

GENERAL SYNOD
LEGISLATIVE COMMITTEE
Ecclesiastical Jurisdiction and Care of Churches Measure
Comments and explanations

The Ecclesiastical Jurisdiction and Care of Churches Measure consolidates, with corrections and minor improvements, a number of enactments relating to ecclesiastical jurisdiction and the care of churches and other places of worship.

Introduction

1. The Legislative Committee of the General Synod, to which the Measure entitled Ecclesiastical Jurisdiction and Care of Churches Measure ('the Measure') has been referred, has the honour to submit the Measure to the Ecclesiastical Committee with these Comments and Explanations.

Summary of the Measure

2. The Measure consolidates, with corrections and minor improvements, a number of enactments relating to ecclesiastical jurisdiction and the care of churches and other places of worship.
3. The main Acts and Measures consolidated by the Measure include the following:
 - Parochial Libraries Act 1708
 - Consecration of Churchyards Act 1867 (part)
 - Inspection of Churches Measure 1955
 - Ecclesiastical Jurisdiction Measure 1963 (part)
 - Faculty Jurisdiction Measure 1964
 - Ecclesiastical Judges and Legal Officers Measure 1976
 - Ecclesiastical Fees Measure 1986 (part)
 - Care of Churches and Ecclesiastical Jurisdiction Measure 1991
 - Care of Places of Worship Measure 1999
 - Church of England (Miscellaneous Provisions) Measure 2014 (part)
 - Care of Churches and Ecclesiastical Jurisdiction (Amendment) Measure 2015
4. The Measure also consolidates a large number of other statutory provisions. For details of the enactments which are consolidated and repealed, reference should be made to Schedule 5 to the Measure (repeals and revocations).

The provisions of the Measure

Part 1 The Ecclesiastical Courts

5. The non-disciplinary jurisdiction of the ecclesiastical courts is restated in Part 1 of the Measure. The provisions of the Ecclesiastical Jurisdiction Measure 1963 dealing with that aspect of the courts' jurisdiction will be repealed, leaving the 1963 Measure to deal solely with the disciplinary jurisdiction for offences "involving matter of doctrine, ritual or ceremonial". (The provisions of the 1963 Measure dealing with the other aspects of the disciplinary jurisdiction were repealed by the Clergy Discipline Measure 2003 which established a new system of tribunals to deal with conduct cases.)
6. Part 1 accordingly continues the existence of consistory courts, the Arches and Chancery Courts, and the Court of Ecclesiastical Causes Reserved and continues to provide for the appointment and term of office of their respective judges. It also continues the appellate jurisdiction of the Privy Council in faculty appeals not relating to doctrine, ritual or ceremonial and of Commissions of Review in appeals which do relate to those matters.

Part 2 Legal Officers

7. Part 2 restates the provisions concerned with the functions and appointments of provincial and diocesan registrars and their terms of office.

Part 3 Care of Churches etc.

8. Part 3 restates various provisions relating to the care of churches and other places of worship. These include provision for the constitution and function of diocesan advisory committees, for certain churches and chapels to opt in to the faculty jurisdiction, for the regular inspection of churches, and for the respective roles of churchwardens, parochial church councils and archdeacons in relation to their care and maintenance.
9. Provision (which restates provisions of the Parochial Libraries Act 1708) is made in relation to the preservation of historic parochial libraries.

Part 4 Faculty Jurisdiction

10. Part 4 restates and brings together a number of statutory provisions relating to the faculty jurisdiction. These include provisions as to the application and scope of the jurisdiction, parties to faculty proceedings, the demolition of churches, building on disused burial grounds, the reservation of grave spaces, and works to monuments.
11. Part 4 also restates provisions relating to the powers of consistory courts, including the power to attach conditions to the grant of a faculty, the making of costs orders against persons responsible for unlawful acts, and the issue by the consistory courts of injunctions and restoration orders.
12. Provisions relating to the functions of archdeacons and to matters which may be undertaken without a faculty are also restated.

Part 5 Miscellaneous

13. Part 5 restates provisions relating to the constitution and functions of the Rule Committee and the Fees Advisory Commission.

14. It also restates various provisions concerned with burials, the consecration of burial grounds, and the removal of the legal effects of consecration.

Part 6 General

15. Part 6 provides for the procedure for making regulations, orders and rules under the Measure. It also provides for interpretation of the Measure. It introduces the Schedules which contain consequential amendments to other legislation, transitional, saving and transitory provision, and repeals and revocations of other legislation. It also contains provision for the Measure's commencement, extent and short title.

Schedules

16. Schedule 1 makes various amendments to legislation concerned with other ecclesiastical jurisdictions. In particular, it amends the Ecclesiastical Jurisdiction Measure 1963 so as to remove from it everything except the disciplinary jurisdiction for offences involving matter of doctrine, ritual or ceremonial. The provisions which are removed will be found restated either in this Measure or in the particular Measure(s) to which the provisions relate. For example, section 1(1) and (2) of the 1963 Measure (which establish consistory courts and the Arches and Chancery Courts) are removed (by paragraph 3 of Schedule 1) from the 1963 Measure and restated in sections 1 and 9 of this Measure. And, for example, the references to the Vicar-Generals' courts are removed (by paragraph 24 of Schedule 1) from section 81 of the 1963 Measure (which provides for the ecclesiastical courts to have the same powers as the High Court in relation to certain matters, and for dealing with acts which constitute contempt of an ecclesiastical court) and are inserted instead in section 20 of the Care of Cathedrals Measure 2011 (which sets out the powers of the Vicar-Generals' courts in relation to cathedrals).
17. Schedule 2 restates provision which must be included in the constitutions of diocesan advisory committees.
18. Schedule 3 makes amendments to other legislation which are consequential on the main provisions of the Measure.
19. Schedule 4 makes transitional, saving and transitory provision.
20. Schedule 5 contains repeals and revocations of a number of Acts, Measures and subordinate instruments.

Drafting notes, table of origins and table of destinations

21. Drafting notes, which are provided separately, have been prepared by Legislative Counsel. They explain the approach taken in relation to various points which arose in preparing the Measure.
22. Legislative Counsel has also provided a table of origins and a table of destinations (also provided separately). These tables show, respectively, the legislative origins of the provisions which are restated in the Measure, and the places in the Measure where restated provisions of existing legislation are to be found.

Proceedings in the General Synod

23. The Measure was introduced into the Synod for First Consideration in July 2016. As a consolidation Measure, it was not committed to a Revision Committee and there was no Revision Stage in the full Synod.
24. A number of drafting amendments were made to the Measure at the Final Drafting stage which was taken at the February 2017 group of sessions of the Synod. The Final Approval stage immediately followed when the Measure received the approval of all three Houses.
25. The voting on the Measure at the end of the Final Approval stage was as follows—

	In favour	Against
Bishops	23	0
Clergy	86	0
Laity	113	0

26. The Legislative Committee invites the Ecclesiastical Committee to issue a favourable report on the Measure. Should the Ecclesiastical Committee require any further information or explanation, the Legislative Committee stands ready to provide it.

On behalf of the Legislative Committee

G Tattersall

Deputy Chair

3 September 2017