



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

1988 No. 1

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

## <sup>F1</sup>PART I

### LEGAL AID

#### Textual Amendments

- F1** Pt. I (ss. 1-4) modified (1.9.1994) by [1994 No. 3, s. 5\(1\)](#); Instrument dated 25.7.1994 made by [Archbishops of Canterbury and York](#)

<sup>F2</sup>**1** .....

*Status: Point in time view as at 01/09/2000.*

*Changes to legislation: There are currently no known outstanding effects for the Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988. (See end of Document for details)*

**Textual Amendments**

**F2** Ss. 1-4 repealed (with saving in s. 5(1)) (1.9.1994) by 1994 No. 3, **ss. 7(1)**; Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

**F3**<sub>2</sub> .....

**Textual Amendments**

**F3** Ss. 1-4 repealed (with saving in s. 5(1)) (1.9.1994) by 1994 No. 3, **ss. 7(1)**; Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

**F4**<sub>3</sub> .....

**Textual Amendments**

**F4** Ss. 1-4 repealed (with saving in s. 5(1)) (1.9.1994) by 1994 No. 3, **ss. 7(1)**; Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

**F5**<sub>4</sub> .....

**Textual Amendments**

**F5** Ss. 1-4 repealed (with saving in s. 5(1)) (1.9.1994) by 1994 No. 3, **s. 7(1)**; Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

**PART II**

MISCELLANEOUS PROVISIONS

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

In section 2 of the <sup>M1</sup> Extra-Parochial Ministry Measure 1967 (ministry at institutions) the proviso at the end of subsection (1) shall be omitted and there shall be inserted the following subsection—

“(1A) Where—

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

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- (c) that marriage is intended to be solemnized according to the rites of the Church of England,

the offices and services which the clergyman is licensed under subsection (1) above to perform shall be treated as including the solemnization of that marriage; but, except as provided by the preceding provision of this subsection, no licence granted under subsection (1) above shall extend to the solemnization of marriage.

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

#### Marginal Citations

M1 1967 No. 2.

## 6 Change of name of see.

- (1) Without prejudice to any other powers of Her Majesty in Council in relation to sees, Her Majesty in Council, on receipt of a petition under this section, shall have power to change the name of any diocesan or suffragan see.
- (2) Where any petition for the change of name of a see is approved by the diocesan synod of the diocese concerned, the bishop of the diocese shall lay the petition before the General Synod [<sup>F6</sup>for its approval].
- [<sup>F7</sup>(3) Where the Business Committee of the General Synod determines that any such petition does not need to be debated by the Synod, then, unless notice is given by a member of the Synod in accordance with its Standing Orders that he wishes the petition to be debated, the petition shall for the purposes of subsection (2) above be deemed to have been approved by the Synod.
- (4) Where the petition is approved by the General Synod the bishop of the diocese may forward it to Her Majesty in Council.]
- (5) Nothing in this section shall confer power to alter the boundaries of a see.

#### Textual Amendments

- F6 Words in s. 6(2) inserted (1.9.2000) by 2000 Measure No. 1, s. 18(a); Instrument dated 30.8.2000 made by the Archbishops of Canterbury and York
- F7 S. 6(3)(4) substituted (1.9.2000) by 2000 Measure No. 1, s. 18(b); Instrument dated 30.8.2000 made by the Archbishops of Canterbury and York

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

- (1) [<sup>F8</sup>Subject to subsection (1A) below,]It shall be lawful for the General Synod to make provision by Canon with respect to the revocation by the bishop of a diocese of licences granted to ministers, deaconesses, lay workers and readers, and with respect to appeals from any such revocation.

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- [<sup>F9</sup>(1A) (a) In the case of a deacon to whom section 20(3A) of the Pastoral Measure 1983 applies, a licence shall not be revoked by a bishop unless the bishop is satisfied that there has been a serious breakdown of the pastoral relationship between that deacon and the parishioners concerned or he is unable by reason of age or infirmity to discharge his pastoral duties adequately.
- (b) In this subsection the reference to a serious breakdown of the pastoral relationship between a deacon and the parishioners concerned shall be construed in accordance with section 19A of the Incumbents (Vacation of Benefices) Measure 1977.]
- (2) The following provisions of the <sup>M2</sup> Pluralities Act 1838 shall cease to have effect—
- (a) in section 97 (penalty for licensed curate who quits curacy without notice) the words from “upon pain of paying to the bishop” to the end of the section; and
- (b) section 98 (licences of curates employed by non-resident incumbents and revocation of such licences).

#### Textual Amendments

- F8** Words in s. 7(1) inserted (1.5.1996) by 1995 No. 1, s. 15(a); Instrument dated 12.2.1996 made by Archbishops of Canterbury and York
- F9** S. 7(1A) inserted (1.5.1996) by 1995 No. 1, s. 15(b); Instrument dated 12.2.1996 made by Archbishops of Canterbury and York

#### Marginal Citations

- M2** 1838 c. 106.

## 8 Appointment of organists and choirmasters.

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

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

In section 7 of the <sup>M3</sup> Church Property (Miscellaneous Provisions) Measure 1960 (powers in relation to land granted under the Gifts for Churches Act 1803, the Gifts for Churches Act 1811 or the Consecration of Churchyards Act 1867) there shall be added at the end the following subsection—

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

#### Marginal Citations

- M3** 1960 No. 1

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## 10 Amendment of s. 31 of Leasehold Reform act 1967.

Section 31 of the <sup>M4</sup> Leasehold Reform Act 1967 (tenancies of ecclesiastical property) shall have effect subject to the following amendments—

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

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

### Marginal Citations

M4 1967 c. 88.

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

In section 3(3) of the <sup>M5</sup> Pastoral Measure 1983 (definition of “interested parties” for purposes of consultation) there shall be inserted at the end the following paragraph—  
“Where a team ministry is established for the area of a benefice, the reference in paragraph (b) to the incumbents of benefices shall in relation to that benefice be construed as a reference to all the persons who constitute the team under section 20(1).”

### Marginal Citations

M5 1983 No. 1.

## 12 Clergy (Widows and Dependants) Pensions Fund.

<sup>M6</sup> The Clergy Pensions Measure 1961 shall have effect subject to the following amendments—

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

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**Marginal Citations**

M6 1961 No. 3.

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

In paragraph (iv) of section 7 of the <sup>M7</sup> Parochial Church Councils (Powers) Measure 1956 (which confers power on a parochial church council to determine, jointly with the minister, the objects for which moneys collected in church are to be given) the words “subject to the directions contained in the Book of Common Prayer as to the disposal of money given at the offertory” shall be omitted.

**Marginal Citations**

M7 1956 No. 3.

**PART III**

GENERAL

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

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

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

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

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

C1 Power of appointment conferred by s. 15(2) fully exercised by Instrument dated 19.4.1988

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## SCHEDULE 1

F10 . . .

### Textual Amendments

**F10** Sch. 1 repealed (with saving in s. 5(1)) (1.9.1994) by 1994 No. 3, s. 7(1); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

## SCHEDULE 2

Section 14.

### MINOR AND CONSEQUENTIAL AMENDMENTS

*M8 Ecclesiastical Jurisdiction Measure 1963*

### Marginal Citations

**M8** 1963 No. 1.

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

*M9 Incumbents (Vacation of Benefices) Measure 1977*

### Marginal Citations

**M9** 1977 No. 1.

*Status: Point in time view as at 01/09/2000.*

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- 3 In section 13(3) of the Incumbents (Vacation of Benefices) Measure 1977 (compensation of incumbents)—
- (a) for the words “paragraphs 5 to 14, 16 and 17 of Schedule 4 to the Pastoral Measure 1968” there shall be substituted the words “paragraphs 6 to 15 and paragraph 18 of Schedule 4 to the Pastoral Measure 1983”; and
- (b) for paragraphs (b) and (c) there shall be substituted the following paragraph—
- “(b) in paragraph 13(1) for the words “any benefice archdeaconry or office is dissolved, abolished, vacated or resigned in the circumstances mentioned in paragraphs 1 to 4” of the words “any benefice is resigned or vacated in the circumstances mentioned in section 4 or 10 of the Incumbents (Vacation of Benefices) Measure 1977.””

*M10* Pastoral Measure 1983

**Marginal Citations**

**M10** 1983 No. 1.

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

SCHEDULE 3

Section 14.

REPEALS

ACT

Chapter	Short title	Extent of repeal
1 & 2 Vict. c. 106	The Pluralities Act 1838.	In section 97 the words from “upon pain of” to the end of the section. Section 98.

MEASURES

Number	Short title	Extent of repeal
1956 No. 3.	The Parochial Church Councils (Powers) Measure 1956.	In section 7, in paragraph (iv) the words from “subject to” to the end of the paragraph.



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

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