

GENERAL SYNOD

DRAFT CARE OF CHURCHES AND ECCLESIASTICAL JURISDICTION (AMENDMENT) MEASURE

Explanatory Memorandum

The Draft Care of Churches and Ecclesiastical Jurisdiction (Amendment) Measure makes a number of changes to existing legislation concerned with the exercise of the faculty jurisdiction and the ecclesiastical courts.

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

1. Clause 1 amends section 6(3) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (“the 1991 Measure”). Section 6(3) currently requires the chancellor of each diocese to give written guidance to all parochial church councils in the diocese on the planting, felling, lopping and topping of trees in churchyards. The amendment will transfer the responsibility for giving such guidance from chancellors to the Church Buildings Council.

Clause 2 – Powers of archdeacons

2. Clause 2 amends section 14 of the 1991 Measure (Delegation to archdeacons of power to grant faculties).
3. Section 14(1) currently requires the chancellor of each diocese to confer the jurisdiction of the consistory court in faculty matters on each of the archdeacons of the diocese. The extent of the archdeacons’ jurisdiction to grant faculties is prescribed by rules made by the Rule Committee under section 26 of the 1991 Measure. The amendment made by clause 2(1) removes the requirement for the chancellor to take any steps to confer jurisdiction on the archdeacon: instead the new section 14(1) will confer jurisdiction directly on the archdeacon. But, as is currently the case under section 14, the extent of the archdeacon’s jurisdiction in faculty matters is limited to such matters as are prescribed in rules.
4. In the light of other proposals (see the notes on clause 5 below), the Rule Committee does not currently propose to prescribe any matters as being within the extent of the archdeacons’ jurisdiction under the new section 14(1). But the amendment keeps the possibility open for the future.
5. Clause 2(2) is a consequential amendment.
6. Clause 2(3) makes statutory provision for archdeacons to grant licences for the temporary minor re-ordering of churches. The extent of archdeacons’ powers to grant such licences is to be prescribed in rules. The Faculty Jurisdiction Rules already make provision for archdeacons to grant licences for temporary minor re-ordering but the statutory basis for their doing so is not as clear as it might be. The amendments made by clause 2(3) therefore clarify the position in that regard.

Clause 3 – Consultation with advisory committee

7. Clause 3 amends section 15 of the 1991 Measure (Consultation with diocesan advisory committee).

8. Section 15(1) requires the chancellor to seek the advice of the diocesan advisory committee (DAC) before making a final determination in faculty proceedings or issuing an injunction or making a restoration order. However, that requirement does not apply if –
 - a. the proposed action relates exclusively to exhumation or the reservation of a grave space; or
 - b. the chancellor is satisfied that the matter is sufficiently urgent to justify dealing with the matter without obtaining the DAC’s advice.
9. The exception in section 15(1) for urgent cases is currently drafted in such a way that it is not entirely clear whether it applies to the making of restoration orders (as well as to the grant of faculties and the issue of injunctions). The amendment made by clause 3(1) ensures that restoration orders are covered by the exception for urgent cases.
10. Clause 3(2) adds a new subsection at the end of section 15 which will enable the Rule Committee to make rules specifying further exceptions from the general requirement for the chancellor to seek the DAC’s advice before making a final determination. (The power might, for example, be used to provide an exception so that where the PCC had already obtained the advice of the DAC and that advice was before the consistory court, the chancellor need not seek advice from the DAC him- or herself.)

Clause 4 – Disused burial grounds

11. The Disused Burial Grounds Act 1884 makes it unlawful to erect any building (whether permanent or temporary) on a burial ground which is no longer used for interments except for the purpose of enlarging a church, chapel, meeting house, or other place of worship. It is therefore unlawful for a free-standing church hall (for example) to be built on a closed churchyard and a faculty cannot be granted to authorise it.
12. This has resulted in some church halls being built unnecessarily close to churches, connected to the church by a covered walkway of some description, so that it can be argued that these buildings amount to an enlargement of the church. In some cases, the 1884 Act has resulted in faculty petitions having to be refused for proposals that would, but for the prohibition contained in the Act, have been authorised without any difficulty by the consistory court.
13. The effect of the 1884 Act has been modified in relation to non-conformist burial grounds by the Disused Burial Grounds (Amendment) Act 1981 but that Act does not apply to any consecrated ground and is not therefore of assistance in relation to parochial churchyards. The prohibition contained in the 1884 Act can be overcome by certain types of pastoral scheme (by virtue of section 44(4) of the Mission and Pastoral Measure 2011). But a pastoral scheme is not normally a convenient mechanism for facilitating most building proposals in churchyards, not least because the statutory provisions governing such schemes normally require the exhumation and re-interment elsewhere of all human remains in the land concerned. The faculty jurisdiction, by contrast, would be capable of providing a much more flexible means of authorising such proposals.
14. Clause 4 accordingly inserts a new section 18A into the 1991 Measure which empowers consistory courts to grant faculties permitting the erection of free-standing buildings on disused burial grounds. If such a faculty is granted the prohibition on building in the 1884 Act will not apply to the works authorised by the faculty. The exercise of the power to grant such a faculty is subject to one of two alternative conditions being met. The conditions – which are

essentially the same as those which apply under the Disused Burial Grounds (Amendment) Act and under the Mission and Pastoral Measure – are either:

- a. that no interments have taken place in the land on which the building is to stand within the past 50 years, or
- b. if there have been any interments within the past 50 years, the executor or relatives of any person who has been buried in the land during that period does not object to the grant of the faculty.

15. The consistory courts can be expected to safeguard any human remains in accordance with their normal approach to such matters.

Clause 5 – Power for Rule Committee to prescribe works, etc. which do not require a faculty

16. Clause 5 implements a proposal from the Faculty Simplification Group that there should be nationally applicable lists of minor and routine works that can, subject to certain conditions, be implemented without a faculty. (See GS Misc 1048, paragraph 28.)

17. The new section 26A(1) empowers the Rule Committee to make rules prescribing matters within the jurisdiction of a consistory court that may be implemented without a faculty. Subsection (2) enables the rules to impose conditions on the implementation of any of those matters. Subsection (3) provides that the power to specify conditions includes –

- a. a condition that the archdeacon is consulted on the proposal and that it may be implemented without a faculty only if the archdeacon gives written notice to that effect, and
- b. a power for the archdeacon to impose conditions on the implementation of a particular proposal, over and above any conditions that are contained in the rules.

18. Subsection (4) enables the rules to impose a requirement that the archdeacon obtain the advice of the DAC or of its members or officers before giving notice that a proposal may be implemented.

19. Subsection (5) deals with the position where the archdeacon is the incumbent or priest in charge of the benefice concerned. In such a case, the chancellor is to exercise the role that would otherwise be exercised by the archdeacon under the rules.

20. Subsection (6) excludes the matters listed there from the scope of the power to prescribe matters that may be implemented without a faculty. The matters listed in subsection (6) are matters that must always be the subject of a faculty petition.

21. Subsection (7) empowers the chancellor to add to the list of matters that may be implemented without a faculty, subject to any conditions imposed by the chancellor under subsection (8).

22. Subsection (9) empowers the chancellor to make an order in relation to a particular parish etc. so that certain matters may not be implemented there without a faculty despite the fact that they are prescribed by the rules as matters that may generally be implemented without a faculty. This power will enable the chancellor to ensure that the ability to implement prescribed matters without a faculty does not result in harm to particular buildings which require special treatment because, for example, the whole building and all its fittings are of special artistic importance. It

will also enable the chancellor to take action where there is evidence of the system having been abused. Subsections (10) to (13) make supplementary provision.

23. Subsection (14) contains definitions that apply for the purposes of the new section 26A.
24. Clause 5(2) repeals section 11(8) of the 1991 Measure. Section 11(8) requires the chancellor of each diocese to give written guidance to all PCCs, ministers and churchwardens as to those matters within the jurisdiction of the consistory court which are of such a minor nature that they may be implemented without a faculty. That requirement will become redundant once the new section 26A is in operation.
25. The Rule Committee has carried out some preliminary work on the way in which the new section 26A might be implemented. It proposes that the power to prescribe matters that may be implemented without a faculty should be exercised by creating two lists. The matters in List A could simply be implemented by a parish, subject to any conditions imposed in respect of any particular item in the list. Implementation of the matters in List B would be subject to consultation with the archdeacon, who would be required to consult the DAC (or its members or officers), and could proceed if the parish received written notification from the archdeacon that the proposal may be implemented without a faculty. Illustrative drafts of the two lists are set out in the Annex to this memorandum.

Clause 6 – Power for appellate court to intervene in proceedings in cases of delay

26. Clause 6 also arises from a proposal that originated from the Faculty Simplification Group and is concerned with addressing cases where there is undue delay in proceedings in a consistory court.
27. Clause 6 inserts new subsections in section 7 of the Ecclesiastical Jurisdiction Measure 1963 (“the 1963 Measure”) that empower the Court of Arches and the Chancery Court of York to give directions as to the further conduct of proceedings that are pending in a consistory court if the appeal court considers that there has been inordinate delay in the conduct of the proceedings or if it is otherwise in the interests of justice for the appeal court to intervene in that manner. The appeal court can give such directions either of its own initiative or on the application of a party to the proceedings.
28. The consistory court and the parties to the proceedings will be under a duty to comply with any such directions given by the appeal court.

Clause 7 – Duration of office of chancellor

29. Clause 7 amends section 2 of the 1963 Measure (Judge of consistory court). Section 2(4) of the 1963 Measure provides for a chancellor to hold office until he or she reaches the age of 70. Subsection (4A) currently empowers the bishop to continue the chancellor in office for a further period (or periods) not exceeding one year in total if he considers it desirable in the interests of the diocese to do so.
30. Clause 7 replaces subsection (4A) with a new provision that empowers the bishop to continue the chancellor in office for up to two years. Subsection (4B) empowers the bishop to continue the chancellor in office thereafter for periods of one year at a time. But, by virtue of new subsection (4C) the chancellor cannot be continued in office beyond the date at which he or she reaches the age of 75.

31. New subsection (4D) requires the bishop to consult the Dean of the Arches and Auditor before continuing the chancellor in office under subsections (4A) or (4B).

Clause 8 – Interlocutory orders in the appellate courts

32. Clause 8 amends section 47 of the 1963 Measure. That section provides that proceedings in the Court of Arches and the Chancery Court of York are to be heard and disposed of by the Dean of the Arches and Auditor sitting with two diocesan chancellors. That provision is entirely apt to deal with appeal hearings themselves. But that requirement is disproportionate when it comes to the making of interlocutory orders relating to appeals (e.g. orders as to timetables, the service of documents, permission to call witnesses at a hearing etc.) which are capable of being dealt with – and can be dealt with more expeditiously – by a single judge.
33. Clause 8 accordingly inserts a new subsection (1A) in section 47 of the 1963 Measure which provides that the Dean of the Arches and Auditor sitting alone has jurisdiction to make interlocutory orders in the Court of Arches or the Chancery Court of York. (That would include any orders made under the new section 7(4) of the 1963 Measure inserted by clause 6.)

Clause 9 – Citation, commencement, extent and interpretation

34. Clause 9 makes provision for the short title of the Measure, its commencement, extent and interpretation.
35. Some of the Measure’s provisions can be extended to the Isle of Man and the Channel Islands if instruments are made to that effect by their local legislative bodies.
36. Clause 9 also allows transitional and saving provisions to be made by order to facilitate the implementation of the provisions of the Measure. An order that makes transitional or saving provisions must be laid before Parliament and be subject to annulment by either House.
37. The expressions “the 1963 Measure” and “the 1991 Measure” are defined in clause 9(9).

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Annex

Illustrative draft lists of matters which may be implemented without a faculty

List A – Matters which may be implemented without the need for consultation

This table prescribes matters which may be implemented without a faculty subject to any specified conditions

<i>Matter</i>	<i>Specified conditions</i>
Church building etc. Works of routine maintenance to the church building (other than works affecting the fabric or any historic material)	
Like for like repairs to window glass	The works do not include repairs to broken or cracked quarries in stained glass or historic clear glazed windows
The repair or like for like replacement of wire mesh window guards	Only non-corroding fixings are used
Works of routine maintenance to existing— <ul style="list-style-type: none">• heating systems• gas, water or other services• electrical installations and other electrical equipment	The works do not involve making additions to an electrical installation Any work to a gas fitting is carried out by a person who is registered on the Gas Safe Register (or is a member of another class of persons approved by the Health and Safety Executive for the purposes of Regulation 3(3) of the Gas Safety (Installation and Use) Regulations 1998) Any work to an electrical installation or electrical equipment is carried out by a person whose name appears on the Electrical Safety Register or any similar register established by the Electrical Safety Council (alone or jointly with any other body)
The installation of a roof alarm	
Work to an existing lightning conductor	The work is carried out by a person whose name appears on the Electrical Safety Register or any similar register established by the Electrical Safety Council (alone or jointly with any other body) The parochial church council's insurers are notified of the proposed work
The repair or replacement of a flagpole	Only non-corroding fixings are used
The introduction, removal or disposal of furniture, furnishings, office equipment and minor fixtures in vestries (other than safes)	The existing use of the vestry is not changed No item of historic or artistic interest is removed or disposed of
The introduction, removal or disposal of fire extinguishers	Any instructions from the supplier or the parochial church council's insurer in relation to

their type or location is complied with

The making of additions to an existing name board

The board is not a war memorial or roll of honour
The addition is in the same style (including colour and materials) as existing names on the board

Musical instruments

The introduction of musical instruments (other than organs and grand pianos) and associated equipment

The routine tuning and maintenance of organs and pianos

In the case of organs, any works do not involve tonal alterations or major dismantling of the instrument

Bells

The inspection and routine maintenance of bells and bell frames

No tonal alterations are made to any bell

The repair and routine maintenance of bell wheels

Works do not include the re-soling or re-rimming of a bell wheel

The replacement of bell stays, pulleys, bell ropes, sliders or ball bearings

Clocks

The inspection and routine maintenance of clocks and clock faces

Church contents

The repair of woodwork, metalwork and movables

Matching materials are used
The repair does not involve any works to—

- woodwork or metalwork of historic or artistic interest
- Royal coats of arms
- hatchments or other heraldic achievements
- paintings
- historic textiles
- church plate (including candlesticks and crosses)

The invisible marking of items for security purposes

The introduction of kneelers, hassocks, pew runners and cushions

The introduction of such items does not result in a change to the overall appearance of the church

The introduction, removal or disposal of—

- movable bookcases
- movable display stands

No item of historic or artistic interest is removed or disposed of

- cruets
- vases and flower stands
- hymn boards
- altar linen (but not altar frontals or falls)
- flags and banners used for temporary displays (but not the laying up, removal or disposal of flags or banners)
- the Union flag or St George's flag (with or without the diocesan arms in the first quarter) for flying from the church

Church halls

Routine repairs to the building and the replacement of fittings in the building

The introduction, removal or disposal of furniture

No item of historic or artistic interest is removed or disposed of

Churchyard

The purchase and maintenance of equipment for maintenance of the church and churchyard

The routine repair of paths, including resurfacing in the same materials and colour

The routine maintenance of, and repairs to, fences and gates (but not to lychgates, walls or historic railings)

The carrying out of repairs to a notice board and the repainting of a notice board

Trees

Works to trees (other than felling)

The works do not relate to any tree in respect of which a tree preservation order is in force or which is in a conservation area

The works are carried out by a professional arboriculturist

The removal of self-sown saplings

List B – Matters which may be implemented without a faculty subject to consultation etc.

This table prescribes matters which may, subject to any specified conditions, be implemented without a faculty if the archdeacon has been consulted and has given notice in writing that the matter may be implemented without a faculty

<i>Matter</i>	<i>Specified conditions</i>
<p>Church building etc.</p> <p>Works of routine maintenance and repair affecting the fabric of a church or historic material</p>	<p>The works are identified as routine items of maintenance in the most recent report prepared in respect of the church pursuant to section 1(2) of the Inspection of Churches Measure 1955 (the “quinquennial inspection report”) or in subsequent written advice from a qualified person</p> <p>The mix of any mortar to be used on a listed building or on any stone forming part of an unlisted building has been specified by the qualified person who produced the quinquennial inspection report or by another qualified person</p>
The installation of a wall offertory box	The installation does not affect historic fabric
The introduction of a safe in a vestry	
Works of external or internal redecoration	<p>Details of materials and colours are submitted to the archdeacon when he or she is consulted on the proposal</p> <p>The parochial church council’s insurer’s are notified of any proposal to erect scaffolding</p> <p>The overall appearance of the building is not changed</p>
The treatment of timber against beetle or fungal activity	The works do not involve the replacement of timber
<p>Works of adaptation (not amounting to substantial addition or replacement) to—</p> <ul style="list-style-type: none"> • heating systems • gas, water and other services • electrical installations and other electrical equipment 	<p>The works do not involve making additions to an electrical installation</p> <p>Any work to a gas fitting is carried out by a person who is registered on the Gas Safe Register (or is a member of another class of persons approved by the Health and Safety Executive for the purposes of Regulation 3(3) of the Gas Safety (Installation and Use) Regulations 1998)</p> <p>Any work to an electrical installation or electrical equipment is carried out by a person whose name appears on the Electrical Safety Register or any similar register established by the Electrical Safety Council (alone or jointly with any other body)</p> <p>The parochial church council’s insurers are notified of the proposed works</p>

The replacement of a boiler in the same location and utilising an existing fuel supply and existing pipe-runs

Any work to a gas fitting is carried out by a person who is registered on the Gas Safe Register (or is a member of another class of persons approved by the Health and Safety Executive for the purposes of Regulation 3(3) of the Gas Safety (Installation and Use) Regulations 1998
The parochial church council's insurers are notified of the proposals

The introduction or replacement of control equipment that is ancillary to a boiler or existing heating system

Any work to a gas fitting is carried out by a person who is registered on the Gas Safe Register (or is a member of another class of persons approved by the Health and Safety Executive for the purposes of Regulation 3(3) of the Gas Safety (Installation and Use) Regulations 1998

Any work to an electrical installation or electrical equipment is carried out by a person whose name appears on the Electrical Safety Register or any similar register established by the Electrical Safety Council (alone or jointly with any other body)

The parochial church council's insurers are notified of the proposals

The like for like replacement of roofing material

The material being replaced was not introduced unlawfully

The parochial church council's insurers are notified of the proposals

The application of forensic marking on roof lead or other material covering a roof or to rain water goods or flashings

The installation of lighting and safety equipment

The lighting or other equipment—

- is installed only in a part of the church (such as a tower or crypt) that is not normally visible to the public, or
- when installed will not be visible from ground level

In the case of a listed building, the installation is not likely to affect its character as a building of special architectural or historic interest or its archaeological importance or any archaeological remains within the building or its curtilage

The installation will not affect any graves or vaults

The parochial church council's insurers are notified of the proposals

The installation of a lightning conductor

The work is carried out by a person whose name appears on the Electrical Safety Register or any similar register established by the Electrical Safety Council (alone or jointly with any other body)

The parochial church council's insurers are notified of the proposals

The installation of a sound reinforcement system or loop system or the alteration of an existing system

In the case of a listed building, the installation is not likely to affect its character as a building of special architectural or historic interest

Bells etc.

The lifting of a bell to allow the cleaning of bearings and housings

The like for like replacement of roller bearings and their housings

The like for like replacement of steel or cast iron headstocks

The introduction of peal boards in a location not normally visible to the public

Church contents

The repair of—

- Royal coats of arms
- hatchments and other heraldic achievements
- paintings
- historic textiles

The repair and maintenance of church plate (including candlesticks and crosses)

The introduction of portable audio-visual equipment used in connection with church services

No equipment is fixed to the fabric of the church

The replacement of portable audio visual equipment

No equipment is fixed to the fabric of the church

The maintenance of audio visual equipment

The replacement of carpets or curtains (other than curtains and other hangings associated with an altar)

Treatment of fixtures and furniture against beetle or fungal activity

The introduction of a book of remembrance and stand

Churchyard

The introduction of benches in a churchyard

No bench has an inscription on it which would not be permitted on a memorial in the churchyard under the applicable churchyard regulations made or approved by the chancellor

The replacement of gas or oil tanks

The replacement tank is of similar dimensions and in substantially the same location
No works of excavation are involved

The routine maintenance, repair or rebuilding of walls

The works do not relate to any wall which is a scheduled ancient monument or a listed building
No works of excavation are involved

Trees

The planting of trees

The felling of dead or diseased trees

The law relating to the preservation of trees in respect of which a tree preservation order is in force or which are in a conservation area is complied with (if applicable)
The works are carried out by a professional arboriculturist

Works (other than felling) to trees in respect of which a tree preservation order is in force or which are in a conservation area

The law relating to the preservation of trees in respect of which a tree preservation order is in force or which are in a conservation area is complied with
The works are carried out by a professional arboriculturist
