



Incumbents (Vacation of Benefices) Measure 1977

1977 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

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- (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.

VALID FROM 01/09/1994

[^{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 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

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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.
- (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.

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- (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—
- (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

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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.
- (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 ^{M1}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

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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.
- (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

M1 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.

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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 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,

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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 [F⁵Church 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.

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](#)

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