



# Incumbents (Vacation of Benefices) (Amendment) Measure 1993 (No. 1)

1993 No. 1

## 1 Code of Practice as to reconciliation

In the 1977 Measure section 1 shall be re-numbered as section 1A and before that section there shall be inserted—

### “1 Code of Practice as to reconciliation

- (1) It shall be the duty of the House of Bishops to draw up rules of guidance for the purposes of this Measure generally and, in particular, as to the steps which that House considers should be taken, where the bishop of a diocese receives notice of intention to make a request under section 1A of this Measure, to—
  - (a) promote better relations between the incumbent and the parishioners; and
  - (b) remove the causes of their estrangement,and to promulgate the rules of guidance in a Code of Practice.
- (2) The House of Bishops may at any time amend or replace a Code of Practice issued under subsection (1) above by a further Code of Practice issued under that subsection.”.

## 2 Request for enquiry under Part I

- (1) Section 1A of the 1977 Measure as re-numbered by this Measure (request for enquiry into pastoral situation in a parish) shall be amended as follows.
- (2) After subsection (1) there shall be inserted—

“(1A) An enquiry under this Part of this Measure shall only be undertaken after the persons concerned have had an opportunity to resolve the pastoral situation in the parish in question; and, accordingly, a request for such an enquiry shall not be made unless notice of intention to make the request has been given by the person or persons concerned to the bishop of the diocese in which the

parish in question is at least six months, and not more than twelve months, before the request is made.”.

(3) At the end there shall be inserted—

“(7) A request made under this section may be withdrawn by notice in writing given to the bishop of the diocese in which the parish in question is and the secretary of the diocesan synod of that diocese by—

- (a) in the case of a request made by the person mentioned in subsection (1)(a) or (b) above, that person;
- (b) in the case of a request made by the persons mentioned in subsection (1)(c) above, a majority 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council of the parish present and voting at a duly convened meeting of that council on a resolution that the request be withdrawn;
- (c) in the case of a request made by the persons mentioned in subsection (1)(d) above, by 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,

and where a request is withdrawn under this subsection no further steps shall be taken under this Part of this Measure in connection with the request.”.

### **3 Power of bishop to order enquiry**

(1) Section 3 of the 1977 Measure (institution of enquiry) shall be amended as follows.

(2) In subsection (1) for the words from “, subject to” to the end there shall be substituted the words “the bishop may, if he thinks fit, direct the secretary of the diocesan synod to institute such enquiry”.

(3) After subsection (1) there shall be inserted—

“(1A) If, within the period of six months after the relevant date, the bishop neither gives a direction under subsection (1) above nor notifies the secretary of the diocesan synod that he has decided not to give such a direction, such a direction shall be deemed to have been given.

(1B) In this section “relevant date” means—

- (a) in either of the cases described in subsection (1)(a) above, the date on which the request was made;
- (b) in the case described in subsection (1)(b) above, the date on which the report was made;
- (c) in the case described in subsection (1)(c) or (d) above, the date on which the bishop is informed that, notwithstanding that the archdeacon did not report that in his opinion an enquiry under this Part of this Measure should be instituted, such an enquiry is nevertheless required.”.

(4) Subsections (2) and (3) (which specify circumstances in which the bishop has discretion whether or not to give a direction under subsection (1)) shall cease to have effect.

#### **4 Abolition of diocesan committees of enquiry**

Enquiries under the 1977 Measure shall no longer be conducted by diocesan committees of enquiry, but shall in all cases be conducted by provincial tribunals and the provisions of that Measure relating to such committees shall cease to have effect.

#### **5 Medical examinations**

After section 7 of the 1977 Measure there shall be inserted—

##### **“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.”

#### **6 Inhibition in disability cases**

After section 9 of the 1977 Measure there shall be inserted—

##### **“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

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*Status: This is the original version (as it was originally enacted).*

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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.”.

## 7 Powers of bishop in cases of breakdown of pastoral relationship

In section 10 of the 1977 Measure (powers of bishop in cases of breakdown of pastoral relationship)—

- (a) in subsection (2) for the word “shall” there shall be substituted the word “may”;
- (b) in subsection (6) at the end there shall be inserted—

“and may, if he thinks fit, disqualify such of them as he thinks fit from being a church warden or member or officer of the parochial church council of the parish in question and of such other parishes in his diocese as he may specify during such period not exceeding five years as he may specify”;

- (c) after subsection (6) there shall be inserted—

“(6A) Where the bishop disqualifies a person who is or who becomes a lay member of a deanery synod, a diocesan synod, or the General Synod from being a member of a parochial church council during any period under subsection (6) above, that person shall not be a member of that council by virtue of that lay membership during that period, notwithstanding rule 12(1)(e) of the Church Representation Rules”;

- (d) at the end there shall be inserted—

“(9) The bishop may revoke any disqualification effected under subsection (5) or (6) above.”.

## **8 Compensation**

(1) For section 13 of the 1977 Measure there shall be substituted—

### **“13 Compensation**

- (1) Subject to the provisions of this Measure, 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, on application in writing made to the diocesan board of finance, be entitled to compensation for any loss suffered by him in consequence of his resignation or the vacation of his benefice.
- (2) Schedule 2 to this Measure shall have effect for the purpose of determining the form and amount of compensation under this section and of prescribing the circumstances in which payments of compensation thereunder may be altered, terminated, suspended or refused and of providing for other matters relating thereto.
- (3) Regulations approved by the General Synod under section 6 of the Clergy Pensions (Amendment) Measure 1972 may make such amendments to Schedule 2 to this Measure as the Synod considers necessary or expedient in consequence of any regulations made under subsection (1)(a) of that section.”.

## **9 Rules**

For section 18 of the 1977 Measure there shall be substituted—

### **“18 Procedural rules**

- (1) There shall be a committee, to be known as the Vacation of Benefices Rule Committee, which shall consist of a chairman and four other members appointed by the Standing Committee of the General Synod.
- (2) The Vacation of Benefices Rule Committee shall have power to make rules for carrying into effect the provisions of this Measure and, in particular, for—
  - (a) regulating the procedure and practice (including the mode and burden of proof and admissibility of evidence) of provincial tribunals in connection with enquiries under this Measure;
  - (b) obtaining medical evidence in connection with enquiries under this Measure.
- (3) Any three members of the Vacation of Benefices Rule Committee may exercise all the powers of the committee.
- (4) Any rules made under this section shall be laid before the General Synod and shall not come into force until approved by the General Synod, whether with or without amendment.
- (5) Where the Standing Committee determines that the rules do not need to be debated by the General Synod then, unless—

- (a) notice is given by a member of the General Synod in accordance with its Standing Orders that he wishes the rules to be debated, or
- (b) notice is so given by any such member that he wishes to move an amendment to the rules and at least twenty-five other members of the General Synod indicate when the amendment is called that they wish the amendment to be moved,

the rules shall for the purposes of subsection (4) above be deemed to have been approved by the General Synod without amendment.

- (6) The Statutory Instruments Act 1946 shall apply to any rules approved by the General Synod under subsection (4) above as if they were statutory instruments and were made when so approved, and as if this Measure were an Act providing that any such rules should be subject to annulment in pursuance of a resolution of either House of Parliament.”.

## **10 References to pastoral situation**

After section 19 of the 1977 Measure there shall be inserted—

### **“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.”

## **11 Extension of 1977 Measure to Isle of Man**

In section 21 of the 1977 Measure in subsection (2) (extent) at the end there shall be inserted the words “and, if an Act of Tynwald or an instrument made in pursuance of an Act of Tynwald so provides, shall extend to the Isle of Man subject to such exceptions, adaptations or modifications as may be specified in the Act of Tynwald or instrument.”.

## **12 Constitution of provincial tribunals**

For the Schedule to the 1977 Measure there shall be substituted the Schedule set out in Schedule 1 to this Measure.

## **13 Form and amount of compensation**

In the 1977 Measure after Schedule 1 as substituted by this Measure there shall be inserted the Schedule set out in Schedule 2 to this Measure.

## **14 Amendments and repeals**

- (1) The provisions of the 1977 Measure specified in Schedule 3 to this Measure shall have effect subject to the amendments specified in that Schedule, being minor amendments or amendments of a consequential nature.

- (2) The provisions of the 1977 Measure specified in column 1 in Schedule 4 to this Measure are hereby repealed to the extent specified in column 2.

## **15 Transitional provisions**

- (1) In relation to an incumbent in respect of whom a request for an enquiry under Part I of the 1977 Measure has been made in accordance with that Part before the coming into operation of section 8 above, section 13 of the 1977 Measure shall have effect as if the said section 8 (and Schedule 2 to this Measure) had not been enacted.
- (2) Without prejudice to subsection (1) above, in the application of the 1977 Measure to an incumbent in respect of whom a request for such an enquiry has been made as aforesaid before the coming into operation of section 4 above or the bishop of a diocese has, before the coming into operation of that section, given an instruction under section 6 of that Measure that an enquiry should be held, that Measure shall have effect as if this Measure had not been enacted.

## **16 Citation, commencement, extent and interpretation**

- (1) This Measure may be cited as the Incumbents (Vacation of Benefices) (Amendment) Measure 1993, and the 1977 Measure and this Measure may be cited together as the Incumbents (Vacation of Benefices) Measures 1977 and 1993.
- (2) This Measure shall come into operation 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, if an Act of Tynwald or an instrument made in pursuance of an Act of Tynwald so provides, shall extend to the Isle of Man subject to such exceptions, adaptations or modifications as may be specified in the Act of Tynwald or instrument.
- (4) In this Measure “the 1977 Measure” means the Incumbents (Vacation of Benefices) Measure 1977.