provisions of this section, a court may grant a faculty for the demolition of the whole or part of a church if it is satisfied that another church or part of a church will be erected on the site or curtilage of the church or part of a church in question or part thereof to take the place of that church or part of a church.
- (3) Subject to the following provisions of this section, a court may grant a faculty for the demolition of part of a church if it is satisfied that—
- (a) the part of the church left standing will be used for the public worship of the Church of England for a substantial period after such demolition; or
 - (b) such demolition is necessary for the purpose of the repair or alteration of the church or the reconstruction of the part to be demolished.
- (4) The court shall not grant a faculty under subsection (2) or (3)(a) above unless—
- (a) the person bringing proceedings for the faculty has—
 - (i) obtained the written consent of the bishop of the diocese concerned to the proceedings being brought; and
 - (ii) within the prescribed time, caused to be published in “The London Gazette” and in such other newspapers as the court may direct a notice stating the substance of the petition for the faculty;
 - (b) the registrar has given notice in writing to the Council for the Care of Churches and the advisory committee of the diocese concerned of the petition;
 - (c) the judge of the court has thereafter considered such advice as the advisory committee has tendered to the court; and
 - (d) the judge has heard evidence in open court, after application for the purpose has been made to the court in the prescribed manner, from—
 - (i) a member of the said Council or some person duly authorised by the Council; and
 - (ii) any other person, unless in the opinion of the judge his application or the evidence which he gives is frivolous or vexatious.
- (5) Without prejudice to the requirements of subsection (4) above, the court shall not grant a faculty under subsection (2) or (3)(a) above in the case of a church which is a listed building or in a conservation area unless—
- (a) the registrar has given notice in writing to—
 - (i) the Secretary of State;
 - (ii) the local planning authority concerned;
 - (iii) the Historic Buildings and Monuments Commission for England; and
 - (iv) the national amenity societies;
 - (b) the judge of the court has thereafter considered such advice as any of those bodies may have tendered to the court;

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- (c) the registrar has given notice in writing to the Royal Commission on the Historical Monuments of England and thereafter either—
 - (i) for a period of at least one month following the giving of the notice reasonable access to the church has been made available to members or officers of the said Royal Commission for the purpose of recording it; or
 - (ii) the said Royal Commission have, by their Secretary or other officer of theirs with authority to act on their behalf for the purposes of this section, stated in writing that they have completed their recording of the church or that they do not wish to record it.
- (6) A court shall not grant a faculty under subsection (3)(b) above unless—
 - (a) the court is satisfied, after consultation with the advisory committee, that when the proposed repair, alteration or reconstruction is completed the demolition will not materially affect the external or internal appearance of the church or the architectural, archaeological, artistic or historic character of the church; or
 - (b) the requirements of subsection (4) above and also, in the case of a church which is a listed building or in a conservation area, the requirements of subsection (5) above have been complied with.
- (7) Anything done under or for the purposes of section 2 of the 1964 Measure and having effect immediately before the coming into force of this section shall continue to have effect and be deemed to have been done under or for the purposes of this section.

18 Emergency demolition of churches

- (1) Without prejudice to the powers exercisable under any rule of law by diocesan chancellors at the coming into operation of this section, where the chancellor of a diocese is satisfied—
 - (a) that the demolition of the whole or part of a church in the diocese is necessary in the interests of safety or health or for the preservation of the church and, having regard to the urgency of the matter, there is insufficient time to obtain a faculty in respect of it; and
 - (b) in the case of a church which is a listed building or is in a conservation area—
 - (i) that it is not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter; and
 - (ii) that the works to be carried out are limited to the minimum measures immediately necessary,

he may by an instrument under his hand authorise the carrying out of the demolition without a faculty.
- (2) An instrument under subsection (1) above—
 - (a) may require the person to whom it is issued (subject to his obtaining any necessary faculty) to carry out such works for the restoration of the church following its demolition or partial demolition as may be specified in the instrument;
 - (b) in the case of partial demolition of a church which is a listed building or is in a conservation area, shall require the person to whom it is issued, as soon as practicable after the works have been carried out, to give to the local planning authority notice in writing describing the works carried out.

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- (3) Where the chancellor of a diocese issues an instrument under subsection (1) above he shall send a copy of the instrument to the Council for the Care of Churches and the local planning authority.

19 Meaning of “church”

In this Part, unless the context otherwise requires, “church” includes any building which is licensed for public worship according to the rites and ceremonies of the Church of England and is subject to the faculty jurisdiction.