

Draft Care of Churches and Ecclesiastical Jurisdiction (Amendment) Measure

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A Draft of a Measure to amend the Care of Churches and Ecclesiastical Jurisdiction Measure 1991; and to amend the Ecclesiastical Jurisdiction Measure 1963.

1 Guidance as to the planting etc. of trees in churchyards

In section 6(3) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (“the 1991 Measure”) –

- (a) for “The chancellor of a diocese shall, after consultation with the advisory committee,” substitute “The Church Buildings Council shall”, 5
and
- (b) omit “in the diocese”.

2 Powers of archdeacons

- (1) In section 14 of the 1991 Measure (the title to which becomes “Powers of archdeacons”), in subsection (1), for the words from the beginning to “in the diocese” substitute “The archdeacon of every archdeaconry in a diocese shall exercise”. 10
- (2) In subsection (2) of that section, for “upon whom such jurisdiction is conferred” substitute “who exercises jurisdiction under subsection (1) above”.
- (3) At the end of that section insert – 15
 - “(7) Every archdeacon shall have power to grant a licence authorising, without a faculty, the minor re-ordering of a church in his archdeaconry for a temporary period to such extent and in such manner as may be prescribed.
 - (8) The archdeacon may amend or revoke a licence granted under subsection (7) above.”. 20

3 Consultation with advisory committee

- (1) In section 15 of the 1991 Measure, in subsection (1), after “injunction”, in the second place it occurs, insert “or making of a restoration order”. 25
- (2) At the end of that section insert –
 - “(4) Rules made under section 26 below may prescribe further circumstances in which, or further matters in respect of which, the duty imposed on a chancellor by subsection (1) above shall not apply.”.

4 Disused burial grounds

After section 18 of the 1991 Measure insert – 30

“18A Erection of buildings on disused burial grounds

- (1) Notwithstanding section 3 of the Disused Burial Grounds Act 1884, a court may grant a faculty permitting the erection of a building on a disused burial ground otherwise than for a purpose permitted by that

section, provided that one of the conditions set out in subsection (2) below is satisfied.

- (2) The conditions referred to in subsection (1) are—
- (a) that no interments have taken place in the land on which the building is to stand during the period of 50 years immediately prior to the date of the petition for the faculty; 5
 - (b) that no personal representative or relative of any person whose remains have been interred in the land during that period has objected to the grant of the faculty or that any such objection has been withdrawn. 10
- (3) The power conferred by subsection (1) is without prejudice to any other power which the court has to authorise the erection of buildings on burial grounds.”

5 Powers to prescribe matters not requiring a faculty

- (1) After section 18A of the 1991 Measure (as inserted by section 4 above) insert— 15
- “18B Power of Rule Committee to prescribe matters not requiring a faculty**
- (1) Rules made under section 26(1) below may prescribe matters within the jurisdiction of a consistory court which may be undertaken without a faculty; but this is subject to subsection (7) below.
- (2) The rules may prescribe conditions which may be imposed on the undertaking of such matters; and different conditions may be prescribed in relation to different matters. 20
- (3) The conditions may in particular include—
- (a) a condition that the archdeacon is consulted on the proposal to undertake the matter and that it may be undertaken without a faculty only if the archdeacon gives notice in writing that it may be undertaken without a faculty, and 25
 - (b) a condition that, if the archdeacon gives notice as mentioned in sub-paragraph (a) above, the archdeacon may make the undertaking of the matter subject to such additional conditions as he may specify in the notice. 30
- (4) Where the archdeacon is consulted as mentioned in subsection (3)(a) above, the rules may require him to seek the advice of the advisory committee or such of its members or officers as he thinks fit before deciding whether to give notice as mentioned in subsection (3)(a). 35
- (5) Where the archdeacon decides not to give notice as mentioned in subsection (3)(a) above—
- (a) the decision must be recorded in writing, and
 - (b) the matter in question may not be undertaken without a faculty.
- (6) Where the archdeacon is the incumbent or priest in charge of **the benefice where it is proposed to undertake the matter**, references to the archdeacon in subsections (3) to (5) above are to be construed as references to the chancellor. 40
- (7) Subsection (1) above does not apply to any of the following matters—

- (a) any works which involve alteration to or the extension of a listed building to such an extent as would be likely to affect its character as a building of special architectural or historic interest;
- (b) any works which are likely to affect the archaeological importance of a building or any archaeological remains within a building or its curtilage; 5
- (c) any works in respect of all or part of which scheduled monument consent is required under the Ancient Monuments and Archaeological Areas Act 1979; 10
- (d) any works which involve extension, demolition or partial demolition of a building, or the erection of a new building;
- (e) any matter which gives rise to a question of law or of doctrine, ritual or ceremonial or which would, if undertaken, affect the legal rights of any person; 15
- (f) the exhumation or other disturbance of human remains;
- (g) the reservation of a grave space;
- (h) the sale or other disposal of any article of architectural, archaeological, artistic or historic interest;
- (i) the sale of any book remaining in or belonging to a library to which the Parochial Libraries Act 1708 applies; 20
- (j) the introduction of an aumbry or any other receptacle used for the reservation of the sacrament of Holy Communion; or
- (k) the introduction of, or the carrying out of any work to, a monument of the kind referred to in section 3 of the Faculty Jurisdiction Measure 1964. 25
- (8) Any question as to whether a particular matter is, or is not, a matter that is prescribed by virtue of subsection (1) above is to be determined by the consistory court of the diocese concerned.
- (9) The definition of “partial demolition” that applies for the purposes of section 17 in relation to a church applies for the purposes of this section in relation to any building. 30
- 18C Power of chancellor to make further provision**
- (1) The chancellor of a diocese may by order provide that any matter specified in the order may be undertaken without a faculty (in addition to the matters that are prescribed by virtue of section 18B(1) above). 35
- (2) An order under subsection (1) above –
- (a) may specify a matter only if it could be prescribed by the Rule Committee by virtue of section 18B(1) above;
- (b) may specify such conditions as may be prescribed by virtue of section 18B(2) above; 40
- (c) may apply to the whole or a specified part of the diocese.
- (3) Where the chancellor of a diocese considers that there are special circumstances affecting a parish or church, churchyard or other building or place in the diocese which justify doing so, he may by order provide that a matter specified in the order may not be undertaken without a faculty even though it is a matter that is prescribed by virtue of section 18B(1) above. 45

- (4) The chancellor of a diocese shall seek the advice of the advisory committee before making an order under subsection (1) or (3) above, unless he is satisfied that the matter is sufficiently urgent to justify the making of an order without obtaining the committee's advice.
- (5) The chancellor of a diocese shall send every order made by him under subsection (1) or (3) above to the registrar of the diocese; and the registrar shall register any order so made in the diocesan registry. 5
- (6) Where an order is made under subsection (3) above, the registrar shall serve a copy of the order on—
- (a) the minister and churchwardens of any parish affected by the order, 10
- (b) the archdeacon of every archdeaconry in which a parish affected by the order is situated, and
- (c) the secretary of the advisory committee.
- (7) Any churchwardens on whom a copy of an order is served under subsection (6) above must— 15
- (a) keep it with the inventory, and
- (b) insert a copy of it in the log-book.
- (8) The chancellor of a diocese may by order vary or revoke an order made under subsection (1) or (3) above in relation to the diocese; and a reference in this section to such an order includes a reference to an order varying or revoking such an order.” 20
- (2) Omit section 11(8) of the 1991 Measure (duty of chancellor to give guidance on matters which may be undertaken without a faculty).
- 6 Membership of Rule Committee for matters relating to faculty jurisdiction etc 25**
- (1) In section 25 of the 1991 Measure, in subsection (1) —
- (a) omit paragraph (f), and
- (b) for “eleven” substitute “the”.
- (2) In subsection (2) of that section, after paragraph (d) insert “;
- (e) 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 section 13 above), three persons nominated by the Church Buildings Council, one being a person who holds office as chairman of an advisory committee and one being a person who holds office as secretary to an advisory committee; 30
- (f) for the purpose of exercising the power to prescribe things in rules by virtue of section 14(1), 15(4), 18B(1) or (2) or 21(4) above or the power to make rules under section 26(3) below, the three persons specified as members in paragraph (e) above.” 35
- (3) In that subsection, in paragraph (b)(i), for “the General Synod” substitute “the Church of England”. 40
- 7 Power for appellate court to intervene in proceedings in cases of delay**
- In section 7 of the Ecclesiastical Jurisdiction Measure 1963 (“the 1963

Measure”), at the end insert –

- “(4) Each of the appellate courts mentioned in subsection (1) of this section also has jurisdiction, either on its own motion or on the application of any party to proceedings pending in a consistory court, to give directions as to the further conduct of those proceedings if it considers that there has been inordinate delay in the conduct of the proceedings or it is otherwise in the interests of justice.
- (5) Subsection (4) enables any directions to be given which could have been given by the chancellor.”

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8 Duration of office of chancellor

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- (1) In section 2 of the 1963 Measure, for subsection (4A) substitute –

- “(4A) Where the bishop of a diocese considers it desirable in the interests of the diocese to retain the chancellor of the diocese in office after the date on which he would otherwise retire in accordance with subsection (4) above, he may authorise the continuance in office of the chancellor after that date for a period of up to 2 years.
- (4B) The bishop may authorise the further continuance in office of a chancellor for periods of up to 1 year at a time.
- (4C) The period during which a chancellor remains in office shall not be continued under subsection (4A) or (4B) above beyond the date at which the chancellor attains the age of 75 years.
- (4D) Before authorising any period of continuance in office of a chancellor under subsection (4A) or (4B), the bishop shall consult the Dean of the Arches and Auditor.”

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- (2) In subsection (4) of that section, after “(4A)” insert “to (4C)”.

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9 Interlocutory orders in the appellate courts

In section 47 of the 1963 Measure, after subsection (1) insert –

- “(1A) The Dean of the Arches and Auditor sitting alone **in either of the said Courts** has jurisdiction to make interlocutory orders, including any directions under section 7(4) of this Measure.”.

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10 Citation, commencement, extent and interpretation

- (1) This Measure may be cited as the Care of Churches and Ecclesiastical Jurisdiction (Amendment) Measure 20--.
- (2) This section comes into force on the day on which this Measure is passed and the other provisions of this Measure come into force on such day as the Archbishops of Canterbury and York may by order jointly appoint; and different days may be appointed for different provisions or for different purposes.
- (3) The Archbishops of Canterbury and York may by order jointly make transitional, transitory or saving provision in connection with the commencement of a provision of this Measure.

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- (4) This Measure extends to the whole of the provinces of Canterbury and York, except that it only extends to the Channel Islands and the Isle of Man in accordance with the following provisions of this section.
- (5) This section extends to the Isle of Man and, if an Act of Tynwald or an instrument made under an Act of Tynwald so provides, the other sections of this Measure (except section 4) also extend to the Isle of Man subject to such exceptions, adaptations or modifications as are specified in the Act of Tynwald or instrument. 5
- (6) This section and sections 1 to 3, 5 **and** 6 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. 10
- (7) The power to make an order conferred by subsection (2) or (3) shall be exercisable by statutory instrument and the Statutory Instruments Act 1946 shall apply to any such order as if it had been made by a Minister of the Crown and as if this Measure were an Act. 15
- (8) In this Measure –
“the 1963 Measure” means the Ecclesiastical Jurisdiction Measure 1963;
“the 1991 Measure” means the Care of Churches and Ecclesiastical Jurisdiction Measure 1991.