



# Ecclesiastical Jurisdiction and Care of Churches Measure 2018

2018 No. 3

## PART 5

### MISCELLANEOUS

#### *Rules*

#### **81 Rule Committee: continuation and membership**

- (1) There is to continue to be a body known as the Rule Committee.
- (2) The members of the Rule Committee are—
  - (a) one diocesan bishop nominated by the Archbishops of Canterbury and York,
  - (b) the Dean of the Arches and Auditor,
  - (c) one archdeacon nominated by the Archbishops of Canterbury and York,
  - (d) two chancellors nominated by the Archbishops of Canterbury and York,
  - (e) two diocesan registrars nominated by the Archbishops of Canterbury and York,
  - (f) two persons nominated by the Standing Committee of the House of Laity of the General Synod from among the members of that House, and
  - (g) for each of the purposes referred to in subsections (3) to (7), the persons specified as members for that purpose.
- (3) For the purpose of making rules relating to proceedings in the Court of Ecclesiastical Causes Reserved or a Commission of Review, the members of the Committee also include one person nominated by the Lord Chancellor who holds or has held high judicial office.
- (4) For the purpose of making rules relating to cathedral churches, the members of the Committee also include—

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- (a) one person nominated by the Appointments Committee of the Church of England who is a member of the chapter of a cathedral church,
  - (b) three persons nominated by the Cathedrals Fabric Commission for England from among the members of that Commission, who have special knowledge of the conservation of cathedrals, and
  - (c) three persons nominated by the Association of English Cathedrals.
- (5) For the purpose of making rules relating to disciplinary proceedings, the members of the Committee also include—
- (a) one diocesan bishop nominated by the Archbishops of Canterbury and York (in addition to the one nominated under subsection (2)(a)),
  - (b) the Prolocutor of the Lower House of the Convocation of Canterbury or a member of that House nominated by the Prolocutor, and
  - (c) the Prolocutor of the Lower House of the Convocation of York or a member of that House nominated by the Prolocutor.
- (6) For the purpose of making rules relating to the practice and procedure of consistory courts in their exercise of the faculty jurisdiction, including the exercise of functions under sections 69 to 71 (orders in case of default etc.), the members of the Committee also include three persons nominated by the Church Buildings Council, of whom—
- (a) one must hold office as chair of a Diocesan Advisory Committee, and
  - (b) one must hold office as secretary to a Diocesan Advisory Committee.
- (7) For the purpose of making rules under each of the following provisions, the members of the Committee also include the three persons nominated for the purposes of subsection (6)—
- (a) section 53(7) (order by archdeacon to remove article to safety);
  - (b) section 74(1) (archdeacon’s jurisdiction in certain faculty matters);
  - (c) section 75(1) (archdeacon’s power to grant licence for temporary minor re-ordering);
  - (d) section 77(1), (2) or (4) (matters which may be undertaken without a faculty, conditions on undertaking such matters etc.);
  - (e) section 79(4) (circumstances where chancellor not required to consult advisory committee);
  - (f) section 83(3), (4) or (5) (deposit of article for safekeeping; records of location of burials etc; safekeeping documents of historic interest).
- (8) In subsection (4)(c), the reference to the Association of English Cathedrals is a reference to the group of persons commonly known by that name (being the representative body for English Anglican Cathedrals), regardless of the form in which the group is for the time being constituted.
- (9) In subsection (5), “disciplinary proceedings” means—
- (a) proceedings in respect of an offence of the kind referred to in section 14 of the Ecclesiastical Jurisdiction Measure 1963,
  - (b) disciplinary proceedings under the Clergy Discipline Measure 2003, or
  - (c) proceedings under any of the provisions referred to in section 4(1) of the Safeguarding and Clergy Discipline Measure 2016 (appeal against suspension).

## **82 Rule Committee: procedure etc.**

- (1) The chair of the Rule Committee is—
  - (a) the Dean of the Arches and Auditor, or
  - (b) if the Dean declines or is unable to act as such, such other member of the Committee as the Dean nominates after consultation with the Archbishops of Canterbury and York.
- (2) The quorum of the Committee is five; but a person who is a member for a particular purpose referred to in section 81(3) to (7) may not be included in a quorum for any other purpose.
- (3) Subject to that, the Committee may regulate its own procedure.
- (4) The validity of anything done by the Committee is not affected by a vacancy in its membership.

## **83 Rule Committee: powers to make rules**

- (1) The Rule Committee may make rules for carrying into effect the relevant provisions; and for this purpose “relevant provision” means a provision of any of the following—
  - (a) Parts 1, 3 and 4 and this Part of this Measure (subject to subsection (6));
  - (b) the Ecclesiastical Jurisdiction Measure 1963;
  - (c) the Clergy Discipline Measure 2003;
  - (d) the Care of Cathedrals Measure 2011;
  - (e) the provisions referred to in section 4(1) of the Safeguarding and Clergy Discipline Measure 2016 (appeal against suspension).
- (2) Rules under subsection (1) may in particular (so far as the following matters are not regulated by a relevant provision or by rules under section 4 of the Church of England (Legal Aid) Measure 1994) make provision for—
  - (a) regulating the procedure and practice (including the mode and burden of proof and admissibility of evidence) of an ecclesiastical court;
  - (b) the appointment and duties of officers of an ecclesiastical court;
  - (c) the procedure and practice where an archdeacon has jurisdiction in faculty matters under section 74;
  - (d) the procedure and practice where complaints are referred to a registrar under section 11 of the Clergy Discipline Measure 2003;
  - (e) the time within which an act required or permitted by a relevant provision is to be done;
  - (f) matters relating to the appointment of authorised complainants and prosecutors in connection with proceedings or contemplated proceedings under a relevant provision;
  - (g) the forms of complaint for bringing proceedings under a relevant provision and of answers to be made to complaints;
  - (h) any other form or notice required in connection with a relevant provision;
  - (i) the mode of effecting service of a complaint, article or other document including provision for substituted service;
  - (j) the fixing of the time and place of a hearing or trial and the notification of the parties;
  - (k) the passing of censures and the forms of certificates of findings;

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- (l) matters relating to costs, fees and expenses in relation to proceedings under a relevant provision;
  - (m) enabling evidence to be obtained of compliance with a relevant provision;
  - (n) a matter which may be specified in rules in accordance with a relevant provision.
- (3) The Rule Committee may also make rules containing provision for enabling a PCC, after consultation with the advisory committee of the diocese concerned, to deposit (without a faculty) a movable article appertaining to a church in the parish for safekeeping in a place approved for the purpose by specified persons, subject to such requirements, terms and conditions as may be specified or as may be determined by the specified persons.
- (4) The Rule Committee may also make rules containing provision for requiring a PCC to keep records of—
- (a) the location of burials carried out in churchyards in the parish, and
  - (b) reserved grave-spaces in relation to which a faculty has been granted.
- (5) The Rule Committee may also make rules containing provision for the safekeeping, care, inspection and preservation of books and other documents which, in the opinion of a specified person, are of historic interest to the Church of England; and the provision which may be made includes provision for the appointment of persons with duties in that respect.
- (6) In subsection (1)(a), the reference to provisions of this Measure does not include a reference to—
- (a) section 22(7) to (10) (certain vacancies in see),
  - (b) sections 45 to 47 (inspections),
  - (c) section 54 (parochial libraries),
  - (d) sections 84 to 87 (fees), or
  - (e) sections 88 to 91 (burials).
- (7) In subsection (2)(a) and (b), “ecclesiastical court” means a court, disciplinary tribunal, commission or committee provided for in a provision referred to in subsection (1)(a) to (d); but subsection (2)(a) and (b) does not apply to a court of appellate jurisdiction in so far as rules made by the Judicial Committee of the Privy Council provide for the matters in question in the case of that court.
- (8) In subsection (5), the reference to books and other documents does not include a reference to register books or records within the meaning of section 25 of the Parochial Registers and Records Measure 1978.
- (9) Rules under this section—
- (a) must be laid before the General Synod, and
  - (b) may not come into force unless approved by the Synod, whether with or without amendment.
- (10) If the Business Committee of the General Synod decides that the Synod does not need to debate rules under this section, the rules are deemed to be approved by the Synod without amendment unless notice is given by a member of the Synod in accordance with its Standing Orders that—
- (a) the member wishes the rules to be debated, or
  - (b) the member wishes to move an amendment to the rules.

## *Fees*

### **84 Fees Advisory Commission: continuation and membership**

- (1) There is to continue to be a body known as the Fees Advisory Commission.
- (2) The members of the Commission are—
  - (a) one person who is a member of the House of Bishops nominated by that House;
  - (b) one person who is a Church Commissioner or an officer of the Church Commissioners nominated by them;
  - (c) one person who is the chair of a diocesan board of finance nominated by representatives of dioceses (see subsection (4));
  - (d) one person who is the registrar of a diocese nominated by the Ecclesiastical Law Association (see subsection (5));
  - (e) one person who is the chancellor of a diocese nominated by the Ecclesiastical Judges Association (see subsection (6));
  - (f) either the registrar of the province of Canterbury or the registrar of the province of York, whichever of them is nominated by the two registrars acting jointly;
  - (g) three persons appointed by the Appointments Committee of the Church of England (see subsection (7)).
- (3) The chair of the Commission is the member chosen by the Commission from among the members appointed under subsection (2)(g).
- (4) In subsection (2)(c), “representatives of dioceses” means persons—
  - (a) who are officers or members of a diocesan board of finance or are members of the House of Clergy or House of Laity of the General Synod elected for a diocese, and
  - (b) who are chosen under arrangements approved by the Archbishops of Canterbury and York acting jointly to represent dioceses in consultations on financial matters.
- (5) In subsection (2)(d), the reference to the Ecclesiastical Law Association is a reference to the group of persons commonly known by that name (being a group which includes lawyers involved in the work of the Church of England) regardless of the form in which the group is for the time being constituted.
- (6) In subsection (2)(e), the reference to the Ecclesiastical Judges Association is a reference to the group of persons commonly known by that name (being a group which includes the chancellor of each diocese and the Dean of the Arches and Auditor), regardless of the form in which the group is for the time being constituted.
- (7) A person may not be appointed under subsection (2)(g) if he or she is eligible for membership under subsection (2)(a) to (f); and at least one, but no more than two, of the three persons appointed under subsection (2)(g) must be a member of the House of Clergy or House of Laity of the General Synod.

**85 Fees Advisory Commission: term of office and procedure**

- (1) As soon as practicable after each ordinary election of the General Synod, new members of the Fees Advisory Commission are to be nominated or appointed in accordance with section 84.
- (2) A member of the Commission holds office until a new member is nominated or appointed to replace him or her under subsection (1).
- (3) If a member of the Commission dies or resigns from office, the persons responsible for nominating or appointing the member under section 84 must, as soon as practicable, nominate or appoint in accordance with that section a person to fill the vacancy.
- (4) A person nominated or appointed under subsection (3) holds office only for the unexpired portion of the term of office of the person whose place is being filled.
- (5) A member of the Commission (including one nominated or appointed under subsection (3)) is eligible for renomination or reappointment.
- (6) The quorum of the Commission is three, of whom—
  - (a) one must be a member under section 84(2)(a), (b) or (c),
  - (b) one must be a member under section 84(2)(d), (e) or (f), and
  - (c) one must be a member under section 84(2)(g).
- (7) Subject to that, the Commission may regulate its own procedure.
- (8) The validity of anything done by the Commission is not affected by a vacancy in its membership.

**86 Fees orders**

- (1) The Fees Advisory Commission must inform itself of the duties of the offices of ecclesiastical judges and the duties of the offices of legal officers and may make recommendations as to the annual fees to be paid to them in relation to such of those duties as it specifies.
- (2) The Commission may make recommendations as to the fees to be paid to such persons as it specifies in relation to—
  - (a) such duties carried out by ecclesiastical judges as it specifies;
  - (b) such duties carried out by legal officers as it specifies;
  - (c) such functions carried out by advisory committees or archdeacons in connection with relevant faculty proceedings as it specifies.
- (3) The Commission may make an order to give effect to its recommendations under subsection (1) or (2).
- (4) An order under this section may contain such incidental provision as the Commission considers necessary or desirable; and the provision which may be made includes, in particular, provision relating to payment for reasonable expenses incurred by ecclesiastical judges or legal officers—
  - (a) on the holding of court hearings, or
  - (b) on travel, subsistence and accommodation.
- (5) A fee payable under an order under this section is recoverable as a debt.

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- (6) Where an archbishop or bishop has paid a sum under an order under this section, and the liability to pay was imposed on the archbishop or bishop in that capacity, the Church Commissioners must reimburse the sum to the archbishop or bishop.
- (7) “Ecclesiastical judge” means—
- (a) the Dean of the Arches and Auditor,
  - (b) the Vicar-General of either province,
  - (c) the chancellor of a diocese,
  - (d) the president of tribunals,
  - (e) the chair of a disciplinary tribunal for the purposes of the Clergy Discipline Measure 2003, or
  - (f) the deputy of a person specified in paragraphs (a) to (e).
- (8) “Legal officer” means—
- (a) the registrar of a province,
  - (b) the registrar of a diocese,
  - (c) the administrator of a cathedral,
  - (d) the registrar of tribunals for the purposes of the Clergy Discipline Measure 2003, or
  - (e) the deputy of a person specified in paragraph (a) or (b).
- (9) “Relevant faculty proceedings” means proceedings, or proposed proceedings, for obtaining a faculty in the case of a building which is subject to the faculty jurisdiction as a result of its inclusion in the list under section 38, other than a building within subsection (2)(e) of that section (sharing agreements).
- (10) The references in subsection (9) to a building are to be read with section 39(3) (inclusion of monuments, curtilages, structures etc.).
- (11) An order under this section—
- (a) must be laid before the General Synod, and
  - (b) may not come into force unless—
    - (i) in the case of an order giving effect to recommendations under subsection (1), it has been approved by the Synod, or
    - (ii) in the case of an order giving effect to recommendations under subsection (2), it has been approved by the Synod, whether with or without amendment.
- (12) If the Business Committee of the General Synod decides that the Synod does not need to debate an order under this section giving effect to recommendations under subsection (1), the order is deemed to be approved by the Synod unless notice is given by a member of the Synod in accordance with its Standing Orders that the member wishes the order to be debated.
- (13) If the Business Committee decides that the Synod does not need to debate an order under this section giving effect to recommendations under subsection (2), the order is deemed to be approved by the Synod without amendment unless notice is given by a member of the Synod in accordance with its Standing Orders that the member—
- (a) wishes the order to be debated, or
  - (b) wishes to move an amendment to the order.

**87 Fees: power of chancellor**

- (1) Where a faculty is or has been granted for a relevant purpose, the chancellor of the diocese may determine the amount of the fees payable to the PCC or the diocesan board of finance.
- (2) Each of the following is a relevant purpose—
  - (a) the introduction of a monument in a church;
  - (b) an additional inscription on a monument in a church;
  - (c) the erection of a monument in a churchyard;
  - (d) an additional inscription on a monument in a churchyard;
  - (e) the reservation of a grave space;
  - (f) the construction of a vault;
  - (g) the burial of cremated remains in or under a church or in a closed churchyard.
- (3) The reference in subsection (1) to a faculty is, where the relevant purpose is within subsection (2)(c), (d) or (g), a reference to a particular (as opposed to general) faculty.
- (4) In this section—
 

“burial” and “monument” each have the same meaning as in Schedule A1 to the Ecclesiastical Fees Measure 1986;

“church” and “churchyard” each have the same meaning as in that Measure (see section 10 of that Measure).
- (5) This section does not affect any power which exists apart from this section.

*Burials and consecration***88 Burials in parish burial ground**

- (1) A person who, but for this subsection, would have no right of burial in the churchyard or other burial ground of a parish has that right if, at the date of the person’s death, his or her name is entered on the church electoral roll of the parish.
- (2) A person who has a right of burial in the churchyard or other burial ground of a parish has a right to have his or her cremated remains buried there.
- (3) But subsection (2) does not give a person a right to have his or her cremated remains buried in a churchyard or burial ground in which burials have been discontinued by an Order in Council under the Burial Act 1853 or 1855 except—
  - (a) in accordance with a faculty authorising the burial, or
  - (b) in an area which has been set aside by a faculty for the burial of cremated remains generally.
- (4) A person who does not have a right of burial in the churchyard or other burial ground of a parish may not be buried there, or have his or her cremated remains buried there, without the consent of the minister of the parish.
- (5) In deciding whether to give consent under subsection (4), the minister must have due regard to any general guidance given by the PCC of the parish in question.
- (6) For the avoidance of doubt it is hereby declared that the bishop of a diocese may consecrate land in the diocese for the sole purpose of the burial of cremated remains.



- (7) In this section, “minister”, in relation to a parish, means—
- (a) the incumbent of a benefice to which the parish belongs,
  - (b) if the benefice is vacant, the minister acting as priest in charge of the parish or the curate licensed to the charge of the parish, or
  - (c) if there is no minister or curate of that description, the rural dean of the deanery in which the parish is situated.

## **89 Consecration of ground added to churchyard**

- (1) This section applies where ground adjoining a churchyard has been or is added to it.
- (2) The bishop of the diocese may, at the churchyard or in the church to which the ground belongs, sign an instrument declaring and recording the consecration of the ground, without the need for the chancellor or registrar of the diocese to be present.
- (3) The instrument must be in the form of a plan of the ground with the following endorsement—

“I, ..., Bishop of ... , do hereby declare and record the ground added to the churchyard of ... , as on the plan, to be consecrated ground and part of the churchyard.”
- (4) The instrument is to be treated as signed by the bishop of the diocese if it is signed by a bishop nominated by him or her for the purposes of this section (whether another diocesan bishop or a suffragan or assistant bishop).
- (5) The signature on the instrument must be witnessed by—
  - (a) the chancellor,
  - (b) a surrogate,
  - (c) a clerk in Holy Orders beneficed or licensed to serve in the diocese, or
  - (d) the churchwardens of the church concerned.
- (6) Once the instrument, having been signed and witnessed, is deposited in the registry of the diocese, it has the same effect as a sentence of consecration.
- (7) Sections 5 to 7 of the Consecration of Churchyards Act 1867 (conveyancing procedure etc.) apply for the purposes of this section and sections 90 and 91 as they apply for the purposes of that Act.

## **90 Reservation of right to burial in land added to churchyard**

- (1) This section applies where a person, by way of a gift, transfers land which is to be added to a consecrated churchyard as referred to in section 89; and it does not matter whether or not the person resides in the parish in which the churchyard is situated.
- (2) The person may reserve the exclusive right in perpetuity of burial and of placing monuments and gravestones in a part of the added land; but that part must not exceed one-sixth of the area of the whole of the added land.
- (3) Where the right under subsection (2) is reserved, the part in question must be shown and coloured on the plan referred to in section 89.
- (4) A memorandum in the following form must be written on the instrument referred to in that section—

“We, ... (*Rector, Vicar or Incumbent*) and ... and ..., Churchwardens, of ... declare the piece of land (*insert description and measurement*), and coloured ... on this plan, to be the burial place of ..., the giver of the land added to the churchyard of ... , his or her heirs and assigns.

Signed ...

Witnessed ...

Dated ...”

- (5) The memorandum must be signed by the incumbent and churchwardens of the parish in which the churchyard is situated, with each signature being witnessed; and the memorandum must specify the date on which it is signed and witnessed.
- (6) Once the memorandum has been signed and witnessed, and the land has been declared to be consecrated, the memorandum operates as an exclusive right in perpetuity in the specified land.
- (7) The right forms part of the real estate of the person who reserved the right or of any successor in title to the right.
- (8) The costs of preparing and executing the memorandum are to be borne by the person by whom the reservation is made.
- (9) “Land” includes messuages, tenements and hereditaments, houses and buildings of any tenure.

## **91 Conditions on reservation under section 90**

- (1) A body may not be buried in the land in which a right is reserved under section 90, nor may a monument or gravestone be placed on the land, without the consent of the person who is for the time being the owner of the right.
- (2) But consent is not required under subsection (1) for the burial of a deceased owner, or of a spouse or widow or widower of a deceased owner who has been or is about to be buried in the land.
- (3) The bishop of the diocese, or any person acting under the bishop’s authority, has the same right to object to the placing of a monumental inscription within the reserved ground and to procure its removal as the bishop has to object to a monumental inscription in any consecrated ground and to procure its removal.
- (4) The land in which a right is reserved under section 90 may not be included in an Order in Council under the Burial Act 1853 or 1855 which provides for the discontinuance of burials in the churchyard to which the land belongs.
- (5) But burials in the land may be discontinued under a separate Order in Council under either of those Acts founded on the basis of a special report that the ground is in such a state as to render further burials in the land prejudicial to the public.

## **92 Power of bishop to remove legal effects of consecration**

- (1) This section applies where the bishop of a diocese, on the application of the archdeacon of an archdeaconry in the diocese in relation to a building or land which is in the archdeaconry and which is subject to the legal effects of consecration, is satisfied that—

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- (a) the building or land is not held or controlled by an ecclesiastical corporation or a diocesan board of finance, and
  - (b) no purpose will be served by its remaining subject to the legal effects of consecration.
- (2) The bishop may by order direct that the building or land or part of it is not to be subject to the legal effects of consecration; and, accordingly, where an order under this section is made, the faculty jurisdiction ceases to extend to the building or land or part concerned.
- (3) An order under this section may impose such conditions or requirements as the bishop thinks fit as to—
  - (a) the preservation or disposal of any human remains believed to be buried in or beneath a building affected by the order or in land affected by it and of any tombstones, monuments or memorials commemorating the deceased persons;
  - (b) the maintenance of orderly behaviour in or on the building or land affected by the order.
- (4) For the purposes of subsection (3)(a), the order may apply to the building or land such provisions of section 78 of and Schedule 6 to the Mission and Pastoral Measure 2011 (disposal of human remains) as are specified in the order, with or without modifications or adaptations.
- (5) A condition or requirement within subsection (3)(a) may not be imposed by an order under this section except with the consent of the Secretary of State.
- (6) A condition or requirement imposed by an order under this section is enforceable as if—
  - (a) the archdeacon were the owner of the adjacent land, and
  - (b) the condition or requirement were a negative covenant expressed to be entered into for the benefit of that adjacent land.
- (7) For the purposes of subsection (6), the enforcement of a condition or requirement is to be regarded as being for the benefit of the archdeacon.
- (8) Section 84 of the Law of Property Act 1925 (which enables the Upper Tribunal to discharge or modify restrictions affecting land), other than subsection (2) of that section, does not apply in relation to a condition or requirement imposed by an order under this section.
- (9) A condition or requirement imposed by an order under this section is a local land charge; and for the purposes of the Local Land Charges Act 1975, the bishop who made the order is to be treated as the originating authority as respects the charge.
- (10) The bishop must send each order he or she makes under this section to the registrar of the diocese; and the registrar must file each order in the diocesan registry.
- (11) The registrar is entitled to such fees as may be authorised by an order under section 86 for—
  - (a) filing an order under subsection (10);
  - (b) permitting a search for and inspection of an order filed under that subsection;
  - (c) providing a copy of an order filed under that subsection.
- (12) For the purposes of subsection (10), an order may be sent by post to the registrar, delivered to him or her, or left at his or her proper address; and for that purpose and

the purposes of section 7 of the Interpretation Act 1978, a person's proper address is that person's last known address.

- (13) "Ecclesiastical corporation" means a corporation in the Church of England, whether sole or aggregate, established for spiritual purposes.
- (14) "Diocesan board of finance" has the same meaning as in the Endowments and Glebe Measure 1976 (see section 45 of that Measure).
- (15) The definition of "land" in Schedule 1 to the Interpretation Act 1978 does not apply to this section.

### **93 Section 92: application to Crown land**

- (1) Section 92 applies to Crown land and to buildings situated on Crown land as it applies to other land and buildings.
- (2) But a condition or requirement within section 92(3)(b) may not be imposed by an order under section 92 in relation to Crown land or a building situated on Crown land without the consent of the appropriate authority.
- (3) For the purposes of subsection (2), land which is used for the purposes of the Church of England and which will become Crown land on ceasing to be so used or on the exercise of a right of re-entry is to be treated as Crown land.
- (4) "Crown land" and "appropriate authority" each have the same meaning as in Part 13 of the Town and Country Planning Act 1990 (see section 293 of that Act).
- (5) Any question as to which authority is the appropriate authority in relation to any land or building is to be determined by the Treasury.