

# Draft Care of Churches and Ecclesiastical Jurisdiction (Amendment) Measure

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To amend the Care of Churches and Ecclesiastical Jurisdiction Measure 1991; to amend the Ecclesiastical Jurisdiction Measure 1963; and for connected purposes.

## **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 (No.1) (“the 1991 Measure”), for the words “The chancellor of a diocese shall, after consultation with the advisory committee,” there are substituted the words “The Church Buildings Council shall” and the words “in the diocese” are omitted. 5

## **2 Powers of archdeacons**

(1) For section 14(1) of the 1991 Measure there is substituted the following subsection—

“(1) Every archdeacon shall exercise the jurisdiction of the consistory court of the diocese in faculty matters relating to his archdeaconry, to such extent and in such manner as may be prescribed.”. 10

(2) In section 14(2), for the words “upon whom such jurisdiction is conferred” there are substituted the words “who exercises jurisdiction under subsection (1) above”. 15

(3) At the end of section 14 there are added the following subsections—

“(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. 20

(8) The archdeacon may amend or revoke a licence granted under subsection (7) above.”.

## **3 Consultation with advisory committee**

(1) In section 15(1) of the 1991 Measure, after the word “injunction”, in the second place where it occurs, there are inserted the words “or making a restoration order”. 25

(2) At the end of section 15 there is added the following subsection—

“(4) Rules made under section 26 below may prescribe further circumstances in which, and further descriptions or classes of matter in respect of which, the duty imposed on a chancellor by subsection (1) above shall not apply.”. 30

#### 4 Disused burial grounds

After section 18 of the 1991 Measure there is inserted the following section –

##### “18A Erection of buildings on disused burial grounds

- (1) Notwithstanding section 3 of the Disused Burial Grounds Act 1884 (47 & 48 Vict. c.72), 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. 5
- (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 a faculty, 10
  - (b) 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 any such objection has been withdrawn. 15
- (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 Power for Rule Committee to prescribe works, etc. which do not require a faculty 20

(1) After section 26 of the 1991 Measure there is inserted the following section –

##### “26A Power for Rule Committee to prescribe works, etc. which do not require a faculty

- (1) Subject to the following provisions of this section, rules made under section 26(1) above may prescribe classes or descriptions of matters within the jurisdiction of a consistory court which may be implemented without a faculty. 25
- (2) The Rules may specify conditions which may be imposed on the implementation of prescribed classes or descriptions of matter under subsection (1) above and different conditions may be specified in relation to different classes or descriptions of matter. 30
- (3) Without prejudice to subsection (2) above, the power in that subsection to specify conditions includes –
  - (a) a condition that the archdeacon is consulted on the proposal to implement the matter and that it may be implemented without a faculty only if the archdeacon gives notice in writing that it may be implemented without a faculty, and 35
  - (b) a condition that, if the archdeacon gives notice as mentioned in sub-paragraph (a) above, the archdeacon may make the implementation of the matter subject to such additional conditions as he may specify in the notice. 40
- (4) Where the archdeacon is consulted under 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 giving notice as mentioned in that subsection. 45

- (5) Where the archdeacon is the incumbent or priest in charge of a benefice to which the Rules relate references to the archdeacon in subsections (3) and (4) above are to be construed as references to the chancellor.
- (6) Subsection (1) above does not apply to any of the following matters –
- (a) any works which –
    - (i) 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;
    - (ii) are likely to affect the archaeological importance of a building or any archaeological remains within a building or its curtilage;
  - (b) any works in respect of all or part of which scheduled monument consent is required;
  - (c) any works which involve extension, demolition or partial demolition of a building, or the erection of a new building;
  - (d) any proposal which gives rise to a question of law or of doctrine, ritual or ceremonial or which would, if implemented, affect the legal rights of any person;
  - (e) the exhumation or other disturbance of human remains;
  - (f) the reservation of a grave space;
  - (g) the sale or other disposal of any article of architectural, archaeological, artistic or historic interest;
  - (h) the sale of any book to which the Parochial Libraries Act 1708 (c.14) applies;
  - (i) the introduction of an aumbry or any other receptacle used for the reservation of the sacrament of Holy Communion; or
  - (j) the introduction of a monument or the carrying out of any work to a monument to which section 3 of the Faculty Jurisdiction Measure 1964 (No. 5) applies.
- (7) The chancellor of a diocese may make an order, for the purposes of the diocese, or any part of it, adding to the matters prescribed under subsection (1) above which the Rule Committee has power to prescribe (not being matters listed in subsection (6) above).
- (8) When making an order under subsection (7) above, the chancellor may specify any conditions which may be specified in Rules under subsection (2).
- (9) 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 the making of an order under this subsection, he may make an order providing that, notwithstanding that a matter belongs to a class or description of matter which is prescribed under subsection (1) above, it may not be implemented without a faculty.
- (10) The registrar shall serve a copy of any order made by the chancellor under subsection (9) above on –
- (a) the incumbent and churchwardens of any parish affected by the order,
  - (b) any archdeacon in whose archdeaconry any parish to which the order relates is situated, and

- (c) the secretary of the advisory committee.
- (11) Any churchwardens who are served with the copy of an order under subsection (10) above shall—
- (a) keep it with the inventory maintained under section 4(1)(a) above, and
  - (b) insert a copy of it in the log-book maintained under section 4(1)(b) above.
- (12) The chancellor may, by order, vary or revoke an order made under subsection (7) or (9) above.
- (13) Section 28 of this Measure applies to an order made by the chancellor under subsection (7) or (9) above as it applies to an order made by the bishop.
- (14) In this section—
- “church” has the same meaning as in section 19 of this Measure;
  - “partial demolition” has the same meaning as in section 17 of this Measure; and
  - “scheduled monument consent” has the same meaning as in section 2(3)(a) of the Ancient Monuments and Archaeological Areas Act 1979 (c.46).”.
- (2) Section 11(8) of the 1991 Measure is repealed.
- 6 Power for appellate court to intervene in proceedings in cases of delay**
- In section 7 of the Ecclesiastical Jurisdiction Measure 1963 (No. 1) (“the 1963 Measure”) there are added, at the end the following subsections—
- “(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.
  - (6) The consistory court and the parties to the proceedings in the consistory court are under a duty to comply with any directions under subsection (4).”.
- 7 Duration of office of chancellor**
- For section 2(4A) of the 1963 Measure there are substituted the following subsections—
- “(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 1 year at a time.
- (4C) The period during which a chancellor remains in office shall not be continued under subsections (4A) and (4B) above beyond the date at which the chancellor reaches the age of 75. 5
- (4D) Before authorising any period of continuance of office of a chancellor under subsection (4A) or (4B) the bishop shall consult the Dean of the Arches and Auditor.”.

## 8 Interlocutory orders in the appellate courts

- (1) Section 47 of the 1963 Measure is amended as follows. 10
- (2) In subsection (1), at the beginning there are inserted the following words “Subject to subsection (1A) below”.
- (3) After subsection (1) there is inserted the following subsection—
- “(1A) The Dean of the Arches and Auditor sitting alone has jurisdiction to make interlocutory orders, including any directions under section 7(4) of this Measure.”. 15

## 9 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 jointly appoint and— 20
- (a) different days may be appointed for different provisions or for different purposes, and
- (b) an order may contain transitional or saving provisions. 25
- (3) 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.
- (4) 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. 30
- (5) This section and sections 1, 2, 3 and 5 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. 35
- (6) The power to make an order conferred by subsection (2) shall be exercisable by statutory instrument and the Statutory Instruments Act 1946 (c.35) 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. 40
- (7) Provision made under subsection (2)(b) may be contained in a separate order from the order which provides for the commencement to which the provision relates and, for that purpose, it does not matter—

- (a) whether the order which provides for the commencement includes a provision made under subsection (2)(b);
  - (b) whether the commencement has taken place.
- (8) An order which contains a provision made under subsection (2)(b) must be laid before Parliament and is subject to annulment in pursuance of a resolution of either House of Parliament. 5
- (9) In this Measure “the 1963 Measure” means the Ecclesiastical Jurisdiction Measure 1963 and “the 1991 Measure” means the Care of Churches and Ecclesiastical Jurisdiction Measure 1991.