



Incumbents (Vacation of Benefices) Measure 1977

1977 No. 1

A Measure passed by the General Synod of the Church of England to make provision, including provision for the vacation of the benefice, where there has been a serious breakdown of the pastoral relationship between an incumbent and his parishioners or where an incumbent is unable by reason of age or infirmity to discharge adequately the duties attaching to his benefice, and for purposes connected therewith. [30th June 1977]

PART I

INSTITUTION OF ENQUIRY INTO PASTORAL SITUATION IN A PARISH

1 Request for enquiry into pastoral situation in a parish.

- (1) A request for an enquiry under this Part of this Measure into the pastoral situation in a parish on the ground that there has been a serious breakdown of the pastoral relationship between the incumbent and his parishioners to which the conduct of the incumbent or of his parishioners or of both has contributed over a substantial period may be made by—
 - (a) the incumbent of the benefice to which the parish belongs; or
 - (b) the archdeacon in whose archdeaconry the parish is; or
 - (c) a majority of not less than two-thirds of the lay members of the parochial church council of the parish present and voting at a duly convened meeting of that council on a resolution that the request be made; or
 - (d) where the incumbent mentioned in paragraph (a) above is the archdeacon mentioned in paragraph (b) above, a majority of the members of the bishop's council and standing committee of the diocesan synod of the diocese in which the parish is.

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- (2) A request for such an enquiry shall be made in writing to the bishop of the diocese in which the parish in question is and the secretary of the diocesan synod of that diocese and shall contain particulars of the facts which appear to the person or persons making the request to justify an enquiry.
- (3) A request for such an enquiry made by the persons mentioned in subsection (1)(c) or (d) above must—
 - (a) be signed by all of those persons and include the address of each of them; and
 - (b) specify two persons from among those signing the request who are willing to act as representatives of those persons in connection with the enquiry and indicate which of those two is willing to conduct and receive correspondence relating to the enquiry (in this Measure referred to as “the designated representative”).
- (4) A request for such an enquiry made by the persons mentioned in subsection (1)(c) above must also contain a statement that the persons who have signed the request constitute a majority of two-thirds or more of those lay members of the parochial church council of the parish in question who were present at a duly convened meeting of that council and voted thereat on a resolution that the request be made.
- (5) A request for such an enquiry made by the persons mentioned in subsection (1)(d) above must also contain a statement that the persons who have signed the request constitute a majority of the members of the bishop’s council and standing committee of the diocesan synod of the diocese in which the parish in question is.
- (6) Where a request made under this section is received by the secretary of the diocesan synod, he shall notify—
 - (a) the incumbent of the benefice to which the parish in question belongs, unless it was he who made the request;
 - (b) the archdeacon in whose archdeaconry that parish is, unless it was he who made the request; and
 - (c) the secretary of the parochial church council of that parish, unless it was the persons mentioned in subsection (1)(c) above who made the request.

2 Action to be taken by archdeacon in certain cases before institution of enquiry.

- (1) Where the bishop of a diocese receives a request under section 1 of this Measure, then, unless—
 - (a) the request was made by the archdeacon in whose archdeaconry the parish in question is, or
 - (b) that archdeacon is the incumbent of the benefice to which the parish in question belongs,
 the bishop shall direct the first mentioned archdeacon to take such steps as are mentioned in subsection (4) below and to report in accordance with subsection (5) below.
- (2) Where the archdeaconry in which the parish in question is situated is vacant, the bishop shall appoint some other archdeacon holding office in the diocese to act in the case and shall inform the secretary of the diocesan synod accordingly.
- (3) Where the archdeacon in whose archdeaconry the parish in question is situated is of opinion that it would not be right or expedient for him to act in the case, he shall so inform the bishop and the bishop shall appoint some other archdeacon holding office

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in the diocese to act in his place and shall inform the secretary of the diocesan synod accordingly.

- (4) On receiving the directions of the bishop the archdeacon shall take such steps as he considers appropriate to promote better relations between the incumbent and his parishioners and to remove the causes of their estrangement.
- (5) Not more than six weeks after receiving such directions the archdeacon shall report to the bishop whether in his opinion an enquiry into the pastoral situation in the parish to which the request relates would be in the best interest of the incumbent and his parishioners and should accordingly be instituted.
- (6) On receiving the archdeacon's report the bishop shall inform the secretary of the diocesan synod of the archdeacon's opinion as stated in his report and direct him to inform the incumbent, the secretary of the parochial church council and the designated representative, if any, of it.

3 Institution of enquiry.

- (1) Where—
 - (a) the request for an enquiry under this Part of this Measure was made by the archdeacon in whose archdeaconry the parish in question is or that archdeacon is the incumbent of the benefice to which the parish in question belongs; or
 - (b) the archdeacon appointed to act under section 2 of this Measure reports that in his opinion such an enquiry should be instituted; or
 - (c) within six months after the making of his report the archdeacon informs the bishop that notwithstanding that he did not report as aforesaid he considers that the circumstances are such that such an enquiry is nevertheless required; or
 - (d) within six months after the making of the archdeacon's report the incumbent, the secretary of the parochial church council or the designated representative, if any, informs the bishop that notwithstanding that the archdeacon did not report as aforesaid such an enquiry is nevertheless required,

then, subject to subsections (2) and (3) below and section 4 of this Measure, the bishop shall direct the secretary of the diocesan synod to institute such enquiry.

- (2) Where it is the secretary of the parochial church council or the designated representative who informs the bishop as mentioned in subsection (1)(d) above, the bishop may, if he thinks fit and without prejudice to subsection (3) below, give a direction under subsection (1) above but shall not be obliged to do so.
- (3) Where the person holding the office of incumbent of the benefice to which the parish in question belongs has held that office for less than three years at the date on which, but for this subsection, the bishop would be required or have power to give a direction under subsection (1) above, the bishop may, if he thinks fit, give such a direction but shall not be obliged to do so.

4 Provisions with respect to resignation of benefice by incumbent.

- (1) Where a request for an enquiry under this Part of this Measure is made in accordance with section 1 thereof, the incumbent concerned may when, or at any time before, he receives a notification from the bishop of the diocese under section 12(1) of this Measure request the bishop to accept his resignation of his benefice, and the bishop

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may, if he thinks it would be in the interest of the Church to do so, accept the resignation.

- (2) An incumbent who has been informed that the bishop has accepted his resignation of his benefice under subsection (1) above shall execute a deed resigning his benefice as from such date as may be specified in the deed, being a date not later than three months after the date on which he was informed as aforesaid, and shall vacate the parsonage house or other his official residence not later than three months after the date on which the benefice became vacant by virtue of that deed.
- (3) Where the bishop accepts the resignation of an incumbent under this section, he shall notify the secretary of the diocesan synod that no further steps are to be taken in connection with the enquiry and direct him to inform the secretary of the parochial church council of the parish in question, the designated representative, if any, and, if necessary, the archdeacon in whose archdeaconry that parish is and the members of the body by which the enquiry was to have been, or is being, conducted of that fact.

5 Enquiry to be conducted by diocesan committee or, at option of incumbent, provincial tribunal.

- (1) Subject to subsection (2) below, an enquiry into the pastoral situation in a parish shall be conducted by a diocesan committee of enquiry for the diocese in which the parish in question is situated.
- (2) If the incumbent of the benefice to which the parish in question belongs so elects, such an enquiry shall be conducted by a provincial tribunal for the province in which the said diocese is situated.
- (3) Before taking any steps to institute such enquiry the secretary of the diocesan synod shall notify the incumbent concerned in writing of his right to make an election under this section and of the period within which the election must be made.
- (4) An election under this section shall be made within the period of fourteen days beginning with the date on which a notice under subsection (3) above is given to the incumbent and shall be made in writing to the said secretary.

PART II

INSTITUTION OF ENQUIRY INTO DISABILITY OF INCUMBENT

6 Enquiry whether incumbent is unable to discharge duties by reason of age or infirmity.

- (1) Subject to subsection (2) below, in any case where the bishop of a diocese is satisfied that it is proper to do so he may by notice in writing instruct the secretary of the diocesan synod to constitute a diocesan committee of enquiry for the purpose of enquiring and reporting to the bishop whether in the opinion of the committee the incumbent of a benefice in the diocese is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to his benefice and, if so, whether it is desirable that he should resign his benefice or be given assistance in discharging those duties.
- (2) This section shall not apply to an incumbent who is also—

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- (a) a suffragan bishop to whom the ^{M1}Bishops (Retirement) Measure 1951 applies; or
- (b) a dean, provost or archdeacon to whom the ^{M2}Church Dignitaries (Retirement) Measure 1949 applies.

Marginal Citations

- M1** 1951 No. 2.
M2 1949 No. 1.

PART III

ENQUIRIES AND SUBSEQUENT PROCEEDINGS

7 Constitution and procedure of committees and tribunals.

- (1) Diocesan committees of enquiry for the purposes of this Measure shall be constituted in accordance with the provisions of Part I of the Schedule to this Measure and provincial tribunals for the said purposes shall be constituted in accordance with the provisions of Part II of that Schedule.
- (2) The provisions of Part III of the said Schedule shall have effect with respect to the procedure on and in connection with an enquiry conducted by any such committee or tribunal.
- (3) A diocesan committee of enquiry shall have power to appoint a barrister or solicitor to advise and assist the committee in the exercise of its functions.
- (4) Without prejudice to subsection (5) below, at any meeting of any such committee or tribunal to which the incumbent concerned is invited, or at which he is entitled to be present, he may, if he so desires, be assisted, or in his absence represented, by some other person whether having professional qualifications or not.
- (5) In the case of an enquiry under Part I of this Measure conducted by a provincial tribunal, the following persons, that is to say,—
 - (a) the incumbent concerned;
 - (b) the archdeacon in whose archdeaconry the parish to which the enquiry relates is;
 - (c) the parochial church council of that parish; and
 - (d) if the request for the enquiry was made by the persons mentioned in section 1(1)(c) or (d) of this Measure, the persons specified in the request as being willing to act as the representatives of the first mentioned persons,may be represented by a barrister or solicitor.

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[^{F1}7A Medical examinations.

- (1) The tribunal by which an enquiry under Part I or II of this Measure is being conducted may direct that the incumbent concerned should undergo a medical examination in

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accordance with rules made under section 18 of this Measure for the purpose of obtaining a report on his mental or physical condition; and the tribunal may at any time revoke or vary a direction given under this subsection.

- (2) Where a tribunal gives a direction under subsection (1) above and the incumbent concerned fails to take any step required of him for the purpose of giving effect to the direction, the tribunal may draw such inferences (if any) from that fact as appear proper in the circumstances, without prejudice to the drawing of any other inferences that may properly be drawn by the tribunal in the course of the enquiry.]

Textual Amendments

F1 S. 7A inserted (1.9.1994) by 1993 Measure No. 1, s.5 (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York.

8 Ancillary provisions with respect to enquiry under Part I.

- (1) In the case of an enquiry under Part I of this Measure, the secretary of the diocesan synod shall notify—
- (a) the secretary of the parochial church council of the parish to which the enquiry relates, and
 - (b) the secretary of the parochial church council of any other parish belonging to the benefice of which the incumbent concerned is the incumbent,
- of the institution of the enquiry and ask him whether that council wishes to make representations to the committee or tribunal which is to conduct the enquiry.
- (2) In the case of an enquiry under the said Part I, the secretary of the diocesan synod shall supply each member of the committee or tribunal by which the enquiry is to be conducted with a copy of the request for such enquiry and, in the case of an enquiry to which subsection (1) above applies, shall inform the committee or tribunal, as the case may be, whether or not any parochial church council wishes to make representations to it.

9 Report to be made to the bishop.

- (1) Subject to subsection (2) below, the committee or tribunal by which an enquiry under Part I of this Measure was conducted shall report to the bishop whether in its opinion there has been a serious breakdown of the pastoral relationship between the incumbent concerned and his parishioners and whether in its opinion the breakdown is one to which the conduct of the incumbent or of his parishioners or of both has contributed over a substantial period.
- (2) Where the committee or tribunal by which such enquiry was conducted is of opinion that the incumbent concerned is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to his benefice it may so report to the bishop instead of reporting in accordance with subsection (1) above.
- (3) The committee by which an enquiry under Part II of this Measure was conducted shall report to the bishop whether in its opinion the incumbent to which the enquiry related is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to his benefice.

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- (4) Where the committee or tribunal is of opinion that there has been such a breakdown as is mentioned in subsection (1) above, or, as the case may be, is of opinion that the incumbent in question is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to his benefice, then, subject to subsection (5) below, it shall include in its report its recommendations as to the action to be taken by the bishop.
- (5) A report to the bishop under this Measure shall not include a recommendation—
- (a) in a case to which section 10 of this Measure applies, that the bishop should execute a declaration of avoidance in relation to the benefice of the incumbent concerned, or
 - (b) in a case to which section 11 of this Measure applies, that it is desirable that the incumbent concerned should resign his benefice,
- unless four or more members of the committee or tribunal, as the case may be, were in favour of making that recommendation.

VALID FROM 01/09/1994

[^{F2}9A Inhibition in disability cases.

- (1) Subject to the following provisions of this section, where—
- (a) the bishop of a diocese has instructed the secretary of the diocesan synod to institute an enquiry under Part II of this Measure; or
 - (b) the tribunal by which an enquiry under Part I of this Measure was conducted has reported to the bishop in accordance with section 9(2) of this Measure,
- and it appears to the bishop that it is desirable in the interests of the Church of England that he should take action under this section, it shall be lawful for the bishop to cause a notice to be served on the incumbent who is the subject of the enquiry inhibiting him from executing or performing without the consent of the bishop any such right or duty of or incidental to his office as the bishop may specify.
- (2) A notice of inhibition shall not be served under subsection (1) above in the circumstances mentioned in paragraph (a) of that subsection after the tribunal by which the enquiry was conducted has made its report to the bishop unless it reports that in its opinion the incumbent concerned is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to his benefice.
- (3) Where the tribunal has reported to the bishop that in its opinion the incumbent concerned is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to his benefice, a notice of inhibition shall not be served under subsection (1) above after the expiry of the period of three months following the making of the report unless—
- (a) the bishop has notified the incumbent under section 11(2)(a) of this Measure that it is desirable that he should resign his benefice, in which case such a notice may be served at any time before he ceases to be the incumbent; or
 - (b) the bishop has given the incumbent leave of absence under section 11(2)(c) of this Measure, in which case such a notice may be served at any time during the leave of absence.
- (4) A notice of inhibition served under subsection (1) above shall cease to have effect—

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- (a) if it is served before the tribunal makes its report to the bishop, on the making of the report unless it reports that the incumbent concerned is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to his benefice; or
 - (b) on the expiry of the period of three months following the making of the report to the bishop unless the bishop has taken action under section 11(2)(a) or (c) of this Measure; or
 - (c) if the bishop gives the incumbent leave of absence under section 11(2)(c) of this Measure, on the expiry of the leave of absence; or
 - (d) on the benefice of the incumbent becoming vacant.
- (5) The bishop may at any time revoke a notice of inhibition served under this section.]

Textual Amendments

F2 S. 9A inserted (1.9.1994) by 1993 Measure No. 1, s.6 (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

10 Powers of bishop in cases of breakdown of pastoral relationship.

- (1) The provisions of this section shall have effect where the committee or tribunal by which an enquiry under Part I of this Measure was conducted reports to the bishop that in its opinion there has been such a breakdown as is mentioned in section 9(1) of this Measure.
- (2) If, but only if, the committee or tribunal so recommends, the bishop shall execute a declaration of avoidance declaring the benefice of the incumbent concerned vacant as from a date specified in the declaration, being a date not less than three or more than six months after the date on which the declaration is made.
- (3) Where the incumbent concerned holds two or more benefices in plurality, the bishop may include both or all of those benefices in such a declaration notwithstanding that the recommendation of the committee or tribunal related to one only of them.
- (4) Where the bishop executes a declaration under subsection (2) above, he shall disqualify the incumbent concerned from executing or performing without the consent of the bishop any right or duty of or incidental to his office during the period beginning with the date on which the declaration is executed and ending with the date on which the benefice or benefices of the incumbent will become vacant in accordance with the declaration.
- (5) Where the committee or tribunal reports to the bishop that in its opinion the serious breakdown of the pastoral relationship between the incumbent concerned and his parishioners is one to which the conduct of the incumbent has contributed over a substantial period, the bishop may rebuke the incumbent and may, if he thinks fit, disqualify him from executing or performing without the consent of the bishop any such right or duty of or incidental to his office, and during such period, as the bishop may specify.
- (6) Where the committee or tribunal reports to the bishop that in its opinion such a breakdown as is mentioned in subsection (5) above is one to which the conduct of the parishioners has contributed over a substantial period, the bishop may rebuke such of them as he thinks fit.

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- (7) Without prejudice to the preceding provisions of this section, the bishop may give such pastoral advice and guidance to the incumbent concerned and his parishioners as he thinks appropriate having regard to the findings and recommendations of the committee or tribunal.
- (8) Where the bishop disqualifies an incumbent under subsection (4) or (5) above, he shall make such provision for the discharge of the duties attaching to the benefice of the incumbent during the period of disqualification as he thinks fit, and the incumbent shall not interfere with any person who may be appointed to discharge any of those duties.

11 Powers of bishop in cases of disability of incumbent.

- (1) The provisions of this section shall have effect where the committee or tribunal by which an enquiry under Part I or II of this Measure was conducted reports to the bishop that in its opinion the incumbent concerned is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to his benefice.
- (2) Subject to subsection (3) below, the bishop may—
 - (a) notify the incumbent concerned that it is desirable that he should resign his benefice; or
 - (b) with the consent of the incumbent concerned, appoint and license an assistant curate to assist the incumbent; or
 - (c) give the incumbent concerned leave of absence for a period not exceeding two years and make provision for the discharge of the duties attaching to the benefice during that period; or
 - (d) make such other temporary provision for the discharge of those duties as the bishop thinks fit.
- (3) The bishop shall not exercise the power conferred on him by subsection (2)(a) above unless the committee or tribunal recommended that it was desirable that the incumbent concerned should resign his benefice.
- (4) Where the incumbent concerned holds two or more benefices in plurality, then, without prejudice to section 17(4) of the ^{M3}Pastoral Measure 1968 (which makes provision with respect to the resignation of benefices held in plurality), the bishop may, if he thinks fit, include both or all of those benefices in a notification given by him to the incumbent under subsection (2)(a) above notwithstanding that the recommendation of the committee or tribunal related to one only of them.
- (5) An incumbent who is notified by the bishop under this section that it is desirable that he should resign his benefice or benefices shall execute a deed resigning it or them as from such date as may be specified in the deed, being a date not later than three months after the date on which the deed is executed.
- (6) Where the bishop notifies an incumbent under this section that it is desirable that he should resign his benefice or benefices, and the incumbent refuses or fails within one month after the notification is given to resign it or them in accordance with subsection (5) above, the bishop shall execute a declaration of avoidance declaring the benefice or benefices, as the case may be, vacant as from a date specified in the declaration, being a date not less than three or more than six months after the date on which the declaration is made.

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- (7) Where the bishop requests an incumbent under this section to consent to the appointment of an assistant curate and the incumbent refuses or fails within one month after the request is made to comply with it, the bishop shall execute a declaration of avoidance declaring the benefice vacant as from the date mentioned in subsection (6) above.
- (8) Where the incumbent concerned holds two or more benefices in plurality, the bishop may, if he thinks fit, include both or all of those benefices in a declaration executed by him under subsection (7) above.

Marginal Citations

M3 1968 No. 1.

12 Provisions supplementary to ss. 10 and 11.

- (1) As soon as practicable after the report of an enquiry under this Measure has been received by the bishop he shall notify the incumbent concerned of the action he is required or proposes to take under section 10 or 11 of this Measure, as the case may be, or, if no such action is required of, or proposed to be taken by, him, of that fact and shall send a similar notification to—
- (a) the archdeacon in whose archdeaconry the parish concerned is, unless he is the incumbent concerned;
 - (b) the secretary of the parochial church council of that parish; and
 - (c) the designated representative, if any.
- (2) The incumbent of any benefice which has been declared vacant under the said section 10 or 11 or which he had resigned in accordance with section 11(5) shall vacate the parsonage house or other his official residence not later than three months after the date on which the benefice became vacant by virtue of the declaration of avoidance or deed of resignation, as the case may be.
- (3) The bishop shall cause any declaration executed by him under the said section 10 or 11 to be filed in the registry of the diocese and a copy thereof to be sent to the incumbent concerned, to the patron of the benefice and to the Church of England Pensions Board.

13 Compensation of incumbent who retires, etc. before or after enquiry under Part I.

- (1) Where—
- (a) after obtaining the agreement of the bishop under subsection (1) of section 4 of this Measure, an incumbent resigns his benefice in accordance with subsection (2) of that section; or
 - (b) after an enquiry under Part I thereof, the bishop has declared the benefice of an incumbent vacant under section 10 of this Measure,
- the incumbent shall be entitled to compensation for any loss suffered by him in consequence of his resignation or the vacation of his benefice.
- (2) Without prejudice to the generality of subsection (1) above, the loss suffered by any such incumbent shall include loss arising from his ceasing to occupy the parsonage

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house or other his official residence and any expenses arising from his change of residence.

- (3) [^{F3}Paragraphs 6 to 15 and paragraph 18 of Schedule 4 to the Pastoral Measure 1983] (determination of claims of clergy to compensation under that Schedule and other matters relating thereto) shall have effect for the purpose of determining the right to and amount of compensation under this section and of prescribing the circumstances in which payments of compensation thereunder may be altered, terminated or suspended and of providing for other matters relating thereto with the substitution—
- (a) for any reference to compensation under or payable under that Schedule of a reference to compensation under or payable under this section;
 - [^{F4}(b) in paragraph 13(1) for the words “any benefice archdeaconry or office is dissolved, abolished, vacated or resigned in the circumstances mentioned in paragraphs 1 to 4” of the words “any benefice is resigned or vacated in the circumstances mentioned in section 4 or 10 of the Incumbents (Vacation of Benefices) Measure 1977.”]
- (4) Any rules made by the Church Commissioners under paragraph 15 of the said Schedule 4 (rules prescribing the procedure to be followed in proceedings under that Schedule) and for the time being in force shall, with any necessary modifications, apply in relation to proceedings under that Schedule as extended by subsection (3) above.

Textual Amendments

- F3** Words substituted by Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 (No. 1, SIF 21:1), s. 18(1), **Sch. 2 para. 3(a)**
- F4** S. 13(3)(b) substituted by Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 (No. 1, SIF 21:1), s. 18(1), **Sch. 2 para. 3(b)**

14 Provision with respect to pension of incumbent found to be unable to perform duties attaching to benefice.

- (1) Where—
- (a) after an enquiry under Part I of this Measure in which the committee or tribunal, as the case may be, reported to the bishop in accordance with section 9(2) thereof; or
 - (b) after an enquiry under Part II thereof,
- the incumbent concerned resigns his benefice consequent upon a notification from the bishop under section 11(2)(a) of this Measure or the bishop has declared the benefice of the incumbent vacant under that section, the incumbent shall be deemed for the purposes of the [^{F5}Church of England (Pensions) Measures 1961 to 1988] and any regulations approved by the General Synod under section 6 of the Clergy Pensions (Amendment) Measure 1972 to have become incapable through infirmity of performing the duties of his office on the date on which his resignation took effect or the date on which by virtue of the declaration his benefice became vacant, as the case may be, and to have satisfied the Church of England Pensions Board that he was so incapable and that the infirmity was likely to be permanent.
- (2) Subsection (1) above shall not apply to an incumbent who at whichever of the dates mentioned in that subsection applies in his case has attained the retiring age within the meaning of the said Measures and regulations.

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Textual Amendments

- F5** Words substituted by [Church of England \(Pensions\) Measure 1988 \(No. 4, SIF 21:5\)](#), ss. 10(3), 18(1), [Sch. 2 para. 22](#)

PART IV

SUPPLEMENTAL

15 ^{F6}

Textual Amendments

- F6** [S. 15](#) repealed by [Church of England \(Legal Aid and Miscellaneous Provisions\) Measure 1988 \(No. 1, SIF 21:1\)](#), s. 14(2), [Sch. 3](#)

16 Certain expenses to be paid by Diocesan Board of Finance.

- (1) The following expenses, that is to say—
- (a) any expenses incurred for the purpose of enabling a diocesan committee of enquiry or provincial tribunal to discharge its functions under this Measure;
 - (b) any travelling or other personal expenses reasonably incurred by the members of such a committee or tribunal for the purpose of or in connection with the exercise of the functions of the committee or tribunal under this Measure;
 - (c) any such expenses reasonably incurred by an incumbent in connection with an enquiry under this Measure which concerns him;
 - (d) any such expenses reasonably incurred by an archdeacon under section 2 of this Measure;
 - (e) any such expenses reasonably incurred by any person in connection with his attendance at a meeting of a committee or tribunal conducting an enquiry under this Measure, being a meeting which he was entitled, or invited by the committee or tribunal, as the case may be, to attend or which he attended as a witness;
 - (f) in the case of an enquiry under Part I of this Measure conducted by a provincial tribunal, any fee payable to the chairman of the tribunal; and
 - (g) in the case of any other enquiry under this Measure, any fee payable to a barrister or solicitor appointed to advise and assist the committee which conducted the enquiry,
- shall be paid by the Diocesan Board of Finance.
- (2) Any question whether any such expenses as are referred to in paragraph (b), (c), (d) or (e) of subsection (1) above were reasonably incurred or as to the amount thereof shall be determined by the bishop of diocese.

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Changes to legislation: There are currently no known outstanding effects for the Incumbents (Vacation of Benefices) Measure 1977. (See end of Document for details)

17 Exercise of powers of bishop during absence abroad, etc.

During the absence abroad or incapacity through illness of the bishop of a diocese or a vacancy in the see 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 archbishop of the province to which the diocese belongs or a person, being a person in episcopal orders, appointed by that archbishop for that purpose.

18 Power of General Synod to make further provision by rules for constitution of committees, etc. and procedure on enquiries.

- (1) The General Synod may, by rules approved by the Synod under this section, make further provision with respect to the constitution of diocesan committees of enquiry or provincial tribunals for the purposes of this Measure and the procedure to be followed on enquiries thereunder.
- (2) Such rules may amend, replace or revoke any of the provisions of the Schedule to this Measure.
- (3) The ^{M4}Statutory Instruments Act 1946 shall apply to any rules approved by the General Synod under this section as if they were a statutory instrument and were made when so approved, but no such rules shall have effect unless approved by a resolution of each House of Parliament.

Marginal Citations

M4 1946 c. 36.

19 Meaning of “benefice”.

Without prejudice to section 6(2) of this Measure, in this Measure “benefice” means the office of rector or vicar, with cure of souls, including the office of vicar in a team ministry established under the ^{M5}Pastoral Measure 1968 but does not include any office in a Royal Peculiar nor the office of dean or provost of a parish church cathedral within the meaning of the ^{M6}Cathedrals Measure 1963.

Marginal Citations

M5 1968 No. 1.

M6 1963 No. 2.

VALID FROM 01/09/1994

[^{F7}19A Meaning of references to pastoral situation.

In this Measure any reference to a serious breakdown of the pastoral relationship between an incumbent and the parishioners shall be construed as a reference to a situation where the relationship between an incumbent and the parishioners of the parish in question is such as to impede the promotion in the parish of the whole mission of the Church of England, pastoral, evangelistic, social and ecumenical.]

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Textual Amendments

F7 S. 19A inserted (1.9.1994) by 1993 Measure No. 1, s.10 (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

Modifications etc. (not altering text)

C1 S. 19A applied (1.5.1996) by 1988 No. 1, s. 7(1A) (as inserted (1.5.1996) by 1995 No. 1, s. 15; Instrument dated 12.2.1996 made by Archbishops of Canterbury and York)

20 Amendments and repeal.

(1) For the section 14 of the ^{M7} Church Dignitaries (Retirement) Measure 1949 there shall be substituted the following section:—

(1) Where a dignitary, being a dean, provost or archdeacon, is also the incumbent of a parochial benefice a declaration of vacation of his office as dean, provost or deacon made under this Measure shall have effect also of vacating his benefice, whether the office is annexed to the benefice or the benefice to the office.

(2) Where the dignitary, being an archdeacon, canon or prebendary,—

(a) is also the incumbent of a parochial benefice, and

(b) resigns his benefice consequent upon a notification from the bishop under subsection (2)(a) of section 11 of the Incumbents (Vacation of Benefices) Measure 1977 (powers of bishops where enquiry under that Measure results in a finding of mental or physical incapacity), or the bishop has declared his benefice vacant under that section,

the powers of the bishop under section 2 of this Measure shall be exercisable as if the report of the diocesan committee or provincial tribunal under the said Measure of 1977 had been a report by the cathedral chapter under this Measure, and the bishop may execute an instrument declaring the archdeaconry, canonry or prebend, as the case may be, vacant in accordance with that section or, if the case so requires, petition Her Majesty to make such a declaration, and there be no appeal against the exercise of those powers by the bishop.”

(2) The ^{M8}Incumbents (Disability) Measure 1945 is hereby repealed.

Modifications etc. (not altering text)

C2 The text of s. 20 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.

Marginal Citations

M7 1949 No. 1

M8 1945 No. 3.

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Changes to legislation: There are currently no known outstanding effects for the Incumbents (Vacation of Benefices) Measure 1977. (See end of Document for details)

21 Short title, extent and commencement.

- (1) This Measure may be cited as the Incumbents (Vacation of Benefices) Measure 1977.
- (2) This Measure shall extend to the whole of the Provinces of Canterbury and York except the Channel Islands and the Isle of Man, but may be applied to the Channel Islands as defined in the ^{M9}Channel Islands (Church Legislation) Measures 1931 and ^{M10}1957, or either of them, in accordance with those Measures.
- (3) Paragraph 2(1) and (2) of the Schedule to this Measure shall come into force on the passing of this Measure and, except as aforesaid, this Measure shall come into force on the expiration of the period of six months beginning with the date on which it is passed.

Marginal Citations

- M9** 1931 No. 4.
M10 1957 No. 1.

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Changes to legislation: *There are currently no known outstanding effects for the Incumbents (Vacation of Benefices) Measure 1977. (See end of Document for details)*

VALID FROM 01/09/1994

[^{F8}SCHEDULE 1

CONSTITUTION OF PROVINCIAL TRIBUNALS

Textual Amendments

F8 Sch. 1 substituted (1.9.1994) for Sch. by 1993 Measure No. 1, s. 12, **Sch.1** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

VALID FROM 01/09/1994

[^{F9}SCHEDULE 2

COMPENSATION UNDER SECTION 13

Textual Amendments

F9 Sch. 2 inserted (1.9.1994) by 1993 Measure No. 1, s. 13, **Sch.2** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York.

SCHEDULE

CONSTITUTION AND PROCEDURE OF DIOCESAN COMMITTEES AND PROVINCIAL TRIBUNALS

PART I

CONSTITUTION OF DIOCESAN COMMITTEES

- 1 The members of a diocesan committee of enquiry shall consist of—
- (a) three clerks in Holy Orders nominated in accordance with paragraph 3 below from the persons on the panel of clerks in Holy Orders appointed in accordance with paragraph 2 below; and
 - (b) two lay persons so nominated from the persons on the panel of lay persons so appointed.

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- 2 (1) As soon as practicable after the passing of this Measure and after the next and every subsequent election of diocesan synods—
 - (a) the house of clergy of each such synod shall, in such manner as that house may determine, appoint from among the clerks in Holy Orders beneficed in or licensed to any parish in the diocese twelve persons to form the panel of clerks in Holy Orders qualified to be members of a diocesan committee of enquiry for the purposes of this Measure; and
 - (b) the house of laity of each such synod shall, in such manner as that house may determine, appoint from among the persons whose names are on the church electoral roll of any parish in the diocese twelve persons to form the panel of lay persons qualified to be members of such a committee.
 - (2) Subject to sub-paragraph (3) below, persons appointed to any such panel shall hold office for a term ending with the appointment of their successors and, on a casual vacancy among the persons appointed under this paragraph by either house, another person shall be appointed in his place, in such manner as that house may determine, for the remainder of that term.
 - (3) If at the date of the making of appointments under this paragraph an enquiry is pending before any such committee, the members of that committee shall continue to be qualified to act as such until the completion of the enquiry.
- 3 (1) The secretary of the diocesan synod shall constitute a diocesan committee of enquiry by nominating the requisite number of members from the panels referred to in paragraph 2 above, the nominations to be made in rotation in accordance with the alphabetical order of the surnames of the persons thereon.
 - (2) Any person so nominated may refuse to accept the nomination if in his opinion it would not be right for him to serve as a member of the committee which is to conduct the enquiry in question.
 - (3) The secretary of the diocesan synod shall send a list of the proposed members to the incumbent concerned and shall inform him of his right of objection under paragraph 4 below and of the period within which the right must be exercised.
- 4 (1) The incumbent concerned may, within ten days after a list of the proposed members is sent to him, object to any one or more of them by sending to the said secretary a written notice specifying the member or members to whom he objects and stating, in relation to that member or each of those members, as the case may be, the grounds of his objection.
 - (2) If notice of objection is duly given under sub-paragraph (1) above, the said secretary shall refer the matter to the chancellor of the diocese in which the parish in question is situated for him to determine whether the objection is reasonable and should accordingly be allowed, and his decision shall be final.
 - (3) For the purpose of enabling him to decide whether the objection is reasonable, the chancellor may require the incumbent to supply him with such information as he may specify.
 - (4) Where, in the case of any person objected to by the incumbent, the chancellor decides that the objection should be allowed, the said secretary shall nominate another person

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from the appropriate panel to serve in place of that member and shall inform the incumbent of the name of the person nominated.

- (5) Subject to sub-paragraph (6) below, the incumbent may within ten days after he is informed of the name of the proposed member nominated under sub-paragraph (4) above object to that member by sending to the said secretary a written notice stating the grounds of his objection, and sub-paragraphs (2) to (4) above shall have effect where notice of objection is duly given under this sub-paragraph as they have effect where such a notice is so given under sub-paragraph (1) above.
- (6) The incumbent shall not be entitled to object to a person nominated under sub-paragraph (4) above if, were the objection to be allowed, the result would be that the committee could not be constituted, there being no other person on the appropriate panel available for nomination as a member of the committee.
- 5 In the case of an enquiry under Part I of this Measure, the said secretary shall, as soon as the diocesan committee which is to conduct the enquiry has been constituted, send a list of the members to—
- (a) the archdeacon concerned; and
 - (b) the designated representative, if any, and
 - (c) the secretary of the parochial church council of the parish to which the enquiry relates.

PART II

CONSTITUTION OF PROVINCIAL TRIBUNALS

- 6 (1) A provincial tribunal shall consist of five persons appointed by the Vicar-General of the province in which the parish in question is situated.
- (2) Of the five persons to be so appointed—
- (a) one, who shall be the chairman, shall be either the chancellor of a diocese in the province for which the tribunal is to be appointed, other than the diocese in which the parish in question is situated, or a Queen's Counsel who is a communicant member of the Church of England;
 - (b) two shall be clerks in Holy Orders beneficed in or licensed to a parish in a diocese in that province other than the diocese aforesaid; and
 - (c) two shall be lay persons who are communicant members of the Church of England and who reside in a diocese in that province other than the diocese aforesaid.
- 7 (1) Where in accordance with section 5(4) of this Measure an incumbent informs the secretary of the diocesan synod that he elects for an enquiry which concerns him to be conducted by a provincial tribunal, the said secretary shall request the Vicar-General of the province to constitute the tribunal in accordance with paragraph 6 above and to send him a list of the names and addresses of the proposed members.

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- (2) On receiving such list the said secretary shall send a copy of it to the incumbent concerned and shall inform him of his right of objection under paragraph 8 below and of the period within which the right must be exercised.
- 8 (1) The incumbent concerned may, within three weeks after a list of the proposed members is sent to him, object to any one or more of them by sending to the said secretary a written notice specifying the member or members to whom he objects and stating, in relation to that member or each of those members, as the case may be, the grounds of his objection.
- (2) If notice of objection is duly given under sub-paragraph (1) above, the said secretary shall refer the matter to the Vicar-General of the province, other than the province for which the tribunal is to be appointed, for him to determine whether the objection is reasonable and should accordingly be allowed, and his decision shall be final.
- (3) For the purpose of enabling him to decide whether the objection is reasonable, the Vicar-General may require the incumbent to supply him with such information as he may specify.
- (4) Where, in the case of any member objected to by the incumbent, the Vicar-General decides that the objection should be allowed, the said secretary shall request the Vicar-General mentioned in paragraph 6(1) above to appoint another person having the appropriate qualifications to serve in place of that member and to inform him of the name and address of the person appointed, and on receiving that information the said secretary shall inform the incumbent of the name and address of that person.
- (5) The incumbent may within three weeks after he is informed of the name of the proposed member appointed under sub-paragraph (4) above object to that member by sending to the said secretary a written notice stating the grounds of his objection, and sub-paragraphs (2) to (4) above shall have effect where a notice of objection is duly given under this sub-paragraph as they have effect where such a notice is so given under sub-paragraph (1) above.
- 9 As soon as the provincial tribunal which is to conduct an enquiry has been constituted the said secretary shall send a list of the members to the incumbent concerned, the persons mentioned in paragraph 5 above and the person who is to act as secretary of the tribunal.
- 10 The Synodical Secretary of the Convocation of Canterbury or some other person nominated by him shall act as secretary of any tribunal constituted under this Part of this Schedule to conduct an enquiry into the pastoral situation in a parish in the province of Canterbury, and the Synodical Secretary of the Convocation of York or some other person nominated by him shall act as secretary of any tribunal so constituted to conduct an enquiry into the pastoral situation in a parish in the province of York.

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PART III

PROCEDURE

- 11 A diocesan committee of enquiry (hereafter referred to as “the committee”) shall elect a chairman and shall appoint one of its members to act as secretary of the committee.
- 12 (1) Any person may make written representations to the committee or the provincial tribunal (hereafter referred to as “the tribunal”).
- (2) Where any person, other than the incumbent concerned, makes written representations to the committee or tribunal, the incumbent concerned shall be entitled to be supplied with a copy of those representations and within three weeks after such copy is supplied to him to send his comments thereon in writing to the committee or tribunal, as the case may be.
- 13 (1) The incumbent concerned shall be entitled to appear before, and to be heard by, the committee or tribunal, to give oral evidence in the proceedings on the enquiry and to call witnesses.
- (2) The committee or tribunal—
- (a) shall, at the written request of any other party to the proceedings on the enquiry, invite any person named in the request to address it or give oral evidence in those proceedings or both; and
- (b) may invite any other person who may in its opinion be able to assist it to address it or give such evidence or both.
- (3) The tribunal may require oral evidence by any person in such proceedings to be given on oath and for that purpose the chairman of the tribunal may administer oaths.
- (4) The incumbent concerned shall be entitled to attend any meeting of the committee or tribunal at which any other person is to give evidence to, or be heard by, the committee or tribunal and, unless represented by counsel or a solicitor, to put questions to that person.
- 14 (1) Subject to sub-paragraphs (2) and (3) below, the proceedings at any meeting of the committee or tribunal shall be held in private.
- (2) If the incumbent concerned so requests, the proceedings at any meeting of the committee or tribunal, being a meeting at which the committee or tribunal hears him or any other person invited to address it or receives oral evidence, shall be held in public.
- (3) The committee or tribunal by which an enquiry under Part I of this Measure was conducted shall pronounce its findings in public.
- 15 (1) Not less than fourteen days’ notice of the date, time and place at which any meeting of the committee or tribunal is to be held, being a meeting at which the committee

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or tribunal intends to hear any person, to receive oral evidence or to pronounce its findings, shall be given to the bishop, the incumbent concerned, the secretary of the parochial church council of any parish belonging to the benefice of which the incumbent concerned is the incumbent, the archdeacon in whose archdeaconry any such parish is and the designated representative, if any.

- (2) A notice under this paragraph shall state that the person to whom the notice is given and, in the case of a notice given to the designated representative, that the other person specified in the relevant request as being willing to act as a representative of the persons making the request, may attend the meeting to which the notice relates.
- (3) Where the request for an enquiry under Part I of this Measure was made by the persons mentioned in section 1(1)(c) or (d) thereof, none of those persons shall, subject to sub-paragraph (2) above, be entitled to attend any meeting of the committee or tribunal by which the enquiry is being conducted without the consent of the chairman of the committee or tribunal, as the case may be, unless the meeting is one which is held in public by virtue of paragraph 14(2) or (3) above.
- 16 (1) If during the course of any enquiry any one member of the committee or tribunal, as the case may be, dies or becomes incapable of acting as such, then, subject to sub-paragraph (2) below, a fresh enquiry shall be instituted unless either—
- (a) before the occurrence of the death or incapacity the committee or tribunal had agreed on its findings and on the recommendations to be made in its report to the bishop under section 9 of this Measure; or
 - (b) all the parties to the proceedings on the enquiry consent to the continuation of those proceedings.
- (2) If, in the case of an enquiry conducted by the tribunal, it is the chairman of the tribunal who dies or becomes incapable of acting as such, sub-paragraph 1(b) above shall not apply.
- (3) The findings of the committee or tribunal may be pronounced by a single member of the committee or tribunal, as the case may be.
- 17 For the purposes of this Part of this Schedule the parties to proceedings on an enquiry are—
- (a) the incumbent concerned;
 - (b) the parochial church council of the parish to which the enquiry relates;
 - (c) where the request for the enquiry was made by the person mentioned in section 1(1)(b) of this Measure, that person;
 - (d) where the request for the enquiry was made by the persons mentioned in section 1(1)(c) or (d) thereof, the persons specified in the request as being willing to act as the representatives of the first mentioned persons.
- 18 Subject to the provisions of this Measure and of any rules made under section 18 thereof, the procedure of the committee or tribunal at and in connection with its meetings shall be such as the committee or tribunal, as the case may be, may from time to time determine.

Status:

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Changes to legislation:

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