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Care of Cathedrals (Supplementary Provisions) Measure 1994

1994 CHAPTER 2

A Measure passed by the General Synod of the Church of England to make further provision in connection with the care and conservation of cathedral churches. [21st July 1994]

Annotations:

Commencement Information

I1 Measure not in force at Royal Assent see s.11(2)

1 Preliminary interview re. contravention of s.2 of 1990 Measure.

Subject to section 3(1) below, where it appears to the bishop of a diocese, whether of his own motion or on the advice of the Cathedrals Fabric Commission or on the basis of an allegation made by another person, that the administrative body of the cathedral church of the diocese may have committed or be intending to commit an act in contravention of section 2 of the 1990 Measure, he shall, as soon as practicable and before taking any further action, afford to the members of the administrative body an opportunity of being interviewed in private by him with respect to the matter in question.

2 Power of bishop to order special visitation.

(1) Subject to subsection (2) below, where it appears to a bishop, after complying with section 1 above with respect to the members of an administrative body, that the administrative body has committed or is intending to commit an act as mentioned in that section, he shall within such period as may be prescribed order a special visitation under this section in respect of the cathedral church concerned for the purpose of inquiring into the matter in question; and, if he does so, he shall cause a written statement of his reasons for ordering the visitation to be sent to the administrative body.

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(2) It shall not be necessary for a bishop to order a special visitation under this section in respect of any act if—
   (a) he is satisfied that the administrative body concerned intends to make an application for approval of that act under the 1990 Measure; or
   (b) the administrative body concerned has made such an application and the application has not been refused; or
   (c) he considers that there are exceptional reasons for not doing so.

(3) Without prejudice to any rule of law as to the effect of episcopal visitations, where a special visitation under this section is ordered by a bishop in respect of a cathedral church, the administrative body of the cathedral church shall have no power to act as such with regard to the matter under inquiry without the prior approval in writing of the bishop.

(4) A special visitation under this section shall not be treated as an episcopal visitation for the purposes of any provision contained in the constitution and statutes of the cathedral church concerned restricting the ordering of such visitations.

3 Power of bishop to give directions.

(1) Where it appears to a bishop that an administrative body may have committed or be intending to commit an act in contravention of section 2 of the 1990 Measure and he is satisfied, having regard to the urgency of the matter, that there is insufficient time to comply with section 1 above he may from time to time give such interim directions with respect to the matter in question as he thinks fit to the administrative body before complying with that section.

(2) Where a bishop has ordered a special visitation he may from time to time give such directions with respect to the matter in question as he thinks fit to the administrative body concerned.

(3) Without prejudice to the generality of the powers to give directions under this section, such directions may require the administrative body—
   (a) to take such steps as the bishop may consider necessary for the purpose of avoiding a contravention of section 2 of the 1990 Measure;
   (b) to refrain from taking such steps as the bishop may consider likely to lead to such a contravention;
   (c) to take such steps as the bishop may consider necessary for the purpose of restoring the position so far as possible to that which existed before the act was committed.

(4) Before a bishop gives directions under this section which include a requirement of the kind mentioned in subsection (3)(c) above he shall seek the advice of the Cathedrals Fabric Commission.

(5) Directions given by a bishop under this section shall be in writing unless he is satisfied, having regard to the urgency of the matter, that there is insufficient time for them to be committed to writing; but if they are given orally he shall as soon as practicable commit them to writing.

(6) It shall be the duty of an administrative body to which directions are given under this section to comply with them.

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4 Institution of proceedings for injunction or restoration order.

(1) Where a bishop has ordered a special visitation and he considers it necessary or expedient to take further steps in respect of any actual or intended contravention of section 2 of the 1990 Measure, he may authorise a person designated by him for the purposes of this Measure, either generally or in a particular case, to institute proceedings on his behalf against the administrative body of the cathedral church concerned for the purpose of obtaining an injunction or restoration order or both against the administrative body.

(2) Where a bishop proposes to authorise the institution of proceedings under subsection (1) above, he shall inform the Commissioners of the course he proposes to take and the Commissioners shall, as soon as practicable—

(a) decide whether or not they would be prepared to pay, under section 58 of the Ecclesiastical Jurisdiction Measure 1963, any costs or expenses incurred in respect of the proceedings and, if so, to what extent; and

(b) notify the bishop of their decision.

5 Jurisdiction and composition of Vicar-General's court.

(1) The Vicar-General's court of each of the provinces of Canterbury and York shall, in respect of every cathedral church in the province, have original jurisdiction to hear and determine proceedings instituted under section 4 above.

(2) Where, in any such proceedings—

(a) the Vicar-General is for any reason unable to act; or

(b) the cathedral church concerned is in a diocese of which the Vicar-General is the chancellor,

the court shall be presided over by a chancellor appointed by the Archbishop of the province of Canterbury or York, as the case may be, to act as deputy Vicar-General; and a chancellor so appointed shall have all the powers and perform all the duties of the Vicar-General.

(3) Any such proceedings shall be instituted and conducted in such manner as the Vicars-General of Canterbury and York, acting jointly, may direct.

6 Powers of court.

(1) In any proceedings instituted under section 4 above against an administrative body the court may by way of special citation add as a further party to the proceedings any person who appears to the court to be or to have been concerned in furthering the alleged contravention of section 2 of the 1990 Measure.

(2) A special citation under subsection (1) above may require the person to whom it is issued to attend the court concerned at such time and place as may be specified in the citation.

(3) Where, in any such proceedings, it appears to the court that the administrative body concerned intends to commit or continue to commit any act in contravention of section 2 of the 1990 Measure, the court may issue an injunction restraining—

(a) the administrative body from committing or continuing to commit that act; or

(b) any other party to the proceedings from committing or continuing to commit any act in furtherance of the contravention.

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(4) Where, in any such proceedings, it appears to the court that the administrative body against which the proceedings were instituted, has committed any act in contravention of the said section 2, the court may make an order (a "restoration order") requiring the administrative body or any other party to the proceedings to take such steps as the court may consider necessary, within such time as the court may specify, for the purpose of restoring the position so far as possible to that which existed before the act was committed.

(5) The court shall not make a restoration order in respect of any act unless the court is satisfied that less than six years have elapsed since the act was committed.

(6) The court shall seek the advice of the Cathedrals Fabric Commission before making a restoration order.

(7) Where proceedings for obtaining a restoration order are instituted on behalf of a bishop under section 4 above and any fact relevant to the institution of such proceedings has been deliberately concealed from him the period of six years mentioned in subsection (5) above shall not begin to run until the bishop has discovered the concealment or could with reasonable diligence have discovered it.

(8) For the purpose of subsection (7) above, deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in that breach of duty.

(9) Failure to comply without reasonable excuse with any requirement of an injunction or restoration order shall be a contempt of the court.

(10) In any such proceedings the court may order that the special visitation from which the proceedings ensued shall continue on such terms as it considers just or shall cease and may make such further order in relation to the proceedings as it considers just.

7 Amendment of 1990 Measure.

(1) The 1990 Measure shall have effect subject to the following amendments.

(2) In section 2 (approval required for alteration to cathedrals) at the end there shall be inserted the following subsection—

"(3) Where a proposal has been implemented in contravention of this section, anything done in connection with such implementation may be approved under this Measure and, in that event, shall be deemed to have been done in compliance with this section.".

(3) In section 3 (the Cathedrals Fabric Commission for England) in subsection (2) after paragraph (a) there shall be inserted the following paragraph—

"(aa) to give advice to bishops and to the Vicar-General's court when it is sought under the Care of Cathedrals (Supplementary Provisions) Measure 1994;".

(4) In section 6 (body to which application for approval to be made) after subsection (3) there shall be inserted the following subsection—

"(3A) Any application for approval in pursuance of section 2(3) above shall be made to the Commission.".

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(5) In section 8 (applications for approval of Cathedrals Fabric Commission) at the end there shall be inserted the following subsection—

"(4) This section shall apply in relation to an application for approval in pursuance of section 2(3) above as it applies in relation to an application for approval of a proposal.".

(6) In section 10 (Commission of Review) in subsection (5) the words "to the proposal" shall be omitted.

8 Amendment of Ecclesiastical Jurisdiction Measure 1963.

The [M1]Ecclesiastical Jurisdiction Measure 1963 shall have effect subject to the amendments specified in the Schedule to this Measure.

Annotations:

Marginal Citations

M1 1963 No. 1.

9 Rules.

In section 26 of the [M2]Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (functions of Rule Committee) in subsections (1)(d) and (2)(a) for the words "Care of Cathedrals Measure 1990" there shall be substituted in both places the words " Care of Cathedrals Measures 1990 and 1994 ".

Annotations:

Marginal Citations

M2 1991 No. 1.

10 Interpretation.

In this Measure—

"the 1990 Measure" means the [M3]Care of Cathedrals Measure 1990;

"administrative body"—

(a) in relation to a cathedral church in respect of which there is a corporate body known as the dean and chapter, means the body by which administrative functions in relation to the cathedral church are performed by virtue of paragraph (b) of section 7 of the [M4]Cathedrals Measure 1963;

(b) in relation to any other cathedral church, means the body by which administrative functions in relation to the cathedral church are performed by virtue of paragraph (b) of section 8 of that Measure;

"cathedral church" means any cathedral church in the provinces of Canterbury and York, except—

(a) the Cathedral Church of Christ in Oxford;

(b) any cathedral church in the diocese of Sodor and Man or in the diocese in Europe; and

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(c) any cathedral church to which the 1990 Measure does not, for the time being, apply by virtue of an order under section 18(1) of that Measure;

"Cathedrals Fabric Commission" means the Cathedrals Fabric Commission for England established under section 3 of the 1990 Measure;

"Commissioners" means the Church Commissioners;

"the court", in relation to proceedings instituted under section 4 above in respect of a cathedral church, means the Vicar-General's court of the province in which the cathedral church is situated;

"injunction" means an injunction under section 6(3) above;

"prescribed" means prescribed by rules made under section 26 of the [M5]Care of Churches and Ecclesiastical Jurisdiction Measure 1991;

"restoration order" means a restoration order under section 6(4) above;

"special visitation" means a special visitation under section 2 above.

Annotations:

Marginal Citations

M3 1990 No. 2.

M4 1963 No. 2.

M5 1991 No. 1.

11 Short title and commencement.

(1) This Measure may be cited as the Care of Cathedrals (Supplementary Provisions) Measure 1994, and this Measure may be cited with the 1990 Measure as the Care of Cathedrals Measures 1990 and 1994.

(2) This Measure shall come into force on such date as the Archbishops of Canterbury and York may jointly appoint.

Annotations:

Subordinate Legislation Made

P1 S. 11(2): Power exercised (25.7.1994): 1.10.1994 for whole measure; Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

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SCHEDULE

AMENDMENT OF ECCLESIASTICAL JURISDICTION MEASURE 1963

1 The Ecclesiastical Jurisdiction Measure 1963 shall be amended as follows.

2 In section 7 (jurisdiction of Arches and Chancery Courts)—

(a) after subsection (1) there shall be inserted the following subsection—

"(1A) Each of the said Courts shall also have jurisdiction to hear and determine appeals from judgments, orders or decrees of the Vicar-General's court of the province of Canterbury or York, as the case may be.";

(b) in subsection (2) after the words "consistory court" there shall be inserted the words " or the Vicar-General's court, as the case may be, ".

3 In section 58 (payment of costs of bishop and promoter by Commissioners) after paragraph (b) there shall be inserted the following paragraph—

" and

(c) any bishop or person designated by a bishop to act on his behalf for the purposes of the Care of Cathedrals (Supplementary Provisions) Measure 1994 in or in relation to or directly or indirectly arising out of legal proceedings authorised, taken or contemplated in the Vicar-General's court under section 4 of that Measure:".

4 In section 60 (powers of courts and commissions in regard to costs)—

(a) in subsection (1) after the words "under this Measure" there shall be inserted the words " and the Vicar-General's court of each of the provinces of Canterbury and York in proceedings instituted under section four of the Care of Cathedrals (Supplementary Provisions) Measure 1994 ";

(b) in subsection (2) after the word "court" there shall be inserted the words " (including a Vicar-General's court) ".

5 In section 62 (payments of expenses of courts, etc by Central Board) after the words "section fourteen thereof" there shall be inserted the words " and of the Vicar-General's court for the purpose of proceedings instituted under section four of the Care of Cathedrals (Supplementary Provisions) Measure 1994 ".

6 In section 63 (fees payable in or in connection with proceedings) after the words "under this Measure" there shall be inserted the words " or the Care of Cathedrals (Supplementary Provisions) Measure 1994 ".

7 In section 80 (place where courts, etc., are to sit) after the word "Measure" there shall be inserted the words " and the Vicar-General's court of each of the provinces of Canterbury and York ".

8 In section 81 (evidence and general powers and rights of courts and commissions)—

(a) in subsection (1) after the word "Measure" there shall be inserted the words " and the Vicar-General's Court of each of the provinces of Canterbury and York ";

(b) in subsection (2) after the words "such court or commission" there shall be inserted the words " or Vicar-General's court ";

(c) in subsection (4) for the words from "subsection (2)" to the end there shall be inserted the words " section 13(2) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 or section 6(1) of the Care of

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Cathedrals (Supplementary Provisions) Measure 1994 and an injunction under section 13(4) of the former Measure or section 6(3) of the latter Measure ”.

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Changes and effects yet to be applied to the whole Measure, associated Parts and Chapters:

- Measure repealed by 2011 No. 1 Sch. 3
- Act text amended by 1999 gsm 1 s. 36(1A) (as inserted) by 2005 No. 2 Sch. 3 para. 10

Commencement Orders yet to be applied to the Care of Cathedrals (Supplementary Provisions) Measure 1994:
Commencement Orders bringing legislation that affects this Measure into force:

- 2007 No. 2 Instrument made by Archbishops commences (2005 No. 2)

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