



# Ecclesiastical Jurisdiction Measure 1963

1963 No. 1

A Measure passed by The National Assembly of the Church of England to reform and reconstruct the system of ecclesiastical courts of the Church of England, to replace with new provisions the existing enactments relating to ecclesiastical discipline, to abolish certain obsolete jurisdictions and fees, and for purposes connected therewith. [31st July 1963]

## Modifications etc. (not altering text)

- C1 Power exercisable under this Measure by Convocations of Canterbury and York and the Houses thereof continued by [Synodical Government Measure 1969 \(No. 2\) s. 3\(6\)](#)
- C2 Measure extended by [Pastoral Measure 1983 \(No. 1, SIF 21:4\), s. 20\(9\)](#)  
Measure extended (*prosp.*) by [1993 Measure No. 2, ss. 5, 12\(2\)](#)

## Commencement Information

- I1 Measure not in force at Royal Assent see [s. 88\(1\)](#); Measure wholly in force at 1.3.1965

## PART I

### THE ECCLESIASTICAL JUDICIAL SYSTEM

#### *The Courts*

#### 1 The ecclesiastical courts.

- (1) For each diocese there shall be a court of the bishop thereof (to be called the consistory court of the diocese or, in the case of the court for the diocese of Canterbury, the commissary court thereof) which shall have the original jurisdiction conferred on it by this Measure.
- (2) For each of the provinces of Canterbury and York—
  - (a) there shall be a court of the archbishop thereof (to be called, in the case of the court for the province of Canterbury, the Arches Court of Canterbury, and, in

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- the case of the court for the province of York, the Chancery Court of York) which shall have the appellate jurisdiction conferred on it by this Measure; and
- (b) there may, in accordance with the provisions in that behalf of Part V of this Measure, be appointed by the Upper House of the Convocation of the province commissions which shall have the original jurisdiction conferred on them by this Measure with respect to the trial of bishops;
- (3) For both of the said provinces—
  - (a) there may, in accordance with the provisions of Part V of this Measure, be appointed by the Upper House of the Convocations of both the said provinces commissions which shall have the original jurisdiction conferred on them by this Measure with respect to the trial of archbishops;
  - (b) there shall be a court (to be called the Court of Ecclesiastical Causes Reserved) which shall have the original and appellate jurisdiction conferred on it by this Measure;
  - (c) there may, in accordance with the provisions in that behalf of this Measure, be appointed by Her Majesty commissioners who shall have such jurisdiction as is conferred on them by this Measure with respect to the review of findings of any commission of Convocation appointed under paragraph (b) of the last foregoing subsection and paragraph (a) of this subsection, and also of the Court of Ecclesiastical Causes Reserved; and
  - (d) Her Majesty in Council shall have such appellate jurisdiction as is conferred on Her by this Measure.

*The Judges of the Courts constituted by this Measure*

**2 Judge of consistory court.**

- (1) Subject to the following provisions of this Measure, the consistory court of a diocese shall be presided over by a single judge who shall be styled the chancellor of the diocese or, in the case of the diocese of Canterbury, the commissary general, and appointed by the bishop thereof by letters patent.

<sup>F1</sup>(1A) Before appointing a person to be chancellor of a diocese the bishop shall consult the Lord Chancellor and the Dean of the Arches and Auditor.]

- (2) A person appointed to be chancellor of a diocese shall be at least thirty years old and either a <sup>F2</sup>person who has a 7 year general qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990,] or a person who has held high judicial office, and, before appointing a layman, the bishop shall satisfy himself that the person to be appointed is a communicant.

<sup>F3</sup>(3) .....

- (4) Subject to the provisions of <sup>F4</sup>subsections (3) and (4A) of this section], the appointment of a person to be chancellor of a diocese shall be <sup>F5</sup>for the period beginning with the date of the appointment and ending with the date on which he attains the age <sup>F6</sup>at which a Circuit judge is obliged to vacate that office]], but he—
  - (a) may resign his office by instrument in writing under his hand addressed to, and served on, the bishop of the diocese;
  - (b) may be removed by that bishop if the Upper House of the Convocation of the relevant province resolves that he is incapable of acting or unfit to act.

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[<sup>F7</sup>(c) may continue to act as chancellor for the purpose of any proceedings or cause of faculty in the consistory court of the diocese during the course of which he attains the age [<sup>F6</sup>at which a Circuit judge is obliged to vacate that office] as if the date of the conclusion in that court of those proceedings or that cause, as the case may be, were the date on which he attains that age.]

[<sup>F8</sup>(4A) Where the bishop of a diocese considers it desirable in the interests of the diocese to retain the chancellor of the diocese in office after the time at which he would otherwise retire in accordance with subsection (4) above, he may from time to time authorise the continuance in office of the chancellor until such date, not being later than the date on which the chancellor attains the age at which a puisne judge of the High Court is obliged to vacate that office, as he thinks fit.]

- (5) The chancellor of a diocese shall, before he enters on the execution of his office,—
- (a) take and subscribe, either before the bishop of the diocese in the presence of the diocesan registrar, or in open court in the presence of that registrar, the oaths set out in Part I of the First Schedule to this Measure; . . . <sup>F9</sup>
  - (b) . . . . . <sup>F10</sup>
- and the diocesan registrar shall record the taking and subscription of the said oaths . . . <sup>F9</sup>

#### Textual Amendments

- F1** S. 2(1A) inserted (1.3.1993) by [Care of Churches and Ecclesiastical Jurisdiction Measure 1991](#) (No. 1, SIF 21:8), s. 8(1), **Sch. 4 para. 2(a)** (with s. 31(6)); Instrument dated 16.2.1993 made by the [Archbishops of Canterbury and York](#)
- F2** Words substituted by [Courts and Legal Services Act 1990](#) (c. 41, SIF 37), s. 71(2), **Sch. 10 para. 17**
- F3** S. 2(3) repealed (1.6.1992) by [Church of England \(Miscellaneous Provisions\) Measure 1992](#) (No. 1), s. 17(2), **Sch. 4 Pt.II**; Instrument dated 27.5.1992 made by the [Archbishops of Canterbury and York](#).
- F4** Words in s. 2(4) substituted (1.3.1993) by [Care of Churches and Ecclesiastical Jurisdiction Measure 1991](#) (No. 1, SIF 21:8), s. 8(1), **Sch. 4 para. 2(c)(i)** (with s. 31(6)); Instrument dated 16.2.1993 made by the [Archbishops of Canterbury and York](#)
- F5** Words substituted by [Ecclesiastical Judges and Legal Offices Measure 1976](#) (No. 2), s. **1(1)(3)** except in relation to a person who holds the office of chancellor of a diocese, or, in the case of the diocese of Canterbury, commissary general on 25.4.1976
- F6** Words in s. 2(4) substituted with saving (1.3.1993) by [Care of Churches and Ecclesiastical Jurisdiction Measure 1991](#) (No. 1, SIF 21:8), s. 8(1)(2), **Sch. 4 para. 2(c)(ii)** (with s. 31(6)); Instrument dated 16.2.1993 made by the [Archbishops of Canterbury and York](#)
- F7** S. 2(4)(c) added by [Ecclesiastical Judges and Legal Officers Measure 1976](#) (No. 2), s. **1(1)**
- F8** S. 2(4A) inserted (1.3.1993) by [Care of Churches and Ecclesiastical Jurisdiction Measure 1991](#) (No. 1, SIF 21:8), s. 8(1), **Sch. 4 para. 2(d)** (with s. 31(6)); Instrument dated 16.2.1993 made by the [Archbishops of Canterbury and York](#)
- F9** Word repealed by [Church of England \(Worship and Doctrine\) Measure 1974](#) (No. 3), **Sch. 2**
- F10** S. 2(5)(b) repealed by [Church of England \(Worship and Doctrine\) Measure 1974](#) (No. 3), **Sch. 2**

#### [<sup>F11</sup>2A **Number of chancellorships to be held by one person may be limited.**

- (1) Regulations made by the House of Bishops of the General Synod may make provision with respect to the maximum number of chancellorships of dioceses which any one person may hold.

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- (2) Nothing in any regulation made under this section shall be taken as prohibiting any person who at the date on which the regulation comes into force holds more than the maximum number of chancellorships prescribed by the regulation from continuing to hold such offices.
- (3) Regulations made under this section shall be laid before the General Synod and shall not come into operation until they have been approved by the General Synod.
- (4) The <sup>M1</sup>Statutory Instruments Act 1946 shall apply to any regulations approved under subsection (3) of this section as if they were a statutory instrument and were made when so approved, and as if this Measure were an Act providing that any such regulations should be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

**F11** S. 2A inserted by Ecclesiastical Judges and Legal officers Measure 1976 (No. 2), s. 2

#### Marginal Citations

**M1** 1946 c. 36.

### 3 Judges of the Arches and Chancery Courts.

- (1) The judges of the Arches Court of Canterbury and the Chancery Court of York respectively shall be [<sup>F12</sup>as set out in subsection (2) of this section], but proceedings which, by virtue of the following provisions of this Measure, are cognisable by either of those Courts shall be heard and disposed of by such of the judges thereof as may be determined in accordance with those provisions.
- (2) Of the judges of each of the said Courts—
  - (a) one, who shall be a judge of both Courts (and, in respect of his jurisdiction in the province of Canterbury shall be styled Dean of the Arches and, in respect of his jurisdiction in the province of York, shall be styled Auditor, and is hereinafter referred to in this Measure as the Dean of the Arches and Auditor), shall be appointed by the archbishops of Canterbury and York jointly with the approval of Her Majesty signified by warrant under the sign manual;
  - (b) two shall be persons in holy orders appointed by the prolocutor of the Lower House of the Convocation of the relevant province;
  - (c) two shall be laymen appointed by the Chairman of the House of Laity after consultation with the Lord Chancellor and possessing such judicial experience as the Lord Chancellor shall think appropriate;
  - [<sup>F13</sup>(d) the others shall be all the diocesan chancellors appointed under section 2 of this Measure (in whichever province), except the chancellor of the diocese in Europe;]
- (3) A person appointed to be Dean of the Arches and Auditor shall be either a [<sup>F14</sup>person who [<sup>F15</sup>holds or] has a 10 year High Court qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990,]or a person who [<sup>F15</sup>holds or] has held high judicial office, and, before appointing a layman, the archbishops of Canterbury and York shall satisfy themselves that he is a communicant.

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- (4) Before the Chairman of the House of Laity appoints a person to be a judge of either of the said Courts, he shall satisfy himself that that person is a communicant.
- (5) The appointment of any person [<sup>F16</sup>under paragraph (a), (b) or (c) of subsection (2) of this section] to be a judge of either of the said Courts shall be [<sup>F17</sup>for a period beginning with the date of the appointment and ending with the date on which that person attains the age of seventy-five years], but—
- (a) the Dean of the Arches and Auditor—
- (i) may resign his office by instrument in writing under his hand addressed to, and served on, the archbishops of Canterbury and York;
- (ii) may be removed by the archbishops of Canterbury and York jointly if the Upper Houses of the Convocations of the provinces of Canterbury and York each resolve that he is incapable of acting or unfit to act;
- (b) any other judge of either of the said Courts—
- (i) may resign his office by instrument in writing under his hand addressed to, and served on, the archbishop of the relevant province;
- (ii) may be removed by the archbishop of that province if the Upper House of its Convocation resolves that he is incapable of acting or unfit to act;
- <sup>F18</sup>(c) any judge of either of the said Courts may continue to act as a judge thereof for the purpose of any proceedings in that Court during the course of which he attains the age of seventy-five years as if the date of the conclusion in that Court of those proceedings were the date on which he attains that age.]
- (6) [<sup>F19</sup>The Dean of the Arches and Auditor and every chancellor of a diocese shall, before he enters on the execution of his office as a judge of the said Courts],—
- (a) take and subscribe,—
- (i) before the archbishop of Canterbury in the presence of the registrar of the province of Canterbury and before the archbishop of York in the presence of the registrar of the province of York; or
- (ii) in open court in both of those provinces in the presence of the registrar of the province;
- the oaths set out in Part I of the First Schedule to this Measure; . . . <sup>F20</sup>
- (b) . . . . . <sup>F21</sup>
- (7) [<sup>F22</sup>A person appointed under paragraph (b) or (c) of subsection (2) of this section] to hold the office of judge of either of the said Courts shall, before he enters on the execution of his office,—
- (a) take and subscribe the said oaths either before the archbishop of the relevant province and in the presence of the registrar of that province or in open court in the presence of that registrar; . . . <sup>F20</sup>
- (b) . . . <sup>F21</sup>
- (8) A provincial registrar shall record the taking . . . <sup>F20</sup> and subscription, of an oath . . . <sup>F20</sup> in his presence in pursuance of either of the two last foregoing subsections.

#### Textual Amendments

**F12** Words in s. 3(1) substituted (1.3.1993) by [Care of Churches and Ecclesiastical Jurisdiction Measure 1991 \(No. 1, SIF 21:8\)](#), s. 8(1), **Sch. 4 para. 3(a)** (with s. 31(6)); Instrument dated 16.2.1993 made by the Archbishops of Canterbury and York

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- F13** S. 3(2)(d) inserted (1.3.1993) by Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (No. 1, SIF 21:8), s. 8(1), **Sch. 4 para. 3(b)** (with s. 31(6)); Instrument dated 16.2.1993 made by the Archbishops of Canterbury and York
- F14** Words substituted by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. 71(2), **Sch. 10 para. 18(1)**
- F15** Words in s. 3(3) inserted (1.3.1993) by Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (No. 1, SIF 21:8), s. 8(1), **Sch. 4 para. 3(c)** (with s. 31(6)); Instrument dated 16.2.1993 made by the Archbishops of Canterbury and York
- F16** Words in s. 3(5) inserted (1.3.1993) by Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (No. 1, SIF 21:8), s. 8(1), **Sch. 4 para. 3(d)** (with s. 31(6)); Instrument dated 16.2.1993 made by the Archbishops of Canterbury and York
- F17** Words substituted by Ecclesiastical Judges and Legal Officers Measure 1976 (No. 2), s. 1(2)(3) except in relation to any person who holds the office of judge of either of the courts mentioned in this subsection on 25.4.1976
- F18** S. 3(5)(c) inserted by Ecclesiastical Judges and Legal Officers Measure 1976 (No. 2), s. 1(2)
- F19** Words in s. 3(6) substituted (1.3.1993) by Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (No. 1, SIF 21:8), s. 8(1), **Sch. 4 para. 3(e)** (with s. 31(6)); Instrument dated 16.2.1993 made by the Archbishops of Canterbury and York
- F20** Words repealed by Church of England (Worship and Doctrine) Measure 1974 (No. 3), **Sch. 2**
- F21** S. 3(6)(b)(7)(b) repealed by Church of England (Worship and Doctrine) Measure 1974 (No. 3), **Sch. 2**
- F22** Words in s. 3(7) substituted (1.3.1993) by Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (No. 1, SIF 21:8), s. 8(1), **Sch. 4 para. 3(f)** (with s. 31(6)); Instrument dated 16.2.1993 made by the Archbishops of Canterbury and York

#### 4 Appointment of deputy judges.

- (1) [<sup>F23</sup>Where the Dean of the Arches and Auditor or any chancellor is for any reason unable to act as such, or the office of the Dean or any chancellor is vacant], the archbishops of Canterbury and York in the former case, and the bishop of the diocese concerned in the latter, may appoint a fit and proper person to act as deputy Dean of the Arches and Auditor or deputy chancellor of such diocese as the case may be during [<sup>F23</sup>the period of inability or vacancy], and every person so appointed shall have all the powers and perform all the duties of the [<sup>F23</sup>office in respect of which he is appointed to act as deputy].
- [<sup>F24</sup>(1A) The Dean of the Arches and Auditor or any chancellor may, with the consent of the Archbishops of Canterbury and York in the former case, and the bishop of the diocese concerned in the latter, appoint a fit and proper person to act as deputy Dean of the Arches and Auditor or deputy chancellor of such diocese as the case may be for such period not exceeding twelve months or for such purpose as may be specified in the instrument of appointment, and during that period or for that purpose every person so appointed shall have all the powers and perform all the duties of the office in respect of which he is appointed to act as deputy.]
- (2) Every deputy judge appointed to act pursuant to the provisions of the foregoing [<sup>F25</sup>subsections] shall be qualified as hereinbefore provided with respect to the person whose functions he is appointed to perform and, before he enters on the execution of his office, such deputy shall take and subscribe such oaths . . . <sup>F26</sup> as are required to be taken, . . . <sup>F26</sup> and subscribed by the Dean of the Arches and Auditor or by a chancellor of a diocese, as the case may be, under the preceding provisions of this Measure in manner thereby appointed, and such oaths . . . <sup>F26</sup> shall be recorded in the like manner.



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### Textual Amendments

- F23** Words in s. 4(1) expressed to be inserted (1.3.1993) for the words from the beginning to "any chancellor" by [Care of Churches and Ecclesiastical Jurisdiction Measure 1991 \(No. 1, SIF 21:8\)](#), s. 8(1), [Sch. 4 para. 4\(a\)\(i\)](#) (with s. 31(6)); Instrument dated 16.2.1993 made by the Archbishops of Canterbury and York
- Words in s. 4(1) substituted (1.3.1993) by [Care of Churches and Ecclesiastical Jurisdiction Measure 1991 \(No. 1, SIF 21:8\)](#), s. 8(1), [Sch. 4 para. 4\(a\)\(ii\)](#); Instrument dated 16.2.1993 made by the Archbishops of Canterbury and York
- Words in s. 4(1) substituted (1.3.1993) by [Care of Churches and Ecclesiastical Jurisdiction Measure 1991 \(No. 1, SIF 21:8\)](#), s. 8(1), [Sch. 4 para. 4\(a\)\(iii\)](#); Instrument dated 16.2.1993 made by the Archbishops of Canterbury and York
- F24** S. 4(1A) inserted (1.3.1993) by [Care of Churches and Ecclesiastical Jurisdiction Measure 1991 \(No. 1, SIF 21:8\)](#), s. 8(1), [Sch. 4 para. 4\(b\)](#) (with s. 31(6)); Instrument dated 16.2.1993 made by the Archbishops of Canterbury and York
- F25** Word in s. 4(2) substituted (1.3.1993) by [Care of Churches and Ecclesiastical Jurisdiction Measure 1991 \(No. 1, SIF 21:8\)](#), s. 8(1), [Sch. 4 para. 4\(c\)](#); Instrument dated 16.2.1993 made by the Archbishops of Canterbury and York
- F26** Words repealed by [Church of England \(Worship and Doctrine\) Measure 1974 \(No. 3\)](#), [Sch. 2](#)

## 5 Judges of the Court of Ecclesiastical Causes Reserved.

The Court of Ecclesiastical Causes Reserved shall be constituted of five judges appointed by Her Majesty, and of them two shall be persons who hold, or have held, high judicial office and who make a declaration that they are communicants and three shall be persons who are, or have been, diocesan bishops.

### *Jurisdiction of the Courts*

## 6 Jurisdiction of the consistory court.

- (1) Subject to the provisions of the following subsection the consistory court of a diocese has original jurisdiction to hear and determine—
- (a) proceedings upon articles charging an offence under this Measure committed by a priest or deacon who when the offence was alleged to have been committed or when the proceedings were instituted, held preferment in the diocese or resided therein, not being an offence involving matter of doctrine, ritual or ceremonial;
  - (b) a cause of faculty for authorising—
    - (i) any act relating to land within the diocese, or to anything on or in such land, being an act for the doing of which the decree of a faculty is requisite;
    - (ii) the sale of books comprised in a library within the diocese, being a library to which the <sup>M2</sup>Parochial Libraries Act 1708 applies;
  - [<sup>F27</sup>(bb) proceedings for an injunction or restoration order under section 13 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991;]
  - (c) proceedings upon any *jus patronatus* awarded by the bishop of the diocese;
  - (d) proceedings for the recovery of any penalty or forfeiture incurred under section thirty-two . . . <sup>F28</sup> of the <sup>M3</sup>Pluralities Act 1838 in relation to a benefice in the diocese or under section twenty-eight of that Act by a spiritual person

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holding a benefice in the diocese, any proceedings in respect of an offence committed under section twenty-nine of that Act by a person who holds any cathedral preferment, benefice, curacy or lectureship in the diocese or is licensed or otherwise allowed to perform duties therein and any proceedings consequent upon the return into the court of a monition in pursuance of section one hundred and twelve of that Act;

- (e) any proceedings (other than as aforesaid) which, immediately before the passing of this Measure, it had power to hear and determine, not being proceedings jurisdiction to hear and determine which is expressly abolished by this Measure.

- (2) Nothing contained in the foregoing subsection shall extend, or be construed as extending, the jurisdiction of the consistory court in faculty matters to any land or to anything on or in such land in respect of which such court had no jurisdiction immediately before the passing of this Measure.

#### Textual Amendments

**F27** S. 6(1)(bb) inserted (1.3.1993) by [Care of Churches and Ecclesiastical Jurisdiction Measure 1991](#) (No. 1, SIF 21:8), s. 8(1), **Sch. 4 para.5** (with s. 31(6)); Instrument dated 16.2.1993 made by the [Archbishops of Canterbury and York](#)

**F28** Words repealed by [Repairs of Benefice Buildings Measure 1972](#) (No. 2), **Sch. 2**

#### Marginal Citations

**M2** 1708 c. 14.

**M3** 1838 c. 106.

## 7 Jurisdiction of Arches and Chancery Courts.

- (1) The Arches Court of Canterbury and the Chancery Court of York each have jurisdiction to hear and determine appeals from judgments, orders or decrees of consistory courts of dioceses within the provinces for which they are constituted respectively, being judgments, orders or decrees given, made or pronounced—
- (a) in such proceedings as are mentioned in paragraphs (a), (d) and (e) of subsection (1) of the last foregoing section, or
  - (b) in causes of faculty not involving matter of doctrine, ritual or ceremonial. [<sup>F29</sup>or (c) in proceedings for an injunction under section 13(4) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 or for a restoration order under section 13(5) of that Measure, and from interlocutory orders of those consistory courts in causes of faculty involving matter of doctrine, ritual or ceremonial;]
- (2) An appeal which, by virtue of this section, either of the said Courts has jurisdiction to entertain lies—
- (a) in a civil suit, at the instance of any party to the proceedings;
  - (b) in a criminal suit, at the instance of any party to the proceedings on a question of law and the defendant on a question of fact [<sup>F30</sup>but in a civil suit only with the leave of the consistory court or, if leave is refused by that court, of the Dean of the Arches and Auditor] .
- (3) Appeals under this section shall be lodged and conducted in such manner as may be prescribed.



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### Textual Amendments

- F29** Words in s. 7(1) inserted (1.3.1993) by [Care of Churches and Ecclesiastical Jurisdiction Measure 1991](#) (No. 1, SIF 21:8), s. 8(1), **Sch. 4 para. 6(a)** (with s. 31(6)); Instrument dated 16.2.1993 made by the [Archbishops of Canterbury and York](#)
- F30** Words in s. 7(2) inserted (1.3.1993) by [Care of Churches and Ecclesiastical Jurisdiction Measure 1991](#) (No. 1, SIF 21:8), s. 8(1), **Sch. 4 para. 6(b)** (with s. 31(6)); Instrument dated 16.2.1993 made by the [Archbishops of Canterbury and York](#)

## 8 Appellate jurisdiction of Her Majesty in Council.

- (1) Her Majesty in Council has jurisdiction to hear and determine appeals from judgments of the Arches Court of Canterbury and the Chancery Court of York in proceedings which, by virtue of paragraph (b) of subsection (1) of the last foregoing section, those Courts have jurisdiction to entertain.
- (2) An appeal which, by virtue of this section, Her Majesty in Council has jurisdiction to entertain lies at the instance of any party to the proceedings.

## 9 Jurisdiction of commissions of convocation.

- (1) A commission appointed in accordance with the provisions of Part V of this Measure by the Upper Houses of the Convocations of the provinces of Canterbury and York has jurisdiction to hear and determine proceedings upon articles charging an offence against the laws ecclesiastical other than an offence involving matter of doctrine, ritual or ceremonial committed by an archbishop.
- (2) A commission appointed by the Upper House of the Convocation of either of the said provinces in accordance with the provisions referred to in the last foregoing subsection has jurisdiction to hear and determine proceedings upon articles charging an offence against the laws ecclesiastical committed by a bishop who, when the offence was alleged to have been committed or when the proceedings were instituted, was a diocesan bishop whose diocese was within the relevant province, a suffragan bishop commissioned by any such diocesan bishop or a bishop (other than as aforesaid) who resided in such a diocese or held preferment therein, not being an offence involving matter of doctrine, ritual or ceremonial.

## 10 Jurisdiction of Court of Ecclesiastical Causes Reserved.

- (1) The Court of Ecclesiastical Causes Reserved has original jurisdiction to hear and determine—
  - (a) proceedings upon articles charging an offence against the laws ecclesiastical involving matter of doctrine ritual or ceremonial committed by—
    - (i) a priest or deacon who when the offence was alleged to have been committed or when the proceedings were instituted, held preferment in a diocese or resided therein;
    - (ii) an archbishop or a bishop who, at one of those times, was a diocesan or a suffragan commissioned by a diocesan or (not being either a diocesan or a suffragan) held preferment in a diocese or resided therein
  - (b) all suits of *duplex querela*;

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and also has jurisdiction to hear and determine appeals from judgments, orders or decrees of consistory courts of dioceses given, made or pronounced in causes of faculty involving matter of doctrine, ritual or ceremonial.

- (2) An appeal which, by virtue of this section, the Court of Ecclesiastical Causes Reserved has jurisdiction to entertain lies at the instance of any party to the proceedings.
- (3) For the purpose of determining whether an appeal from a judgment, order or decree of a consistory court in a cause of faculty lies to the Arches Court of Canterbury or the Chancery Court of York under paragraph (b) of subsection (1) of section seven of this Measure or to the Court of Ecclesiastical Causes Reserved by virtue of this section, it shall be the duty of the chancellor to certify upon the application of the party desiring to appeal whether or not a question of doctrine, ritual or ceremonial is involved<sup>F31</sup> . . .
- [<sup>F32</sup>(4) In any proceedings in the Court of Ecclesiastical Causes Reserved on an appeal from a judgment, order or decree of a consistory court of a diocese given, made or pronounced in a cause of faculty, the court—
- (a) if it considers that it has heard and determined the appeal in so far as it relates to matter involving doctrine, ritual or ceremonial but that the appeal relates also to other matter, may, if it considers it expedient to do so, deal with the other matter, but otherwise shall refer it, and
- (b) if it considers that no matter of doctrine, ritual or ceremonial is involved, shall refer the appeal (notwithstanding any certificate to the contrary issued under subsection (3) of this section),
- to the Arches Court of Canterbury or the Chancery Court of York, as appropriate, to be heard and determined by that court.
- (5) In any proceedings in the Arches Court of Canterbury or the Chancery Court of York on an appeal from a judgment, order or decree of a consistory court of a diocese given, made or pronounced in a cause of faculty, the court may, if it considers that the appeal relates to matter involving doctrine, ritual or ceremonial, refer the appeal (notwithstanding any certificate to the contrary issued under subsection (3) of this section) to the Court of Ecclesiastical Causes Reserved to be heard and determined by that court.
- (6) Subject to any rules made under section 26 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991, any reference of an appeal under subsection (4) or (5) of this section shall be in accordance with such practice directions as may be issued jointly by the Dean of the Arches and Auditor and the two judges of the Court of Ecclesiastical Causes Reserved appointed in accordance with section 5 of this Measure by virtue of their holding, or having held, high judicial office.]

#### Textual Amendments

- F31** Words in s. 10(3) omitted (1.3.1993) by virtue of [Care of Churches and Ecclesiastical Jurisdiction Measure 1991 \(No. 1, SIF 21:8\)](#), s. 8(1), [Sch. 4 para. 7\(a\)](#) (with s. 31(6)); Instrument dated 16.2.1993 made by the Archbishops of Canterbury and York
- F32** S. 10(4)-(6) inserted (1.3.1993) by [Care of Churches and Ecclesiastical Jurisdiction Measure 1991 \(No. 1, SIF 21:8\)](#), s. 8(1), [Sch. 4 para. 10\(b\)](#) (with s. 31(6)); Instrument dated 16.2.1993 made by the Archbishops of Canterbury and York

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## **11 Jurisdiction of Her Majesty with respect to review of findings of commissions of convocation or of Court of Ecclesiastical Causes Reserved.**

- (1) A petition addressed to Her Majesty praying that She will be pleased to cause a finding of any commission of convocation appointed under Part V of this Measure to be reviewed may be lodged with the Clerk of the Crown in Chancery by any party to the proceedings on a question of law, and by the defendant on a question of fact.
- (2) A petition addressed to Her Majesty praying that she will be pleased to cause a finding of the Court of Ecclesiastical Causes Reserved to be reviewed may be lodged with the Clerk of the Crown in Chancery—
  - (a) in a case where the finding of the Court was in exercise of the jurisdiction it has by virtue of paragraph (a) of subsection (1) of the last foregoing section, by any party to the proceedings on a question of law and the defendant on a question of fact;
  - (b) in any other case, by any party to the proceedings.
- (3) Any such petition must be in the prescribed form and must be lodged as aforesaid within the prescribed period after the finding to which it relates.
- (4) Upon a petition being duly lodged under this section, a commission shall be directed under the Great Seal to such five persons as Her Majesty may be pleased to nominate, of whom three shall be Lords of Appeal (within the meaning of the <sup>M4</sup>Appellate Jurisdiction Act 1876) who make a declaration that they are communicants and two shall be lords spiritual sitting as Lords of Parliament, to review the finding to which the petition relates.
- (5) A commission appointed under this section shall be called a Commission of Review.

### **Marginal Citations**

**M4** 1876 c. 59.

### *Miscellaneous Provisions relating to the Courts and the Judges*

## **12 Consistory, Arches and Chancery Courts to be unaffected by vacation of sees.**

The vacation of the see of Canterbury or of the see of York shall not render the Arches Court of Canterbury or the Chancery Court of York unable to exercise their respective jurisdictions nor shall the vacation of those sees or the see of the bishop of any other diocese render any consistory court unable to exercise its jurisdiction, and subject to the provisions of subsection (3) of section two of this Measure no such vacancy shall affect the discharge by the judges or officers of any such court as aforesaid of their functions.

## **13 Certain judges to be ex officio officials principal.**

- (1) The Dean of the Arches and Auditor shall, by virtue of his office, be the Official Principal of the archbishop of Canterbury and the Official Principal of the archbishop of York in their respective capacities of Metropolitans and shall also be Master of the Faculties to the archbishop of Canterbury.

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- (2) The chancellor of a diocese shall by virtue of his office be the Official Principal of the bishop of that diocese.

## PART II

### OFFENCES COGNISABLE UNDER THE MEASURE AND PROVISIONS AS TO PERSONS CHARGEABLE THEREWITH

#### 14 Offences under the Measure.

- (1) Proceedings may be instituted under this Measure against any of the persons specified in section seventeen thereof charging—
- (a) an offence against the laws ecclesiastical involving matters of doctrine, ritual or ceremonial;
  - (b) any other offence against the laws ecclesiastical, including—
    - (i) conduct unbecoming the office and work of a clerk in Holy Orders, or
    - (ii) serious, persistent, or continuous neglect of duty:

Provided that no proceedings in respect of unbecoming conduct shall be taken in respect of the political opinions or activities of such person;

And provided further that no proceedings in respect of neglect of duty shall be taken in respect of the political opinions of such person.

- (2) The repeal by this Measure of any statutory provision under which proceedings could have been taken for an offence against the law ecclesiastical shall not prevent the taking of any proceedings under this Measure in respect of any such offence.

#### 15 Place where offence committed.

Proceedings under this Measure for an offence involving matters of doctrine, ritual or ceremonial shall only be instituted if the offence was committed within the province of Canterbury or York, but this limitation shall not apply to proceedings under this Measure for other offences.

#### 16 Limitation of time for institution of proceedings under the Measure.

No proceedings under this Measure shall be instituted unless the act or omission constituting the offence, or the last of them if the offence consists of a series of acts or omissions, occurred within the period of three years ending with the day on which proceedings are instituted:

Provided that, when the offence is one for which the accused has been convicted either on indictment or summarily, proceedings may be instituted within six months of the conviction becoming conclusive notwithstanding that the aforesaid period of three years has elapsed.

#### 17 Persons against whom proceedings may be instituted.

Proceedings under this Measure may be instituted against an archbishop, any diocesan bishop or any suffragan bishop commissioned by a diocesan bishop or any other bishop or a priest or deacon who, when the offence was alleged to have been committed or

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when the proceedings are instituted, held or holds preferment in any diocese or resided or resides therein as the case may be.

### PART III

#### INSTITUTION OF PROCEEDINGS IN RESPECT OF OFFENCES UNDER THE MEASURE

#### 18 Mode of instituting proceedings.

- (1) Proceedings charging an offence under this Measure shall be instituted in the case of an archbishop or a bishop by way of complaint laid before the registrar of the relevant province and in the case of a priest or deacon by way of complaint laid before the registrar of any diocese in which the accused held or holds preferment or in which he resided or resides at the date when the alleged offence was committed or at the date of such complaint.
- (2) A complaint laid in accordance with the provisions of the preceding subsection shall be in writing in the prescribed form, contain the prescribed particulars of the offence the commission of which is alleged therein and be verified on oath.
- (3) A copy of the complaint duly laid and verified shall be served on the accused forthwith after it is laid.

#### 19 Persons by whom proceedings against a priest or deacon may be instituted.

Proceedings against a priest or deacon may be instituted by the following persons, that is to say:—

- (a) in all cases by an authorised complainant; or
- (b) in the case of any priest or deacon who is an incumbent of a parochial benefice, a stipendiary curate licensed to a benefice or a curate in charge of a conventional district, by six or more persons of full age whose names are on the electoral roll either of the parish of that benefice or of the district as the case may be; or
- (c) in the case of a stipendiary curate licensed to a benefice, by the incumbent of that benefice.

#### 20 Persons by whom proceedings against an archbishop or bishop may be instituted.

Proceedings against an archbishop or a bishop may be instituted by the following persons, that is to say:—

- (a) in the case of an archbishop:—
  - (i) save in respect of any act or omission in relation to his duties as diocesan by not less than two of his comprovincial diocesan bishops; or
  - (ii) save in respect of any act or omission in relation to his duties as metropolitan by not less than ten persons of whom not less than five are incumbents in the diocese of the accused and not less than five are lay members of the [<sup>F33</sup>diocesan synod] of such diocese; or
- (b) in the case of a diocesan bishop other than an archbishop:—
  - (i) by an authorised complainant; or

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- (ii) by not less than ten persons of whom not less than five are incumbents in the diocese of the accused and not less than five are lay members of the [<sup>F33</sup>diocesan synod] of such diocese; or
- (c) in the case of a suffragan bishop:—
  - (i) by the bishop who commissioned him; or
  - (ii) by an authorised complainant; or
  - (iii) by not less than ten persons of whom not less than five are incumbents in the diocese of the bishop by whom the accused is commissioned and not less than five are lay members of the [<sup>F33</sup>diocesan synod] of such diocese; or
  - (iv) if he is the incumbent of a parochial benefice by six or more persons of full age whose names are on the electoral roll of that parish; or
- (d) in the case of any other bishop:—
  - (i) by the bishop of the diocese in which the accused holds preferment or resides; or
  - (ii) by an authorised complainant; or
  - (iii) if he is the incumbent of a parochial benefice by six or more persons of full age whose names are on the electoral roll of that parish.

#### Textual Amendments

**F33** Words substituted by virtue of [Synodical Government Measure 1969 \(No. 2\), s. 4\(7\)](#)

## 21 Supplementary provisions in special cases.

- (1) For the purposes of the last two preceding sections of this Measure:—
- (a) where a bishop, priest or deacon is an incumbent of or licensed to more than one parochial benefice or a parochial benefice which comprises more than one parish, each of the six or more persons empowered to institute proceedings under paragraph (b) of section nineteen or subparagraph (iv) of paragraph (c) and subparagraph (iii) of paragraph (d) of section twenty of this Measure may be on the electoral roll of any of the parishes comprised in those benefices or that benefice; and
  - (b) a church designated and established as a guild church under the <sup>M5</sup>City of London (Guild Churches) Acts 1952 and <sup>M6</sup>1960 shall be deemed to be a parochial benefice and, accordingly, references in the said sections to the incumbent of a parochial benefice, to the electoral roll of a parish and to a stipendiary curate licensed to a benefice (whether parochial or not) shall, in the case of a guild church, be construed as references to the vicar of such church, to the church electoral roll thereof and to a curate licensed to assist the vicar thereof respectively.
- (2) The provisions of paragraph (a) of the foregoing subsection shall apply in any case where a bishop or priest, as well as being licensed to a benefice, is licensed also to a conventional district, or to any such person as is licensed to more than one conventional district.

#### Marginal Citations

**M5** 1952 c. xxxviii.



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**M6** 1960 c. xxx.

## PART IV

### CONDUCT OF PROCEEDINGS AGAINST PRIESTS OR DEACONS FOR OFFENCES UNDER THE MEASURE NOT INVOLVING MATTER OF DOCTRINE, RITUAL OR CEREMONIAL.

#### *Scope of Part IV*

#### **22 Scope of Part IV.**

The provisions of this Part of this Measure shall have effect for the purpose of regulating proceedings against a priest or deacon against whom a complaint has been laid in accordance with the provisions of Part III of this Measure alleging the commission of an offence other than an offence involving matter of doctrine, ritual or ceremonial.

#### *Procedure under Part IV after Laying of Complaint*

#### **23 Duty of diocesan upon the making of complaint.**

- (1) Upon a complaint under Part III of this Measure of the nature specified in the foregoing section being duly laid and verified, the bishop of the diocese before whose registrar it is laid shall take it into consideration and, as soon as may be after a copy thereof has been served on the accused, shall afford to the accused and to the complainant an opportunity of being interviewed in private by him with respect to the matter of the complaint, and thereafter shall either—
  - (a) decide that no further step be taken under this Part of this Measure in the matter of the complaint; or
  - (b) refer the complaint for inquiry by an examiner selected from a panel of examiners constituted in accordance with the provisions of section thirty of this Measure.
- (2) Where, in pursuance of the foregoing subsection, the bishop of a diocese decides that no further step be taken in the matter of the complaint he shall forthwith give notice of his decision to the complainant and to the accused, and thereafter no further action shall be taken by any person in regard thereto.

#### **24 Inquiry into complaint by examiner.**

- (1) It shall be the duty of the examiner to whom a complaint is referred under the last foregoing section to inquire into the complaint for the purpose of deciding whether there is a case to answer in respect of which the accused should be put on trial upon articles by a consistory court for any offence under this Measure which does not involve matter of doctrine, ritual and ceremonial.
- (2) Either the accused or the complainant may, if he so desires, be assisted or represented by a friend or adviser at any inquiry.

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- (3) The complainant and the accused may lay before the examiner such evidence as they shall think fit, and such evidence shall be given by affidavit, but the examiner shall on the application of either party and may on his own motion request the person making such affidavit to attend the inquiry for the purpose of answering such questions on oath as may be put to him by the examiner or by or on behalf of any party, and unless such person shall attend the inquiry for that purpose his affidavit shall be disregarded: Provided that the evidence of any person who is incapable of giving evidence on oath shall be given orally at the inquiry.
- (4) If the examiner, after making due inquiry into the complaint, decides that there is a case to answer in respect of which the accused should be put on trial for any such offence as aforesaid, he shall declare his decision, specifying the offence.
- (5) If the examiner, after making due inquiry into the complaint, decides that there is no case for the accused to answer, he shall declare his decision, and thereafter no further step shall be taken in regard thereto.
- (6) The Examiner shall reduce his decision to writing and shall give a copy of it to the accused and to the bishop of the diocese before whose registrar the complaint was laid.

## **25 Appointment of person to promote complaint.**

Where an examiner declares, in pursuance of subsection (4) of the last foregoing section, his decision that there is a case to answer in respect of which the accused should be put on trial for any such offence as aforesaid, the bishop of the diocese before whose registrar the complaint was laid shall nominate a fit person to promote a complaint against the accused in the consistory court of that diocese.

## **26 Contents of articles.**

Where a complaint is laid against a person by virtue of the foregoing provisions of this Part of this Measure, the articles may with the leave of the examiner or of the consistory court of the diocese include, either in substitution for or in addition to, particulars of the offence or offences specified by the examiner, particulars of any other offence founded on evidence disclosed in the course of the inquiry, not being particulars of an offence involving matter of doctrine, ritual or ceremonial.

## **27 Power of chancellor to nominate trial judge in lieu of himself.**

- (1) If the chancellor of a diocese is of opinion for any reason that, for the purposes of any proceedings under this Part of this Measure in the consistory court thereof, it is expedient that he should not preside over the court, he may so certify in writing to the bishop and may, with the written consent of the bishop, appoint another person who, in the opinion of the chancellor, possesses sufficient experience in criminal law and procedure and consents to such appointment, to preside over the court for the purpose of such proceedings, being a person who is himself qualified for appointment as chancellor of the diocese and who satisfies the bishop that he is a communicant.
- (2) Any person appointed to preside over a court by virtue of the provisions of the foregoing subsection shall, before he does any act pursuant to such appointment, take and subscribe the oath . . . <sup>F34</sup> required of the chancellor of the diocese by virtue of subsection (5) of section two of this Measure.

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### Textual Amendments

**F34** Words repealed by [Church of England \(Worship and Doctrine\) Measure 1974 \(No. 3\)](#), [Sch. 2](#)

## 28 Conduct of trial under Part IV.

The following provisions shall have effect with respect to the trial under this Part of this Measure of a person by the consistory court of a diocese, namely,—

- (a) the procedure at the trial shall, so far as circumstances admit, and subject to any rules which may be prescribed, be the same as at the trial of a person by a court of assize exercising criminal jurisdiction;
- (b) the accused shall be entitled to be supplied with a copy of the articles;
- (c) the rules as to the admissibility of evidence and as to whether a witness is competent or compellable to give evidence shall be the same as those observed at the trial of a person by such a court of assize;
- (d) the registrar of the diocese shall give not less than fourteen clear days' notice of the sittings of the court to the person promoting the complaint and to the accused and at any sitting the court may proceed in the absence of the accused if satisfied that he was given adequate notice of such sitting;
- (e) the chancellor shall sit with four assessors appointed from a panel of assessors constituted in accordance with section thirty of this Measure, and the functions of the chancellor shall be the same as the functions of a judge of a court of assize exercising criminal jurisdiction, and shall include the obligation to sum up in open court, and the functions of the assessors, who must be unanimous, shall be the same as the functions of a jury in such a court;
- (f) the chancellor, if satisfied that it is in the interests of justice so to do, may give directions that during any part of the proceedings such persons or classes of persons including the assessors as the court may determine shall be excluded;
- (g) if the accused shall be found guilty of an offence charged the chancellor shall decide such censure therefor as is warranted by the following provisions of this Measure;
- (h) the censure shall be reduced to writing by the court, shall be pronounced in open court by the person presiding over the court and shall not be invalid by reason only that it is not pronounced in the presence of the accused.

## 29 New Trial.

If, in the case of any trial under this Part of this Measure, the assessors shall be unable to agree upon a verdict, the chancellor shall discharge them and in such event the chancellor, after such consultation with the parties or their representatives as he shall think appropriate and within the period of fourteen days from such discharge shall either order that the accused be tried again, in which event the chancellor shall give such directions as to the time and place of such trial as he shall think fit, or direct that there shall be no retrial and pronounce the accused to be acquitted of the offence or offences of which he is charged.

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### *Examiners and Assessors*

#### **30 Constitution of panels of examiners and assessors, &c.**

- (1) The panel of examiners for the purpose of holding inquiries under this Part of this Measure shall be constituted in accordance with the provisions of Part I of the Second Schedule to this Measure, and the examiner shall be selected from the panel in accordance with those provisions.
- (2) The provisions of Part II of that Schedule shall have effect for the purpose of providing the assessors with whom a consistory court is by virtue of section twenty-eight of this Measure required to sit.

### *Power of Diocesan to pronounce Sentence by Consent*

#### **31 Power of diocesan to pronounce sentence by consent.**

Notwithstanding anything in the foregoing provisions of this Part of this Measure, where a complaint of the nature specified in section twenty-two thereof has been duly laid and verified the bishop of the diocese before whose registrar it was laid may at any time after consultation with the complainant and with the consent of the accused pronounce on him such censure as the bishop thinks fit, being one warranted by the following provisions of this Measure for pronouncement upon a person found guilty of an offence under this Measure and, where he pronounces such censure, no further step shall be taken in the matter of the complaint.

## **PART V**

### CONDUCT OF PROCEEDINGS AGAINST BISHOPS FOR OFFENCES UNDER THE MEASURE NOT INVOLVING MATTER OF DOCTRINE, RITUAL OR CEREMONIAL

#### *Scope of Part V*

#### **32 Scope of Part V.**

The provisions of this Part of this Measure shall have effect for the purpose of regulating proceedings against an archbishop or a bishop against whom a complaint has been laid in accordance with the provisions of Part III of this Measure alleging the commission of an offence other than an offence involving matter of doctrine, ritual or ceremonial.

### *Procedure under Part V after Laying of Complaint*

#### **33 Inquiry into complaint by episcopal committee.**

- (1) Where a complaint under Part III of this Measure of the nature specified in the foregoing section is duly laid and verified, the following provisions of this section shall have effect.

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- (2) The complaint shall stand referred to a committee whose duty it shall be to inquire into the complaint for the purpose of deciding whether there is a case to answer in respect of which the accused should be put on trial upon articles, by a commission appointed under the following provisions of this Part of this Measure, for any offence under this Measure which does not involve matter of doctrine, ritual or ceremonial.
- (3) The committee shall consist
  - (a) in the case of an archbishop, of the three senior comprovincial diocesan bishops of the relevant province, not being a bishop who laid, or was one of the bishops who laid, the complaint; and
  - (b) in the case of any other bishop, shall consist of the archbishop of the relevant province and two diocesan bishops of that province appointed by such archbishop (not being any bishop who laid, or who was one of several persons who laid, the complaint or the accused, if he is a diocesan);and the determination of any matter before the committee shall be according to the opinion of the majority of the members thereof.
- (4) The committee shall summon to their assistance a [<sup>F35</sup>person who has a 10 year general qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990,] or a person who has held high judicial office to sit with them and act as their assessor in matters of law and, before summoning such a person, the committee shall satisfy themselves that he is a communicant.
- (5) Either the accused or the complainant may, if he so desires, be assisted or represented by a friend or adviser at any meeting of such a committee at which he is invited to be present.
- (6) The complainant and the accused may lay before the committee such evidence as they shall think fit, and such evidence shall be given by affidavit, but the committee shall on the application of either party and may on its own motion request the person making such affidavit to attend the inquiry for the purpose of answering such questions on oath as may be put to him by the committee or by or on behalf of any party, and unless such person shall attend the inquiry for that purpose his affidavit shall be disregarded: Provided that the evidence of any person who is incapable of giving evidence on oath shall be given orally at the inquiry.
- (7) If the committee, after making due inquiry into the complaint, decide that there is a case to answer in respect of which the accused should be put on trial for any such offence as aforesaid, by a commission appointed under the following provisions of this Part of this Measure, they shall declare their decision, specifying the offence, and shall nominate a fit person to promote the complaint against the accused before the commission appointed under the provisions of section thirty-five of this Measure.
- (8) If the committee, after making due inquiry into the complaint, decide that there is no case for the accused to answer, they shall declare their decision and thereafter no further step shall be taken in regard thereto.
- (9) The committee shall reduce their decision to writing and shall send a copy thereof to the accused and (a) in the case of an archbishop, to the archbishop who is not accused, and (b) in the case of any other bishop, to the Upper House of the Convocation of the relevant province.

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### Textual Amendments

**F35** Words substituted by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\)](#), s. 71(2), **Sch. 10 para. 19**

## 34 Contents of articles.

Where a complaint is laid against a person by virtue of the foregoing provisions of this Part of this Measure, the articles may with the leave of the committee which inquired into the complaint or of the commission appointed under the provisions of the next succeeding section include, either in substitution for or in addition to, particulars of the offence or offences specified by that committee, particulars of any offence founded on evidence disclosed in the course of the committee's inquiry, not being particulars of an offence involving matter of doctrine, ritual or ceremonial.

## 35 Appointment of commission of convocation.

Where a committee inquiring into a complaint declare, in pursuance of subsection (7) of section thirty-three of this Measure, their decision that there is sufficient evidence to put the accused on trial—

- (a) in the case of an archbishop, the Upper Houses of the Convocations of both provinces shall hold a meeting summoned by the archbishop who is not accused to meet under his chairmanship, and the meeting shall appoint a commission consisting of the Dean of the Arches and Auditor, and four diocesan bishops chosen by the joint meeting of the two Upper Houses from amongst the diocesan bishops of both provinces, not being a bishop who laid, or was one of the bishops who laid, the complaint, or a member of the committee appointed under subsection (3) of section thirty-three of this Measure;
- (b) in the case of a bishop the Upper House of Convocation of the relevant province shall appoint a commission consisting of the Dean of the Arches and Auditor and four of their members to try the accused not being a bishop who laid, or was one of the bishops who laid, the complaint or a member of the Committee appointed under subsection (3) of section thirty-three of this Measure.

## 36 Conduct of trial by commission of convocation.

The following provisions shall have effect with respect to the trial of a person by a commission appointed under this Part of this Measure, namely:—

- (a) the Dean of the Arches and Auditor shall preside over the commission;
- (b) the procedure at the trial shall, so far as circumstances admit, and subject to any rules which may be prescribed, be the same as at the trial of a person by a court of assize exercising criminal jurisdiction;
- (c) the accused shall be entitled to be supplied with a copy of the articles;
- (d) the rules as to the admissibility of evidence and as to whether a witness is competent and compellable to give evidence shall be the same as those observed at the trial of a person by such court of assize;
- (e) the registrar of the relevant province shall give not less than fourteen clear days' notice of the sittings of the commission to the person promoting the complaint and the accused and at any sitting the commission may proceed in



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the absence of the accused if they are satisfied that he was given adequate notice of the sitting;

- (f) the commission, if satisfied that it is in the interests of justice so to do, may give directions that during any part of the proceedings such persons or classes of persons as the commission may determine shall be excluded;
- (g) the determination of any matter before the commission shall be according to the opinion of the majority of the members thereof;
- (h) the commission shall reduce their finding to writing, shall publish it to the accused and to such other persons as they think ought to have notice of it and shall send a copy of it in the case of an accused archbishop, to the archbishop of the other province, and in the case of any other bishop, to the archbishop of the relevant province.

### **37 Proceedings in Upper House of Convocation upon finding of commission of convocation.**

- (1) In the case of an archbishop upon receipt by the archbishop who is not accused of a copy of the finding sent to him under paragraph (h) of the last foregoing section he shall lay it before a joint meeting of the Upper Houses of the Convocations of both provinces; and where the finding is one of guilt it shall be the duty of the joint meeting to resolve that the accused be censured in accordance with the following provisions of this Measure, and in such a case the censure shall be pronounced by the archbishop of the other province.
- (2) In the case of any other bishop upon the receipt of a copy of a finding by the archbishop of the relevant province he shall lay it before the Upper House of Convocation of that province; and where the finding is one of guilt it shall be the duty of that House to resolve that the accused be censured in accordance with the following provisions of this Measure, and in such a case the censure shall be pronounced by the archbishop of the relevant province.

## **PART VI**

### **CONDUCT OF PROCEEDINGS AGAINST DEACONS, PRIESTS OR BISHOPS FOR OFFENCES UNDER THE MEASURE INVOLVING MATTER OF DOCTRINE, RITUAL OR CEREMONIAL**

#### *Scope of Part VI*

### **38 Scope of Part VI.**

The provisions of this Part of this Measure shall have effect for the purpose of regulating proceedings against a deacon, priest, bishop or archbishop against whom a complaint has been laid in accordance with the provisions of Part III of this Measure alleging the commission of an offence against the laws ecclesiastical involving matter of doctrine, ritual or ceremonial.

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### *Procedure under Part VI after Laying of Complaint*

#### **39 Duty of diocesan upon the making of a complaint against a deacon or priest.**

- (1) Upon a complaint under this Part of this Measure against a priest or deacon being duly laid and verified the bishop of the diocese before whose registrar it is laid shall take it into consideration and as soon as may be after a copy thereof has been served on the accused, shall afford to the accused and the complainant an opportunity of being interviewed in private by him either separately or together as the bishop thinks fit with respect to the matter of the complaint, and thereafter shall either:—
  - (a) decide that no further step be taken under this Part of this Measure in the matter of the complaint; or
  - (b) refer the complaint for inquiry under the following provisions of this Part of this Measure.
- (2) Where, in pursuance of the foregoing subsection, the bishop decides that no further step be taken in the matter of the complaint he shall forthwith give notice of his decision to the complainant and to the accused and thereafter no further action shall be taken by any person in regard thereto.

#### **40 Duty of archbishop upon the making of a complaint against a bishop.**

Upon a complaint under this Part of this Measure against a bishop being laid and verified the archbishop of the relevant province shall have the same powers and duties in relation thereto as are conferred and imposed upon a diocesan bishop by the last preceding section in regard to a complaint against a priest or deacon and, according to his decision, the like consequences shall ensue as are referred to in such section.

#### **41 Complaint against an archbishop to stand referred for inquiry.**

A complaint against an archbishop of the nature referred to in section thirty-eight of this Measure duly laid and verified under this Part of this Measure shall thereupon stand referred for inquiry under the following provisions of this Part of this Measure.

#### **42 Inquiry into complaint by committee of convocation.**

- (1) Where, by virtue of the foregoing provisions of this Part of this Measure, a complaint is referred, or stands referred, for inquiry, the following provisions shall have effect.
- (2) The reference shall be to a committee whose duty it shall be to inquire into the complaint for the purpose of deciding whether there is a case to answer in respect of which the accused should be put on trial upon articles by the Court of Ecclesiastical Causes Reserved, for any offence under this Measure involving matter of doctrine, ritual or ceremonial.
- (3) The committee shall—
  - (a) where the accused is a priest or deacon, consist of—
    - (i) one member of the Upper House of the Convocation of the relevant province, appointed by the archbishop;
    - (ii) two members of the Lower House of that Convocation, appointed by the prolocutor of that House; and

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- (iii) two chancellors of dioceses in that province, appointed by the Dean of the Arches and Auditor:
- (b) where the accused is an archbishop or a bishop, consist of—
- (i) such even number of persons, to be appointed by the Upper House of the Convocation of the relevant province, as that House shall determine; and
  - (ii) the Dean of the Arches and Auditor or a deputy who is nominated by him and who shall make a declaration that he is a communicant being a person holding or having held high judicial office, or a <sup>F36</sup>person who has a 10 year High Court qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990,];
- and the determination of any matter before the committee shall be according to the opinion of the majority of the members thereof.
- (4) Either the accused or the complainant may, if he so desires, be assisted or represented by a friend or adviser at any meeting of such a committee at which he is invited to be present.
- (5) The complainant and the accused may lay before the committee such evidence as they shall think fit and such evidence shall be given by affidavit but the committee shall on the application of either party and may on its own motion request the person making such affidavit to attend the inquiry for the purpose of answering such questions on oath as may be put to him by the committee or by or on behalf of any party, and unless such person shall attend the inquiry for that purpose his affidavit shall be disregarded: Provided that the evidence of any person who is incapable of giving evidence on oath shall be given orally at the inquiry.
- (6) If the committee, after making due inquiry into the complaint, decide that there is a case for the accused to answer in respect of which he should be put on trial upon articles by the Court of Ecclesiastical Causes Reserved for any such offence as aforesaid, they shall declare their decision, specifying the offence.
- (7) Where the committee decide as mentioned in the last foregoing subsection, but are of opinion on consideration of the evidence, of any statement made to them by the accused and of any representations made to them by the bishop of the diocese where the accused is a deacon or a priest—
- (a) that the offence charged by the complaint is too trivial to warrant further proceedings thereon; or
  - (b) that the offence was committed upon extenuating circumstances; or
  - (c) that further proceedings on the complaint would not be in the interests of the Church of England;
- they may dismiss the complaint and report to the Convocation of the relevant province that they have dismissed it and the ground on which they have taken that course.
- (8) If the committee, after making due inquiry into the complaint, decide that there is no case for the accused to answer, they shall declare their decision.
- (9) The committee shall reduce their decision, or decisions, to writing and shall send a copy thereof to the accused and to the Upper House of the Convocation of the relevant province and in the case of an accused archbishop, to the archbishop of the other province.

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- (10) Where the committee dismiss a complaint and report their dismissal of it under subsection (7) of this section or declare that there is no case for the accused to answer under subsection (8) of this section, no further step shall be taken in the matter of the complaint.

#### Textual Amendments

**F36** Words substituted by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\)](#), s. 71(2), **Sch. 10 para. 18(1)**

#### 43 Appointment, of person to promote complaint.

Where a committee inquiring into a complaint declare, in pursuance of subsection (6) of the last foregoing section, their decision that there is a case for the accused to answer and do not dismiss the same under subsection (7) of that section, the Upper House of the Convocation of the relevant province shall nominate a fit person to promote a complaint against the accused in the Court of Ecclesiastical Causes Reserved:

Provided that when the accused is an archbishop the Upper House of the Convocation of the relevant province shall for this purpose meet under the presidency of the senior diocesan bishop of that province and the accused archbishop shall take no part in the proceedings of the said meeting.

#### 44 Contents of articles.

Where a person is prosecuted by virtue of the foregoing provisions of this Part of this Measure, the articles may with the leave of the committee who inquired into the complaint or of the Court of Ecclesiastical Causes Reserved include, either in substitution for or in addition to, particulars of the offence or offences specified by that committee, particulars of any other offence founded on evidence disclosed in the course of the committee's inquiry, being particulars of an offence involving matter of doctrine, ritual or ceremonial.

#### 45 Conduct of trial under Part VI.

- (1) The following provisions shall have effect with respect to the trial of a person by the Court of Ecclesiastical Causes Reserved under this Part of this Measure, namely:—
- (a) the procedure at the trial shall, so far as circumstances admit and subject to any rules which may be prescribed, be the same as at the trial of a person by a court of assize exercising criminal jurisdiction;
  - (b) the accused shall be entitled to be supplied with a copy of the articles;
  - (c) the rules as to the admissibility of evidence and as to whether a witness is competent or compellable to give evidence shall be the same as those observed at the trial of a person by such a court of assize;
  - (d) the registrar before whom the complaint was laid shall give not less than fourteen clear days' notice of the sittings of the court to the promoter thereof and to the accused and at any sitting the court may proceed in the absence of the accused if satisfied that he was given proper notice of the sitting;
  - (e) the court, if satisfied that it is in the interests of justice so to do, may give directions that during any part of the proceedings such person or persons as the court may determine shall be excluded;

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- (f) the determination of any matter before the court shall be according to the opinion of the majority of the members thereof;
  - (g) if the accused shall be found guilty of an offence charged, the court shall decide such censure therefor as is warranted by the following provisions of this Measure;
  - (h) the censure shall be reduced to writing by the court, shall be pronounced in open court by the person presiding over the court and shall not be invalid by reason only that it is not pronounced in the presence of the accused.
- (2) For the purposes of this section it shall be the duty of the Upper Houses of the Convocations of Canterbury and York jointly to draw up, with the approval of the Lower Houses of those Convocations, and from time to time to revise, with the like approval, a panel of persons each of whom shall be an eminent theologian or an eminent liturgiologist, and the Court of Ecclesiastical Causes Reserved shall, when trying a person sit with not less than three nor more than five advisers selected by the Dean of the Arches and Auditor from amongst the members of the panel.
- (3) In the exercise of its jurisdiction under this Measure the Court of Ecclesiastical Causes Reserved shall not be bound by any decision of the Judicial Committee of the Privy Council in relation to matter of doctrine ritual or ceremonial.

## PART VII

### OTHER PROCEEDINGS

#### 46 Proceedings in consistory court not falling within Part IV.

- (1) Proceedings in the consistory court of a diocese other than those falling within paragraph (a) of subsection (1) of section six of this Measure shall be heard and disposed of by the chancellor of the diocese:  
Provided that proceedings in a cause of faculty may be heard and disposed of by the bishop of the diocese alone or with the chancellor if, and in so far as, provision in that behalf is made in the letters patent by which the chancellor of the diocese is appointed.
- (2) Subject to the provisions of the proviso to section sixty-nine of this Measure proceedings to which this section applies other than those falling within paragraph (b) of subsection (1) of section six of this Measure shall be instituted and conducted in such manner as may be prescribed.

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

- C3 S. 46(1) modified (1.7.2001) by 1999 No. 2, ss. 3(3); Instrument dated 21.6.2001 made by the Archbishops of Canterbury and York

#### 47 Proceedings in Arches and Chancery Courts.

- [<sup>F37</sup>(1) Proceedings in the Arches Court of Canterbury or the Chancery Court of York shall be heard and disposed of—
- (a) in the case of an appeal from a judgment of the consistory court of a diocese given in such proceedings as are mentioned in section 6(1)(a) of this Measure,

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- by all the judges of the Court mentioned in paragraphs (a), (b) and (c) of section 3(2) of this Measure;
- (b) in any other case, by the Dean of the Arches and Auditor and two diocesan chancellors designated by him for the purposes of the case.]
- (2) Subject to the provisions of the proviso to section sixty-nine of this Measure proceedings in the said Court shall be instituted and conducted in such manner as may be prescribed.

#### Textual Amendments

**F37** S. 47(1) substituted (1.3.1993) by [Care of Churches and Ecclesiastical Jurisdiction Measure 1991 \(No. 1, SIF 21:8\)](#), s. 8(1), [Sch. 4](#), para. 8(1) (with s. 31(6)); [Instrument dated 16.2.1993 made by the Archbishops of Canterbury and York](#)

#### 48 Proceedings before Commissions of Review.

- (1) Subject to the following provisions of this section all proceedings before a Commission of Review shall be instituted and conducted in such manner as may be prescribed.
- (2) In order to give assistance to any Commission of Review in reviewing any decision of the Court of Ecclesiastical Causes Reserved involving a question of doctrine the Upper Houses of the Convocations of the Provinces of Canterbury and of York shall jointly appoint a panel of persons consisting of members of either of the Upper Houses and also if thought fit of theologians who are not members of either of the Upper Houses in such numbers as the Upper Houses may jointly determine.
- (3) When any review by a Commission of Review involves a question of doctrine the Commission shall request five persons selected by it from the panel appointed under subsection (2) of this section to sit with it as advisers and to give such assistance on the matters of doctrine involved in the review as the Commission may require.
- (4) The judgment of the Commission shall be according to the opinion of the majority of the members thereof and each member of the Commission shall state his own opinion on the question under review.
- (5) In the exercise of its jurisdiction under this Measure a Commission of Review shall not be bound by any decision of the Judicial Committee of the Privy Council in relation to matter of doctrine, ritual or ceremonial.
- (6) A decision of a previous Commission of Review shall be binding on a Commission subsequently appointed in any matter which shall, by virtue of this Measure, be within the jurisdiction of such Commission except in regard to a matter on which new information or evidence is adduced which was not before the Commission on the previous occasion.



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## PART VIII

### CENSURES

#### 49 Censures.

- (1) The censures to which a person found guilty of an offence under this Measure renders himself liable are the following, namely,—
  - (a) deprivation, that is to say, removal from any preferment which he then holds and disqualification from holding any other preferment except as hereinafter provided, and if he holds no preferment at the time the censure is pronounced, disqualification from holding any preferment in the future except as hereinafter provided;
  - (b) inhibition, that is to say, disqualification for a specified time from exercising any of the functions of his Order;
  - (c) suspension, that is to say, disqualification for a specified time from exercising or performing without leave of the bishop any right or duty of or incidental to his preferment or from residing in the house of residence of his preferment or within such distance thereof as shall be specified in the censure;
  - (d) monition that is to say an order to do or refrain from doing a specified act;
  - (e) rebuke.
- (2) Where a censure of suspension or inhibition has been pronounced against any person, he shall not be readmitted to his benefice or permitted to exercise the functions of his order unless he satisfies the bishop (or, where the person is himself a bishop, the Upper House of the Convocation of the relevant province) of his good conduct during the term of his suspension or inhibition.
- (3) Where the offence of which the accused is found guilty is one involving matter of doctrine, ritual or ceremonial no censure more severe than monition shall be imposed unless the Court is satisfied that the accused has already been admonished on a previous occasion in respect of another offence of the same or substantially the same nature.
- (4) No censure of deprivation on any archbishop or bishop or on any person in respect of any preferment the right to appoint to which is vested in Her Majesty (not being a parochial benefice) shall have effect unless and until Her Majesty by order in Council shall confirm the same.
- (5) Where by virtue of any censure of deprivation a bishop, priest or deacon is disqualified from holding any preferment, the disqualification shall not extend to a preferment to which the bishop of a diocese, with the consent of the archbishop of the relevant province and in the case of a priest or deacon of the bishop of the diocese in which the proceedings were instituted, shall appoint him, and shall cease upon the occasion of any such appointment if the archbishop when consenting thereto shall so direct.
- (6) Not more than one censure shall be imposed in respect of any one offence save that when a censure of suspension is pronounced a censure of inhibition may be pronounced for the same period.

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## **50 Power of bishop to depose priest or deacon from Holy Orders.**

When a censure of deprivation is pronounced on any priest or deacon the bishop of the diocese may by sentence without any further legal proceedings depose him from Holy Orders and the sentence of deposition shall be recorded in the registry of the diocese: Provided that before deposing him from Holy Orders the bishop shall serve on the priest or deacon concerned and on the provincial registrar of the relevant province a written notice in the prescribed form of his intention so to depose him and within the period of one month from the date of such notice the said priest or deacon may appeal to the archbishop of the relevant province or, if the diocesan be the archbishop, to the archbishop of the other province in such manner as may be prescribed and the diocesan shall not proceed so to depose him until the time for the making of such appeal has passed or, in the event of an appeal being made, unless or until it shall have been dismissed.

## **51 Power to depose archbishop or bishop from Holy Orders.**

Where a censure of deprivation is pronounced in pursuance of proceedings under this Measure on an archbishop or bishop the Upper House of Convocation of the relevant province may by resolution depose him from Holy Orders: Provided that before any motion for such a resolution is put to the Upper House a notice in the prescribed form shall be served on the archbishop or bishop concerned and the House shall consider any written representations made to it by such archbishop or bishop within one month of the service of such notice and afford him an opportunity of being heard before it personally.

## **52 Effect of deposition.**

When a person is deposed from Holy Orders the like consequences shall ensue as by paragraph (3) of section four of the <sup>M7</sup>Clerical Disabilities Act 1870 would ensue, if, more than six months before the day on which such disqualification takes effect, he had executed a deed of relinquishment in the form set out in the Second Schedule to that Act and done the things prescribed by section three thereof and the bishop had on that day caused the deed to be registered in the registry of his diocese.

### **Marginal Citations**

M7 [1870 c. 91.](#)

## **53 Restoration on pardon.**

Where by virtue of anything done under this Measure an archbishop, bishop or other clergyman is deprived or deposed his incapacities shall cease if he receives a free pardon from the Crown, and he shall be restored to any preferment he previously held if it has not in the meantime been filled.

## **54 Disobedience to censure.**

A person who performs in the Church of England any function which, under a censure pronounced upon him by virtue of this Measure, he is disqualified from performing shall be guilty of an offence under this Measure.

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## PART IX

### DEPRIVATION CONSEQUENT UPON CERTAIN JUDGMENTS, ORDERS OR DECREES OF SECULAR COURTS

#### [<sup>F38</sup>55] Deprivation of priest or deacon following certain proceedings in secular courts.

- (1) Where a priest or deacon—
- (a) is convicted of an offence and a sentence of imprisonment (whether suspended or not) is passed on him; or
  - (b) has a decree of divorce or judicial separation granted against him and the court granting the decree held that the fact on which his wife was entitled to rely was that mentioned in paragraph (a) (adultery), paragraph (b) (behaviour in such a way that the petitioner cannot reasonably be expected to live with the respondent) or paragraph (c) (desertion) of section 1(2) of the <sup>M8</sup>Matrimonial Causes Act 1973 and, in the case of divorce, the decree has been made absolute; or
  - (c) is found to have committed adultery in a matrimonial cause; or
  - (d) has an affiliation order made against him; or
  - (e) has [<sup>F39</sup>an order made against him under section 2 of the Domestic Proceedings and Magistrates' Courts Act 1978]; or
  - (f) has an order under section 27 of the <sup>M9</sup>Matrimonial Causes Act 1973 (wilful neglect by party to marriage to maintain other party or child of the family) made against him,

he shall be liable without further trial to deprivation and disqualification, that is to say, deprivation as from the date on which the sentence, decree, finding or order becomes conclusive of any preferment then held by him and, whether or not he then holds preferment but subject to section 49(5) of this Measure, disqualified from holding preferment.

- (2) Where a priest or deacon is liable to deprivation and disqualification by virtue of subsection (1) of this section, then <sup>F40</sup>. . . the bishop of the relevant diocese shall refer the case to the archbishop of the relevant province with his own recommendation as to the action to be taken and send him a copy of any representations which the priest or deacon may have made to him in writing.
- (3) [<sup>F41</sup>Subject to the provisions of the following subsection] the archbishop to whom a case is referred under subsection (2) of this section shall <sup>F42</sup>. . . make a declaration of deprivation and disqualification in relation to the priest or deacon concerned unless on consideration of all the circumstances, including the recommendation of the bishop of the relevant diocese and any representations a copy of which has been sent to him under that subsection, he determines that no such declaration shall be made.

Where the archbishop so determines he shall inform the priest or deacon concerned and the bishop of the relevant diocese.

[ A declaration shall not be made under this section after the expiry of the period of <sup>F43</sup>(3A) three years beginning with the date on which the sentence, decree, finding or order, as the case may be, becomes conclusive.]

- (4) Where a declaration is to be made under this section, it shall be made by the archbishop or, if the archbishop so directs, by the bishop of the relevant diocese as his commissary, and before making it the archbishop or bishop shall require the registrar of his province

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or the registrar of his diocese, as the case may be, to give (if it is practicable to do so) not less than fourteen days' notice in writing to the priest or deacon concerned of the time and place at which the declaration will be made, and if the priest or deacon appears at that time and place he shall be entitled to be present when the declaration is made.

- (5) When making a declaration under this section the archbishop or bishop shall be attended by the registrar of his province or the registrar of his diocese, as the case may be.

The declaration shall be reduced to writing and a copy thereof shall be filed in the registry of the relevant diocese.

- (6) The functions exercisable under this section by an archbishop shall, during the absence abroad or incapacity through illness of the archbishop or a vacancy in the see, be exercised by the other archbishop.

- (7) In this section—

“affiliation order” means an order under section 44 of the <sup>M10</sup>National Assistance Act 1948, section 26 of the <sup>M11</sup>Children Act 1948, section 4 of the <sup>M12</sup>Affiliation Proceedings Act 1957 . . . <sup>F44</sup> section 24 of the <sup>M13</sup>Ministry of Social Security Act 1966 [<sup>F45</sup> . . . <sup>F46</sup> section 19 of the <sup>M14</sup>Supplementary Benefits Act 1976][<sup>F47</sup> or section 25 of the Social Security Act 1986];

“relevant diocese” means—

- (a) the diocese in which the priest or deacon, in relation : to whom a declaration may be made under this section, holds preferment at the date on which the sentence, decree, finding or order which justifies the making of the declaration becomes conclusive; or
- (b) if at that date he is not holding preferment, but is residing, in a diocese, the diocese in which he is residing at that date; or
- (c) if at that date he neither holds preferment nor resides in a diocese, the diocese in which he last held preferment before that date;

“suspended sentence” means a sentence to which an order under section 39(1) of the <sup>M15</sup>Criminal Justice Act 1967 relates.]

#### Textual Amendments

- F38** S. 55 substituted by Ecclesiastical Jurisdiction (Amendment) Measure 1974 (No. 2), s. 1
- F39** Words in s. 55(1)(e) substituted (1.6.1992) by Church of England (Miscellaneous Provisions) Measure 1992 (No. 1), s. 17(1), **Sch. 3 para.9**; Instrument dated 27.5.1992 made by the Archbishops of Canterbury and York.
- F40** Words in s. 55(2) omitted (1.6.1992) by virtue of Church of England (Miscellaneous Provisions) Measure 1992 (No. 1), s. 7(a)(i); Instrument dated 27.5.1992 made by the Archbishops of Canterbury and York.
- F41** Words in s. 55(3) inserted (1.6.1992) by Church of England (Miscellaneous Provisions) Measure 1992 (No. 1), s. 7(a)(ii); Instrument dated 27.5.1992 made by the Archbishops of Canterbury and York.
- F42** Words in s. 55(3) omitted (1.6.1992) by virtue of Church of England (Miscellaneous Provisions) Measure 1992 (No. 1), s. 7(a)(ii); Instrument dated 27.5.1992 made by the Archbishops of Canterbury and York.
- F43** S. 55(3A) inserted (1.6.1992) by Church of England (Miscellaneous Provisions) Measure 1992 (No. 1), s. 7(a)(iii); Instrument dated 27.5.1992 made by the Archbishops of Canterbury and York.
- F44** Word repealed by Supplementary Benefits Act 1976 (c. 71), **Sch. 7 para. 14**
- F45** Words inserted by Supplementary Benefits Act 1976 (c. 71), **Sch. 7 para. 14**

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**F46** Word repealed by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), ss. 86(1), 88(1), [Sch. 10 para. 40](#)

**F47** Words inserted by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), ss. 86(1), 88(1), [Sch. 10 para. 40](#)

#### Marginal Citations

**M8** 1973 c. 18.

**M9** 1973 c. 18.

**M10** 1948 c. 29.

**M11** 1948 c. 43.

**M12** 1957 c. 55.

**M13** 1966 c. 20.

**M14** 1976 c. 71.

**M15** 1967 c. 80.

### [<sup>F48</sup>56] **Deprivation of bishop or archbishop following certain proceedings in secular courts.**

(1) [<sup>F49</sup>Subject to the provisions of the following subsection] if a bishop or archbishop is convicted of an offence and such a sentence as is mentioned in paragraph (a) of section 55(1) of this Measure is passed on him or such a decree, finding or order as is mentioned in that subsection is granted or made against a bishop or archbishop, the bishop or archbishop shall be liable to deprivation and disqualification within the meaning of that section, and <sup>F50</sup> . . . a declaration of deprivation and disqualification shall be made in relation to the bishop or archbishop—

(a) in the case of a bishop, by the archbishop of the relevant province; and

(b) in the case of an archbishop, by the archbishop of the other province,

unless on consideration of all the circumstances, including any representations which the bishop or archbishop may have made to him in writing, the archbishop determines that no such declaration shall be made.

Where the archbishop so determines he shall inform the bishop or archbishop concerned.

[ A declaration shall not be made under this section after the expiry of the period of <sup>F51</sup>(1A) three years beginning with the date on which the sentence, decree, finding or order, as the case may be, becomes conclusive.]

(2) Before making a declaration under this section the archbishop shall require the registrar of his province to give (if it is practicable to do so) not less than fourteen days' notice in writing to the bishop or archbishop concerned of the time and place at which the declaration will be made, and if the bishop or archbishop appears at that time and place he shall be entitled to be present when the declaration is made.

(3) When making a declaration under this section the archbishop shall be attended by the registrar of his province.

The declaration shall be reduced to writing and a copy thereof shall be filed in the registry of that province.

(4) The functions exercisable under this section by the archbishop of the relevant province shall, during the absence abroad or incapacity through illness of the archbishop or a vacancy in the see, be exercisable by the other archbishop.

(5) In this section “bishop” means any diocesan bishop, any suffragan bishop commissioned by a diocesan bishop and any other bishop.]

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#### Textual Amendments

- F48** S. 56 substituted by [Ecclesiastical Jurisdiction \(Amendment\) Measure 1974 \(No. 2\), s. 1](#)
- F49** Words in s. 56(1) inserted (1.6.1992) by [Church of England \(Miscellaneous Provisions\) Measure 1992 \(No. 1\), s. 7\(b\)\(i\)](#); Instrument dated 27.5.1992 made by the Archbishops of Canterbury and York.
- F50** Words in s. 56(1) omitted (1.6.1992) by virtue of [Church of England \(Miscellaneous Provisions\) Measure 1992 \(No. 1\), s. 7\(b\)\(i\)](#); Instrument dated 27.5.1992 made by the Archbishops of Canterbury and York.
- F51** S. 56(1A) inserted (1.6.1992) by [Church of England \(Miscellaneous Provisions\) Measure 1992 \(No. 1\), s. 7\(b\)\(ii\)](#); Instrument dated 27.5.1992 made by the Archbishops of Canterbury and York.

### 57 Consequences of declarations under this Part of this Measure.

Where a declaration of deprivation or of disqualification is made against any person pursuant to the provisions of either of the last two foregoing sections, such declaration shall have effect subject to the provisions of Part VIII of this Measure, and the like consequences shall ensue in all respects as if such person had been found guilty of an offence under this Measure and such a censure had been pronounced against him.

[<sup>F52</sup>Section 49(5) of this Measure shall have effect for the purposes of section 55 of this Measure with the substitution, for the reference to the bishop of the diocese in which the proceedings were instituted, of a reference to the bishop of the relevant diocese within the meaning of the said section 55.]

#### Textual Amendments

- F52** Para. inserted by [Ecclesiastical Jurisdiction \(Amendment\) Measure 1974 \(No. 2\), s. 2\(1\)](#)

## PART X

### COSTS

### 58 Payment of costs of bishop and promoter by Commissioners.

The Commissioners may at their absolute discretion pay out of their general fund the whole or contribute any part of costs and expenses which have been incurred by—

- (a) any archbishop or bishop (other than an archbishop or bishop himself accused of an offence cognisable under section fourteen of this Measure in relation to the costs and expenses incurred as a result of such accusation)—
  - (i) in or in relation to or directly or indirectly arising out of legal proceedings authorised, taken or contemplated in any court or before any commission, committee or examiner (and notwithstanding that proceedings are not eventually taken) by any person in respect of any offence cognisable under section fourteen of this Measure, or
  - (ii) in relation to any declaration made or to be made in accordance with the provisions of Part IX of this Measure; and
- (b) any person nominated under the provisions of this Measure to promote proceedings in respect of any such offence as is mentioned in the foregoing subsection:

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Provided that the Commissioners before paying the whole or any part of any costs and expenses in pursuance of this section shall first be satisfied that they are reasonable in amount.

59 ..... F53

**Textual Amendments**

**F53** S. 59 repealed by Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 (No. 1, SIF 21:1), s. 14(2), Sch. 3

**60 Powers of courts and commissions in regard to costs.**

- (1) [F54 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] Any court or commission having jurisdiction under this Measure shall have power at any stage of the proceedings to order any party to give security for costs.
- (2) Any court, commission, committee or examiner shall have power at its discretion to make an order for payment of taxed costs against any party and may take into account the fact that the whole or part of the costs of a complainant or accused person are being or have been met out of the [F55 Fund maintained under Part I of the Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988].
- (3) An award of costs to any person under the last foregoing subsection may direct that, instead of taxed costs, that person shall be entitled—
  - (a) to a proportion specified in the direction of the taxed costs or to the taxed costs from or up to a stage of the proceedings so specified; or
  - (b) to a gross sum so specified in lieu of taxed costs.
- (4) In this section the expression “costs” includes fees, charges, disbursements, expenses and remuneration and the expression “taxed costs” [F56 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.] means costs taxed by a registrar in the prescribed manner.
- [F57 (5) Where an order for payment of taxed costs has been made under subsection (2) of this section any party to the proceedings may appeal to the chancellor of the diocese in which the proceedings took place against the registrar’s taxation, and on any such appeal the chancellor may confirm or vary the registrar’s taxation.
- (6) An appeal under subsection (5) of this section shall be lodged and conducted in such manner as may be prescribed.]

**Textual Amendments**

**F54** Words inserted by Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 (No. 1, SIF 21:1), s. 14(1), Sch. 2 para. 1(a)



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- F55** Words substituted by Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 (No. 1, SIF 21:1), s. 18(1), **Sch. 2 para. 1(b)**
- F56** Words inserted by Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 (No. 1, SIF 21:1), s. 14(1), **Sch. 2 para. 1(c)**
- F57** S. 60(5)(6) inserted (1.3.1993) by Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (No. 1, SIF 21:8), s. 8(1), **Sch. 4 para. 9** (with s. 31(6)); Instrument dated 16.2.1993 made by the Archbishops of Canterbury and York

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

- C4** S. 60(3) applied by S.I. 1990/2335, **rule 9(4)**

**61 Recovery of costs.**

- (1) Where an order or direction for the payment of costs is made against any person under the last foregoing section such costs may be recovered by the person in whose favour the order for payment of costs is made by proceedings in the county court of the district in which the award or direction was made or, if the sum recoverable exceeds the amount which under any enactment for the time being in force is recoverable in the county court in respect of a contract debt, then by proceedings in the High Court of Justice, in either case in all respects as if the said sum was a contract debt payable by the person against whom the order was made.
- (2) In any proceedings in a civil court for recovery of costs a certificate purporting to be signed by the registrar of the diocese or province within which the relevant award or direction for payment of costs was made, stating that the sum specified in the certificate is the sum due to be paid by the person mentioned therein pursuant to an order or direction for payment of costs under the last foregoing section, shall be conclusive evidence of the facts so certified.

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

- C5** S. 61 applied by S.I. 1990/2335, **rule 9(4)**

**62 Payment of expenses of courts, &c. by Central Board.**

- (1) Save in so far as the same shall be payable by any other person under this Measure or any order or rule for the time being in force, the Central Board shall pay the costs and expenses of all courts, commissions, committees and examiners constituted or appointed under this Measure for the purpose of proceedings in respect of offences cognisable under section fourteen thereof:  
Provided that the Central Board before paying the whole or any part of any costs and expenses in pursuance of this section shall first be satisfied that they are reasonable in amount.
- (2) The Commissioners shall have power from time to time at their absolute discretion to contribute out of their general fund such sums as they shall think fit in relief of the liability of the Central Board under the foregoing subsection.

**63 Fees payable in or in connection with proceedings under this Measure.**

The fees to be demanded, taken and received by any legal officer as remuneration for the performance by him of the duties of his office in or in connection with any



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proceedings or contemplated proceedings or otherwise under or arising out of the provisions of this Measure shall be fixed in manner provided by the [<sup>F58</sup>Ecclesiastical Fees Measure 1986]

**Textual Amendments**

**F58** Words substituted by [Ecclesiastical Fees Measure 1986 \(No. 2, SIF 21:1\), s. 11\(2\)](#)

**PART XI**

**RULE COMMITTEE**

[<sup>F59</sup>**64** **The Rule Committee.**

(1) There shall be a Rule Committee which shall consist of the following persons, namely:

- 
- The Lord Chancellor, who shall be the Chairman of the Committee;
- The Archbishop of Canterbury or a member of the Upper House of the Convocation of his Province appointed by him;
- The Archbishop of York or a member of the Upper House of the Convocation of his Province appointed by him;
- Two persons appointed by the Lord Chancellor of whom at least one shall hold, or have held, high judicial office;
- The Dean of the Arches and Auditor;
- The Prolocutor of the Lower House of the Convocation of Canterbury or a member of that House appointed by him;
- The Prolocutor of the Lower House of the Convocation of York or a member of that House appointed by him;
- The provincial registrars of the provinces of Canterbury and York;
- One chancellor and one diocesan registrar from each province to be appointed by the archbishop of that province.

(2) Any five members of the Rule Committee, one of whom shall be the Lord Chancellor or one of the persons appointed by him, may exercise all the powers of the Rule Committee.

(3) In the absence of the Lord Chancellor from any meeting of the Rule Committee, the chair shall be taken by a person who holds or has held high judicial office appointed a member of the Committee by the Lord Chancellor.]

**Textual Amendments**

**F59** [S. 64](#) repealed (1.3.1993) by [Care of Churches and Ecclesiastical Jurisdiction Measure 1991 \(No. 1, SIF 21:8\), s. 32\(2\), Sch.8](#) (with s. 31(6)); Instrument dated 16.2.1993 made by the Archbishops of Canterbury and York

[<sup>F60</sup>**65** **Functions of the Rule Committee.**

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### Textual Amendments

**F60** S. 65 repealed (1.3.1993) by Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (No. 1, SIF 21:8), s. 32(2), **Sch. 8** (with s. 31(6)); Instrument dated 16.2.1993 made by the Archbishops of Canterbury and York

## 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>F61</sup>in the province of York and “diocesan” shall be construed accordingly;

“high judicial office” has the meaning assigned to it by section twenty-five of the <sup>M16</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 [<sup>F62</sup>section 26 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991];

“relevant province” in relation to—

(a) a House of Convocation;

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- (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

- F61** Words repealed by virtue of s. 85 of this Measure and Church Act 1969 (an Act of Tynwald)
- F62** Words in s. 66(1) substituted (1.3.1993) by [Care of Churches and Ecclesiastical Jurisdiction Measure 1991 \(No. 1, SIF 21:8\)](#), s. 8(1), [Sch. 4 para.10](#) (with s. 31(6)); [Instrument dated 16.2.1993 made by the Archbishops of Canterbury and York](#)

#### Marginal Citations

- M16** 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.

### 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.

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- (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.
- (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 [F63] 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 M17 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

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he thinks fit and may, if necessary, sequester the said profits for the payment of the part thereof so assigned.]

#### Textual Amendments

**F63** Words substituted by [Endowments and Glebe Measure 1976 \(No. 4\), s. 49\(2\) Sch. 5 para. 2](#)

#### Marginal Citations

**M17** [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>F64</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

**F64** 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, 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:—

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- (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 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

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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>F65</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>F65</sup>sentence, decree, finding or order]; and
  - (c) in the case of a conviction [<sup>F66</sup>decree] or order against which there is no right of appeal from the date of the conviction [<sup>F66</sup>decree] or order.
- (2) After the conviction of a clerk in Holy Orders or [<sup>F65</sup>decree, finding or order] against such a person by or of a temporal court becomes conclusive a certificate of such conviction [<sup>F65</sup>decree, finding or order] shall be conclusive proof in an ecclesiastical court that he has committed the act therein specified.
- (3) In the event of any such conviction by or [<sup>F65</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>F65</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.

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#### Textual Amendments

**F65** Words substituted by [Ecclesiastical Jurisdiction \(Amendment\) Measure 1974 \(No. 2\), s. 2\(2\)](#)

**F66** 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.

[<sup>F67</sup>(2) If any person does or omits to do anything in connection with proceedings before, or with an order made by, such court or commission which is in contempt of that court or commission by virtue of any enactment or which would, if the court or commission had been a court of law having power to commit for contempt, have been in contempt of that court, the judge or presiding judge of the court or the presiding member of the commission, as the case may be, may certify the act or omission under his hand to the High Court.

(3) On receiving a certificate under subsection (2) above the High Court may thereupon inquire into the alleged act or omission and after hearing any witnesses who may be produced against or on behalf of the person who is the subject of the allegation, and after hearing any statement that may be offered in defence, exercise the same jurisdiction and powers as if that person had been guilty of contempt of the High Court.

(4) In this section “order” includes a special citation under subsection (2) of section 13 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 and an injunction under subsection (4) of that section.]

#### Textual Amendments

**F67** [S. 81\(2\)-\(4\)](#) substituted (1.3.1993) for [s. 81\(2\)\(3\)](#) by [Care of Churches and Ecclesiastical Jurisdiction Measure 1991 \(No. 1, SIF 21:8\)](#), [s. 8\(1\)](#), [Sch. 4 para.11](#) (with [s. 31\(6\)](#)); [Instrument dated 16.2.1993 made by the Archbishops of Canterbury and York](#)

### 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—

(a) the Courts of Audience and, subject to the provisions of the next following section, archdeacons courts,



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- (b) all original jurisdiction exercisable by the Arches Court of Canterbury and the Chancery Court of York, and
  - (c) the jurisdiction of consistory courts to hear and determine proceedings for the recovery of tithes 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.
- (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>M18</sup>Ecclesiastical Commissioners Act 1840, nothing in this Measure shall authorise proceedings against a holder of an office in a Royal Peculiar.

#### **Marginal Citations**

**M18** 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

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“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).

### Modifications etc. (not altering text)

- C6** 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)

- C7** 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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## SCHEDULES

### FIRST SCHEDULE

Sections 2, 3, 27.

#### OATHS TO BE TAKEN AND SUBSCRIBED, AND DECLARATION TO BE MADE AND SUBSCRIBED, BY JUDGES OF CONSISTORY, ARCHES AND CHANCERY COURTS

##### PART I

###### OATHS TO BE TAKEN AND SUBSCRIBED BY ALL JUDGES

“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.”

##### PART II. .... F68

###### Textual Amendments

**F68** Sch. 1 Pt. II repealed by [Church of England \(Worship and Doctrine\) Measure 1974 \(No. 3\)](#), [Sch. 2](#)

### SECOND SCHEDULE

#### EXAMINERS AND ASSESSORS

##### PART I

###### PROVISION OF EXAMINERS UNDER PART IV OF THE MEASURE

- 1 (1) For the purpose of enabling examiners to be appointed for the purpose of inquiring under section twenty-four of this Measure into complaints laid under Part IV, the [<sup>F69</sup>diocesan synod] of each diocese shall appoint a committee whose duty it shall be to draw up with the approval of the [<sup>F69</sup>diocesan synod], and from time to time to revise with the like approval, a panel of not less than three persons [<sup>F70</sup>having a 7 year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990) and] possessing such experience as the chancellor shall consider appropriate and as to whom the committee is satisfied that they are communicants.

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- (2) The term of office of a member of the panel drawn up under the foregoing sub-paragraph shall be such as may be determined by the [<sup>F69</sup>diocesan synod] before the time of his appointment to the panel.

#### Textual Amendments

**F69** Words substituted by virtue of [Synodical Government Measure 1969 \(No. 2\), s. 4\(7\)](#)

**F70** Words substituted by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\), s. 71\(2\), Sch. 10 para. 20](#)

- 2 The examiner to whom a complaint is referred for inquiry under paragraph (b) of subsection (1) of section twenty-three of this Measure shall be selected from the members of the panel by ballot conducted by the registrar of the diocese in the presence of such (if any) of the parties as desire to be present by themselves or their representatives.
- 3 A person selected under this Part of this Schedule as an examiner for the purpose of inquiry into a complaint laid under Part IV of this Measure shall, notwithstanding the expiry during the course of such inquiry of his term of office as a member of the panel be capable of continuing to act as an examiner as if his term of office had extended until he had completed his duties under section twenty-four of this Measure in relation to that complaint.
- 4 If a member of the panel ceases to hold a qualification required by sub-paragraph (1) of paragraph 1 of this Part of this Schedule or resigns or dies or becomes incapable of acting the bishop of the diocese shall declare a vacancy and may direct the committee referred to in that paragraph to appoint a duly qualified person to hold office for the remainder of the term of office of the member whom he replaces.

## PART II

### PROVISION OF ASSESSORS TO SIT WITH CONSISTORY COURT UNDER PART IV OF THE MEASURE

- 5 (1) For the purpose of providing assessors to sit with consistory courts in the hearing and determination of proceedings under Part IV of this Measure, the [<sup>F71</sup>diocesan synod] of each diocese shall appoint a committee whose duty it shall be to draw up with the approval of the [<sup>F71</sup>diocesan synod], and from time to time to revise with the like approval—
- (a) a panel of six priests;
  - (b) a panel of six laymen.
- (2) Before a person is appointed to a panel of laymen drawn up under the foregoing sub-paragraph, the body proposing to make the appointment shall satisfy themselves that he is a communicant.
- (3) The term of office of a member of a panel drawn up under sub-paragraph (1) of this paragraph shall be such period, not exceeding six years, as may be determined before his appointment.

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**Textual Amendments**

**F71** Words substituted by virtue of [Synodical Government Measure 1969 \(No. 2\), s. 4\(7\)](#)

- 6 The four assessors with whom the consistory court of a diocese trying a person under Part IV of this Measure is required to sit shall be selected from each panel in equal proportions by ballot conducted by the registrar of the diocese in the presence of such (if any) of the parties as desire to be present by themselves or their representatives.
- 7 If either party shall object to any assessor for reasons approved by the chancellor he shall be discharged from sitting with the court.
- 8 If by reason of any objection or non-attendance or otherwise the requisite number of assessors is not obtained before the trial, the chancellor shall, if there is time, cause a priest or layman, as the case may require, to be chosen from the panel by another ballot, but, if there is not time, shall appoint some priest or layman, as the case may require, who is willing to serve and to whom neither party objects for cause shown and deemed to be sufficient by the chancellor, to make up the full number of assessors required to sit with the court.
- 9 A person selected under this Part of this Schedule to act as assessor at the trial of a person under Part IV of this Measure by a consistory court shall, notwithstanding the expiry during the trial of his term of office as a member of the panel from which he was selected, be capable of continuing to act as assessor at that trial as if his term of office had extended until the conclusion of the trial.
- 10 If a member of either panel resigns or dies or becomes incapable of acting the bishop of the diocese shall declare a vacancy and may direct the committee referred to in paragraph five in this Part of this Schedule to appoint a priest or layman as the case may be to hold office for the remainder of the term of office of the member whom he replaces.

F72F72 THIRD SCHEDULE

**Textual Amendments**

**F72** [Sch. 3](#) repealed by [Ecclesiastical Jurisdiction \(Amendment\) Measure 1974 \(No. 2\), s. 2\(3\)](#)

F72

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## FOURTH SCHEDULE

Section 86

### AMENDMENTS OF OTHER ENACTMENTS.

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

- C8** The text of Sch. 4 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as indicated, does not reflect any amendments or repeals which may have been made prior to 1.2.1991

F73

#### Textual Amendments

- F73** Entry repealed by [Statute Law \(Repeals\) Act 1977 \(c. 18\)](#), [Sch. 1 Pt. V](#)

#### *The Pluralities Act, 1838.*

In section thirty-one, for the words “his chancellor or other competent judge” there shall be substituted the words “the bishop’s court”, and for the words “such chancellor or other judge” and the words “the judge” there shall be substituted the words “the court”; and the words “before such or any other competent ecclesiastical judge” shall be omitted.

#### *The Clerical Disabilities Act, 1870.*

In section four, in paragraph (3), the reference to the enactments mentioned in the first Schedule shall include a reference to this Measure.

#### *The Benefices Act, 1898.*

In sub-section (5) of section one for the words “under section two of the Clergy Discipline Act, 1892”, there shall be substituted “under section eighteen and Part IV of the Ecclesiastical Jurisdiction Measure, 1963”.

#### *The Benefices (Purchase of Rights of Patronage) Measure, 1933.*

In section eight, in subsection (1), for the words “The Rule Committee as defined by section 9 of the Clergy Discipline Act, 1892”, there shall be substituted the words “The Rule Committee constituted under section sixty-four of the Ecclesiastical Jurisdiction Measure, 1963”.

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FIFTH SCHEDULE

Section 87.

ENACTMENTS REPEALED

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

- C9** The text of Sch. 5 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

Session, and Chapter or Number	Title or Short Title	Extent of Repeal
13 Edw. 1. ...	The Statute of Circumspecte Agatis.	The whole statute.
18 Edw. 1. ...	The Statute of the Writ of the Consultation.	The whole statute.
9 Edw. 2. Stat. 1.	Aritcles for the Clergy...	Chapters I, II, VI and VII.
25 Edw. 3. Stat. 6.	An Ordinance for the Clergy made at Westminster in the Twenty-fifth year of the Reign of K. Edward III.	Chapter VIII.
50 Edw. 3. ...	Of the Pardons and Graces granted by the King to the Commonalty of His Realm of England; in the Fiftieth year of King Edward III.	The whole Act.
2 Hen. 5. Stat. 1.		Chapter III.
21 Hen. 8. c. 6	The Mortuaries Act, 1529...	The whole Act.
23 Hen. 8. c. 9	The Ecclesiastical Jurisdiction Act, 1531.	The whole Act.
24 Hen. 8. c. 12	The Ecclesiastical Appeals Act, 1532.	In section three, the words from “in manner and forme as hereafter ensueth” to the end.  In section four, the words from the beginning to “any other courte or courtes”.
25 Hen. 8. c. 19.	The Submission of the Clergy Act, 1533.	In section four, the words from “but that all manner of appelles” to the end.  Section six.
32 Hen. 8. c. 7.	The Tithe Act, 1540 ...	In section five, the proviso.
2 & 3 Edw. 6. c. 1.	The Act of Uniformity, 1548	Sections five, twelve and thirteen.
5 & 6 Edw. 6. c. 4.	The Brawling Act, 1551 ...	The whole Act.

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1 Mary, Sess. 2. c. 3.	The Brawling Act, 1553 ...	Sections five and six.
1 Eliz. 1. c. 2.	The Act of Uniformity, 1558	Sections six, eleven and twelve.
5 Eliz. 1. c. 23.	The Writ De Excommunicato Capiendo Act, 1562.	The whole Act.
13 Eliz. 1. c. 12.	The Ordination of Ministers Act, 1571.	Section two.
1 Car. 1.c. 1...	The Sunday Observance Act, 1625.	The second proviso.
3 Car. 1. c. 2...	An Act for the further reformation of sondry abuses committed on the Lord's Day commonlie called Sunday.	The third proviso.
16 Car. 1. c. 11	An Act for repeal of a branch of a Statute primo concerning Commissioners for causes Ecclesiasticall.	The whole Act.
13 Car. 2. Stat. 1. c. 12.	The Ecclesiastical Jurisdiction Act, 1661.	The whole Chapter except section four.
29 Car. 2. c. 9.	The Ecclesiastical Jurisdiction Act, 1677.	The whole Act.
28 Geo. 2. c. 6.	The Mortuaries (Chester) Act, 1755.	The preamble and section one.
21 Geo. 3. c. 49.	The Sunday Observance Act, 1780.	Section seven.
31 Geo. 3. c. 32.	The Roman Catholic Relief Act, 1791.	In section twelve, the words "in any ecclesiastical court or elsewhere".
53. Geo. 3. c. 127.	The Ecclesiastical Courts Act, 1813.	Sections one, two and three and the Schedules.  In section five, the words "or in any Ecclesiastical Court".  In section seven, the second proviso.  The Schedules.
10 Geo. 4. c. 53.	The Ecclesiastical Courts Act, 1829.	The whole Act.
2 & 3 Will. 4. c. 92.	The Privy Council Appeals Act, 1832.	The whole Act.
2 & 3 Will. 4. c. 93.	The Ecclesiastical Courts (Contempt) Act, 1832.	The whole Act.
3 & 4 Vict. c. 86.	The Church Discipline Act, 1840.	The whole Act.



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3 & 4 Vict. c. 93.	The Ecclesiastical Courts Act, 1840.	The whole Act.
7 & 8 Vict. c. 59.	The Lecturers and Parish Clerks Act, 1844.	In section one, the words from “and in case” to the end, and section five.
10 & 11 Vict. c. 98.	The Ecclesiastical Jurisdiction Act, 1847.	Section nine.
17 & 18 Vict. c. 47.	The Ecclesiastical Courts Act, 1854.	The whole Act.
18 & 19 Vict. c. 41.	The Ecclesiastical Courts Act, 1855.	The whole Act.
23 & 24 Vict. c. 32.	The Ecclesiastical Courts Jurisdiction Act, 1860.	Section one.
33 & 34 Vict. c. 23.	The Forfeiture Act, 1870.	Section two in so far as it relates to ecclesiastical benefices and the holders thereof.
37 & 38 Vict. c. 85.	The Public Worship Regulation Act, 1874.	The whole Act.
39 & 40 Vict. c. 59.	The Appellate Jurisdiction Act, 1876.	In section fourteen the words from “Her Majesty may by Order in Council” to the end.
55 & 56 Vict. c. 32.	The Clergy Discipline Act, 1892.	The whole Act.
16 & 17 Geo. 5. No. 4.	The Ecclesiastical Commissioners Measure, 1926.	Section five.
26 Geo. 5. & 1 Edw. 8. No. 5.	The Ecclesiastical Commissioners (Powers) Measure, 1936.	Section nine.
10 & 11 Geo. 6. No. 1.	The Incumbents (Discipline) Measure, 1947.	The whole Measure.
12 & 13 Geo. 6. No. 1.	The Church Dignitaries (Retirement) Measure, 1949.	Part II.  In section thirteen, in subsection (1), the words “or Part II” and, in subsection (4), the words “and subsection (2) of section five”.  In section fourteen, the words “or both under Part II of this Measure and under the Incumbents (Discipline) Measure, 1947”. the words

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		<p>“or the said Measure of 1947”, in both places where they occur, the words “if the proceedings were taken under the Measure of 1945” and the words from “and (ii) if” to “under this Measure”.</p> <p>In section eighteen, in the definition of “prescribed” the words “the Incumbents (Discipline) Measure, 1947, or”.</p>
13 & 14 Geo. 6. No. 1.	The Incumbents (Discipline) Measure, 1947 (Amendment) Measure, 1950.	The whole Measure.
14 & 15 Geo. 6. c. 39.	The Common Informers Act, 1951.	In the Schedule, the entry relating to the Ecclesiastical Jurisdiction Act, 1531.
14 & 15 Geo. 6. No. 2.	The Bishops (Retirement) Measure, 1951.	Part III.
		<p>In section thirteen, the words “Part I or Part II of”.</p> <p>In section fifteen, the words from “and in the case” to the end.</p> <p>In section sixteen, in subsection (1), the definition of “The pensions authority” and in subsection (2), the words “or who is a complainant or promoter under Part III hereof”.</p>
1 & 2 Eliz. 2. No. 3.	The Incumbents (Discipline) and Church Dignitaries (Retirement) Amendment Measure, 1953.	The whole Measure.

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