



Incumbents (Vacation of Benefices) Measure 1977

1977 No. 1

PART I

INSTITUTION OF ENQUIRY INTO PASTORAL SITUATION IN A PARISH

[^{F1}1] **Code of Practice as to reconciliation.**

- (1) It shall be the duty of the House of Bishops to draw up rules of guidance for the purposes of this Measure generally and, in particular, as to the steps which that House considers should be taken, where the bishop of a diocese receives notice of intention to make a request under section 1A of this Measure, to—
 - (a) promote better relations between the incumbent and the parishioners; and
 - (b) remove the causes of their estrangement,and to promulgate the rules of guidance in a Code of Practice.
- (2) The House of Bishops may at any time amend or replace a Code of Practice issued under subsection (1) above by a further Code of Practice issued under that subsection.]

Textual Amendments

- F1** [S. 1](#) inserted (1.9.1994) by [1993 Measure No. 1, s. 1](#) (with [s. 15](#)) (the originally enacted s. 1 being renumbered (1.9.1994) as s. 1A by s. 2(1) (with s. 15) of that 1993 Measure); [Instrument dated 25.7.1994 made by Archbishops of Canterbury and York](#)

[^{F2}1A] **Request for enquiry into pastoral situation in a parish.**

- (1) A request for an enquiry under this Part of this Measure into the pastoral situation in a parish on the ground that there has been a serious breakdown of the pastoral relationship between the incumbent and [^{F3}the] parishioners to which the conduct of

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the incumbent or of [^{F3}the] parishioners or of both has contributed over a substantial period may [^{F4}, subject to subsection (1A) below] be made by—

- (a) the incumbent of the benefice to which the parish belongs; or
- (b) the archdeacon in whose archdeaconry the parish is; or
- (c) a majority of not less than two-thirds of the lay members of the parochial church council of the parish present and voting at a duly convened meeting of that council on a resolution that the request be made; or
- (d) where the incumbent mentioned in paragraph (a) above is the archdeacon mentioned in paragraph (b) above, a majority of the members of the bishop's council and standing committee of the diocesan synod of the diocese in which the parish is.

[^{F5}(1A) An enquiry under this Part of this Measure shall only be undertaken after the persons concerned have had an opportunity to resolve the pastoral situation in the parish in question; and, accordingly, a request for such an enquiry shall not be made unless notice of intention to make the request has been given by the person or persons concerned to the bishop of the diocese in which the parish in question is at least six months, and not more than twelve months, before the request is made.]

- (2) A request for such an enquiry [^{F6}, and a notice of intention to make it, shall be made or given] in writing to the bishop of the diocese in which the parish in question is and the secretary of the diocesan synod of that diocese and [^{F7}, in the case of a request,] shall contain particulars of the facts which appear to the person or persons making the request to justify an enquiry.
- (3) A request for such an enquiry [^{F8}, and a notice of intention to make it, made or given] by the persons mentioned in subsection (1)(c) or (d) above must—
 - (a) be signed by all of those persons and include the address of each of them; and
 - (b) specify two persons from among those signing the request [^{F9}or notice] who are willing to act as representatives of those persons in connection with the enquiry [^{F9}or notice] and indicate which of those two is willing to conduct and receive correspondence relating to the enquiry [^{F9}or notice] (in this Measure referred to as “the designated representative”).
- (4) A request for such an enquiry [^{F10}, and a notice of intention to make it, made or given] by the persons mentioned in subsection (1)(c) above must also contain a statement that the persons who have signed the request [^{F11}or notice] constitute a majority of two-thirds or more of those lay members of the parochial church council of the parish in question who were present at a duly convened meeting of that council and voted thereat on a resolution that the request be made [^{F12}or the notice be given].
- (5) A request for such an enquiry [^{F13}, and a notice of intention to make it, made or given] by the persons mentioned in subsection (1)(d) above must also contain a statement that the persons who have signed the request [^{F14}or notice] constitute a majority of the members of the bishop's council and standing committee of the diocesan synod of the diocese in which the parish in question is.
- (6) Where a [^{F15}request or notice made or given] under this section is received by the secretary of the diocesan synod, he shall notify—
 - (a) the incumbent of the benefice to which the parish in question belongs, unless it was he who made the request [^{F16}or gave the notice];
 - (b) the archdeacon in whose archdeaconry that parish is, unless it was he who made the request [^{F16}or gave the notice]; and

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- (c) the secretary of the parochial church council of that parish, unless it was the persons mentioned in subsection (1)(c) above who made the request [^{F16}or gave the notice].

[^{F17}(7) A request made under this section may be withdrawn by notice in writing given to the bishop of the diocese in which the parish in question is and the secretary of the diocesan synod of that diocese by—

- (a) in the case of a request made by the person mentioned in subsection (1)(a) or (b) above, that person;
- (b) in the case of a request made by the persons mentioned in subsection (1)(c) above, a majority of the lay members of the parochial church council of the parish present and voting at a duly convened meeting of that council on a resolution that the request be withdrawn;
- (c) in the case of a request made by the persons mentioned in subsection (1)(d) above, by a majority of the members of the bishop's council and standing committee of the diocesan synod of the diocese in which the parish is,

and where a request is withdrawn under this subsection no further steps shall be taken under this Part of this Measure in connection with the request.]

Textual Amendments

- F2** s. 1 (as originally enacted) renumbered as s. 1A (1.9.1994) by 1993 Measure No. 1, ss.1, 14(1), 15, **Sch. 3 para. 1** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F3** Words in s. 1A(1) substituted (1.9.1994) by 1993 Measure No. 1, s. 14(1), **Sch. 3 para. 1(a)** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F4** Words in s. 1A(1) inserted (1.9.1994) by 1993 Measure No. 1, s. 14(1), **Sch. 3 para. 1(a)** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F5** S. 1A(1A) inserted (1.9.1994) by 1993 Measure No. 1, ss. 2(2), 15 (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F6** Words in s. 1A(2) substituted (1.9.1994) by 1993 Measure No. 1, s. 14(1), **Sch. 3 para. 1(b)(i)** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F7** Words in s. 1A(2) inserted (1.9.1994) by 1993 Measure No. 1, s. 14(1), **Sch. 3 para. 1(b)(ii)** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F8** Words in s. 1A(3) substituted (1.9.1994) by 1993 Measure No. 1, s. 14(1), **Sch. 3 para. 1(c)(i)** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F9** Words in s. 1A(3)(b) inserted (1.9.1994) by 1993 Measure No. 1, s. 14(1), **Sch. 3 para. 1(c)(ii)-(iv)** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F10** Words in s. 1A(4) substituted (1.9.1994) by 1993 Measure No. 1, s. 14(1), **Sch. 3 para. 1(d)(i)** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F11** Words in s. 1A(4) inserted (1.9.1994) by 1993 Measure No. 1, s. 14(1), **Sch. 3 para. 1(d)(ii)** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F12** Words in s. 1A(4) inserted (1.9.1994) by 1993 Measure No. 1, s. 14(1), **Sch. 3 para. 1(d)(iii)** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F13** Words in s. 1A(5) substituted (1.9.1994) by 1993 Measure No. 1, s. 14(1), **Sch. 3 para. 1(e)(i)** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F14** Words in s. 1A(5) inserted (1.9.1994) by 1993 Measure No. 1, s. 14(1), **sch. 3 para. 1(e)(ii)** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F15** Words in s. 1A(6) substituted (1.9.1994) by 1993 Measure No. 1, s. 14(1), **Sch. 3 para. 1(f)(i)** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F16** Words in s. 1A(6)(a)(b)(c) inserted (1.9.1994) by 1993 Measure No. 1, s. 14(1), **Sch. 3 para. 1(f)(ii)** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

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F17 S. 1A(7) inserted (1.9.1994) by 1993 Measure No. 1, ss. 2(3), 15, 16 (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

2 Action to be taken by archdeacon in certain cases before institution of enquiry.

- (1) Where the bishop of a diocese receives a request under [F18]section 1A] of this Measure, then, unless—
- (a) the request was made by the archdeacon in whose archdeaconry the parish in question is, or
 - (b) that archdeacon is the incumbent of the benefice to which the parish in question belongs,
- the bishop shall direct the first mentioned archdeacon [F19]to take such steps as are mentioned in subsection (4) below and] to report in accordance with subsection (5) below.
- (2) Where the archdeaconry in which the parish in question is situated is vacant, the bishop shall appoint some other archdeacon holding office in the diocese to act in the case and shall inform the secretary of the diocesan synod accordingly.
- (3) Where the archdeacon in whose archdeaconry the parish in question is situated is of opinion that it would not be right or expedient for him to act in the case, he shall so inform the bishop and the bishop shall appoint some other archdeacon holding office in the diocese to act in his place and shall inform the secretary of the diocesan synod accordingly.
- [F20](4) On receiving the directions of the bishop the archdeacon shall take such steps as he considers appropriate to promote better relations between the incumbent and his parishioners and to remove the causes of their estrangement.]
- (5) Not more than six weeks after receiving [F21]the directions of the bishop] the archdeacon shall report to the bishop whether in his opinion an enquiry into the pastoral situation in the parish to which the request relates would be in the best interest of the incumbent and [F21]the] parishioners and should accordingly be instituted [F22]; and the archdeacon, in making his report to the bishop, shall have regard to the extent to which the current Code of Practice issued under section 1 of this Measure has been complied with].
- (6) On receiving the archdeacon's report the bishop shall inform the secretary of the diocesan synod of the archdeacon's opinion as stated in his report and direct him to inform the incumbent, the secretary of the parochial church council and the designated representative, if any, of it.

Textual Amendments

- F18** Words in s. 2(1) substituted (1.9.1994) by 1993 Measure No. 1, s. 14(1), **Sch. 3 para. 2(a)(i)** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F19** Words in s. 2(1) repealed (1.9.1994) by 1993 Measure No. 1, s. 14(1)(2), **Sch. 3 para. 2(a)(ii)**, **Sch.4** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F20** S. 2(4) repealed (1.9.1994) by 1993 Measure No. 1, s. 14(2), **Sch.4** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F21** Words in s. 2(5) substituted (1.9.1994) by 1993 Measure No. 1, s. 14(1), **Sch. 3 para. 2(b)** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

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F22 Words in s. 2(5) inserted (1.9.1994) by 1993 Measure No. 1, s. 14(1), **Sch. 3 para. 2(b)** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

3 Institution of enquiry.

(1) Where—

- (a) the request for an enquiry under this Part of this Measure was made by the archdeacon in whose archdeaconry the parish in question is or that archdeacon is the incumbent of the benefice to which the parish in question belongs; or
- (b) the archdeacon appointed to act under section 2 of this Measure reports that in his opinion such an enquiry should be instituted; or
- (c) within six months after the making of his report the archdeacon informs the bishop that notwithstanding that he did not report as aforesaid he considers that the circumstances are such that such an enquiry is nevertheless required; or
- (d) within six months after the making of the archdeacon's report the incumbent, the secretary of the parochial church council or the designated representative, if any, informs the bishop that notwithstanding that the archdeacon did not report as aforesaid such an enquiry is nevertheless required,

then ^{F23}the bishop may, if he thinks fit, direct the secretary of the diocesan synod to institute such enquiry]

^{F24}(1A) If, within the period of six months after the relevant date, the bishop neither gives a direction under subsection (1) above nor notifies the secretary of the diocesan synod that he has decided not to give such a direction, such a direction shall be deemed to have been given.

(1B) In this section “relevant date” means—

- (a) in either of the cases described in subsection (1)(a) above, the date on which the request was made;
- (b) in the case described in subsection (1)(b) above, the date on which the report was made;
- (c) in the case described in subsection (1)(c) or (d) above, the date on which the bishop is informed that, notwithstanding that the archdeacon did not report that in his opinion an enquiry under this Part of this Measure should be instituted, such an enquiry is nevertheless required.]

^{F25}(2) Where it is the secretary of the parochial church council or the designated representative who informs the bishop as mentioned in subsection (1)(d) above, the bishop may, if he thinks fit and without prejudice to subsection (3) below, give a direction under subsection (1) above but shall not be obliged to do so.]

^{F25}(3) Where the person holding the office of incumbent of the benefice to which the parish in question belongs has held that office for less than three years at the date on which, but for this subsection, the bishop would be required or have power to give a direction under subsection (1) above, the bishop may, if he thinks fit, give such a direction but shall not be obliged to do so.]

Textual Amendments

F23 Words in s. 3(1) substituted (1.9.1994) by 1993 Measure No. 1, s. 3(2) (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

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- F24** S. 3(1A)(1B) inserted (1.9.1994) by 1993 Measure No. 1, s. 3(3) (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F25** S. 3(2)(3) repealed (1.9.1994) by 1993 Measure No. 1, ss. 3(4), 14(2), Sch.4 (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

4 Provisions with respect to resignation of benefice by incumbent.

- (1) Where a request for an enquiry under this Part of this Measure is made in accordance with section 1 thereof, the incumbent concerned may when, or at any time before, he receives a notification from the bishop of the diocese under section 12(1) of this Measure request the bishop to accept his resignation of his benefice, and the bishop may, if he thinks it would be in the interest of the Church to do so, accept the resignation.
- (2) An incumbent who has been informed that the bishop has accepted his resignation of his benefice under subsection (1) above shall execute a deed resigning his benefice as from such date as may be specified in the deed, being a date not later than three months after the date on which he was informed as aforesaid, and shall vacate the parsonage house or other his official residence not later than three months after the date on which the benefice became vacant by virtue of that deed.
- (3) Where the bishop accepts the resignation of an incumbent under this section, he shall notify the secretary of the diocesan synod that no further steps are to be taken in connection with the enquiry and direct him to inform the secretary of the parochial church council of the parish in question, the designated representative, if any, and, if necessary, the archdeacon in whose archdeaconry that parish is and the members of the body by which the enquiry was to have been, or is being, conducted of that fact.

PROSPECTIVE

[^{F265} Enquiry to be conducted by provincial tribunal.

An enquiry into the pastoral situation in a parish shall be conducted by a provincial tribunal for the province in which the parish in question is situated.]

Textual Amendments

- F26** S. 5 substituted (1.9.1994) by 1993 Measure No. 1, s. 14(1), Sch. 3 para.3 (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

PART II

INSTITUTION OF ENQUIRY INTO DISABILITY OF INCUMBENT

6 Enquiry whether incumbent is unable to discharge duties by reason of age or infirmity.

- (1) Subject to subsection (2) below, in any case where the bishop of a diocese is satisfied that it is proper to do so he may by notice in writing instruct the secretary of the

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diocesan synod to ^{F27}institute an enquiry as to whether] the incumbent of a benefice in the diocese is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to his benefice and, if so, whether it is desirable that he should resign his benefice or be given assistance in discharging those duties.

^{F28}(1A) An enquiry under this section shall be conducted by a provincial tribunal for the province in which the benefice in question is situated.]

(2) This section shall not apply to an incumbent who is also—

- (a) a suffragan bishop to whom the ^{F29}Bishops (Retirement) Measure 1986] applies; or
- (b) a dean, provost or archdeacon to whom the ^{M1}Church Dignitaries (Retirement) Measure 1949 applies.

Textual Amendments

F27 Words in s. 6(1) substituted (1.9.1994) by 1993 Measure No. 1, s. 14(1), **Sch. 3 para. 4(a)** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

F28 S. 6(1A) inserted (1.9.1994) by 1993 Measure No. 1, s. 14(1), **Sch. 3 para. 4(b)** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

F29 Words in s. 6(2)(a) substituted (1.9.1994) by 1993 Measure No. 1, s. 14(1), **Sch. 3 para. 4(c)** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

Marginal Citations

M1 1949 No. 1.

PART III

ENQUIRIES AND SUBSEQUENT PROCEEDINGS

7 Constitution and procedure of committees and tribunals.

^{F30}(1) Provincial tribunals for the purposes of this Measure shall be constituted in accordance with the provisions of Schedule 1 to this Measure:

Provided that where, in the course of an enquiry conducted by a provincial tribunal, a member of the tribunal other than the chairman dies or becomes unable to act as a member by reason of illness or other incapacity, the tribunal may, with the consent of the parties, continue to conduct the enquiry in the absence of that member.]

^{F31}(2) The provisions of Part III of the said Schedule shall have effect with respect to the procedure on and in connection with an enquiry conducted by any such committee or tribunal.]

^{F31}(3) A diocesan committee of enquiry shall have power to appoint a barrister or solicitor to advise and assist the committee in the exercise of its functions.]

(4) Without prejudice to subsection (5) below, at any meeting of any such ^{F32}committee or] tribunal to which the incumbent concerned is invited, or at which he is entitled to be present, he may, if he so desires, be assisted, or in his absence represented, by some other person whether having professional qualifications or not.

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[^{F30}(5) At an enquiry under this Measure the parties may be represented by a barrister or solicitor.]

[^{F33}(6) For the purposes of this section the parties, in relation to an enquiry, are—

- (a) the incumbent concerned;
- (b) the archdeacon in whose archdeaconry the benefice of the incumbent concerned is;
- (c) the parochial church council of the parish concerned or, in the case of an enquiry under Part I of this Measure requested by the persons mentioned in section 1A(1)(c), the persons specified in the request as being willing to act as the representatives of the first-mentioned persons;
- (d) in the case of such an enquiry requested by the persons mentioned in section 1A(1)(d), the persons specified in the request as being willing to act as the representatives of the first-mentioned persons.]

Textual Amendments

- F30** S. 7(1)(5) substituted (1.9.1994) by 1993 Measure No. 1, s. 14(1), **Sch. 3 para. 5(a)(b)** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F31** S. 7(2)(3) repealed (1.9.1994) by 1993 Measure No. 1, s. 14(2), **Sch.4** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F32** Words in s. 7(4) repealed (1.9.1994) by 1993 Measure No. 1, s. 14(2), **Sch.4** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F33** S. 7(6) inserted (1.9.1994) by 1993 Measure No. 1, s. 14(1), **Sch. 3 para. 5(c)** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

[^{F34}7A **Medical examinations.**

- (1) The tribunal by which an enquiry under Part I or II of this Measure is being conducted may direct that the incumbent concerned should undergo a medical examination in accordance with rules made under section 18 of this Measure for the purpose of obtaining a report on his mental or physical condition; and the tribunal may at any time revoke or vary a direction given under this subsection.
- (2) Where a tribunal gives a direction under subsection (1) above and the incumbent concerned fails to take any step required of him for the purpose of giving effect to the direction, the tribunal may draw such inferences (if any) from that fact as appear proper in the circumstances, without prejudice to the drawing of any other inferences that may properly be drawn by the tribunal in the course of the enquiry.]

Textual Amendments

- F34** S. 7A inserted (1.9.1994) by 1993 Measure No. 1, s.5 (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York.

8 **Ancillary provisions with respect to enquiry under Part I.**

- (1) In the case of an enquiry under Part I of this Measure, the secretary of the diocesan synod shall notify—

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- (a) the secretary of the parochial church council of the parish to which the enquiry relates, and
 - (b) the secretary of the parochial church council of any other parish belonging to the benefice of which the incumbent concerned is the incumbent,
- of the institution of the enquiry and ask him whether that council wishes to make representations to the [^{F35}committee or] tribunal which is to conduct the enquiry.
- (2) In the case of an enquiry under the said Part I, the secretary of the diocesan synod shall supply each member of the [^{F35}committee or] tribunal by which the enquiry is to be conducted with a copy of the request for such enquiry and, in the case of an enquiry to which subsection (1) above applies, shall inform the [^{F35}committee or] tribunal [^{F35}, as the case may be,] whether or not any parochial church council wishes to make representations to it.

Textual Amendments

F35 Words in s. 8(1)(2) repealed (1.9.1994) by 1993 Measure No. 1, s. 14(2), Sch.4 (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

9 Report to be made to the bishop.

- (1) Subject to subsection (2) below, the [^{F36}committee or] tribunal by which an enquiry under Part I of this Measure was conducted shall report to the bishop whether in its opinion there has been a serious breakdown of the pastoral relationship between the incumbent concerned and [^{F37}the] parishioners and whether in its opinion the breakdown is one to which the conduct of the incumbent or of [^{F37}the] parishioners or of both has contributed over a substantial period.
- (2) Where the [^{F36}committee or] tribunal by which such enquiry was conducted is of opinion that the incumbent concerned is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to his benefice it may so report to the bishop instead of reporting in accordance with subsection (1) above.
- (3) The [^{F38}tribunal] by which an enquiry under Part II of this Measure was conducted shall report to the bishop whether in its opinion the incumbent to which the enquiry related is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to his benefice.
- (4) Where the [^{F36}committee or] tribunal is of opinion that there has been such a breakdown as is mentioned in subsection (1) above, or, as the case may be, is of opinion that the incumbent in question is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to his benefice, then, subject to subsection (5) below, it shall include in its report its recommendations as to the action to be taken by the bishop.
- (5) A report to the bishop under this Measure shall not include a recommendation—
 - (a) in a case to which section 10 of this Measure applies, that the bishop should execute a declaration of avoidance in relation to the benefice of the incumbent concerned, or
 - (b) in a case to which section 11 of this Measure applies, that it is desirable that the incumbent concerned should resign his benefice,

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unless four or more members of the [^{F36}committee or] tribunal [^{F36}, as the case may be,] were in favour of making that recommendation.

Textual Amendments

- F36** Words in s. 9(1)(2)(4)(5) repealed (1.9.1994) by 1993 Measure No. 1, s. 14(2), **Sch.4** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F37** Words in s. 9(1) substituted (1.9.1994) by 1993 Measure No. 1, s. 14(1), **Sch. 3 para. 6(a)** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F38** Word in s. 9(3) substituted (1.9.1994) by 1993 Measure No. 1, s. 14(1), **Sch. 3 para. 6(b)** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

[^{F39}9A Inhibition in disability cases.

- (1) Subject to the following provisions of this section, where—
- (a) the bishop of a diocese has instructed the secretary of the diocesan synod to institute an enquiry under Part II of this Measure; or
 - (b) the tribunal by which an enquiry under Part I of this Measure was conducted has reported to the bishop in accordance with section 9(2) of this Measure, and it appears to the bishop that it is desirable in the interests of the Church of England that he should take action under this section, it shall be lawful for the bishop to cause a notice to be served on the incumbent who is the subject of the enquiry inhibiting him from executing or performing without the consent of the bishop any such right or duty of or incidental to his office as the bishop may specify.
- (2) A notice of inhibition shall not be served under subsection (1) above in the circumstances mentioned in paragraph (a) of that subsection after the tribunal by which the enquiry was conducted has made its report to the bishop unless it reports that in its opinion the incumbent concerned is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to his benefice.
- (3) Where the tribunal has reported to the bishop that in its opinion the incumbent concerned is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to his benefice, a notice of inhibition shall not be served under subsection (1) above after the expiry of the period of three months following the making of the report unless—
- (a) the bishop has notified the incumbent under section 11(2)(a) of this Measure that it is desirable that he should resign his benefice, in which case such a notice may be served at any time before he ceases to be the incumbent; or
 - (b) the bishop has given the incumbent leave of absence under section 11(2)(c) of this Measure, in which case such a notice may be served at any time during the leave of absence.
- (4) A notice of inhibition served under subsection (1) above shall cease to have effect—
- (a) if it is served before the tribunal makes its report to the bishop, on the making of the report unless it reports that the incumbent concerned is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to his benefice; or
 - (b) on the expiry of the period of three months following the making of the report to the bishop unless the bishop has taken action under section 11(2)(a) or (c) of this Measure; or

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Changes to legislation: There are currently no known outstanding effects for the Incumbents (Vacation of Benefices) Measure 1977. (See end of Document for details)

- (c) if the bishop gives the incumbent leave of absence under section 11(2)(c) of this Measure, on the expiry of the leave of absence; or
 - (d) on the benefice of the incumbent becoming vacant.
- (5) The bishop may at any time revoke a notice of inhibition served under this section.]

Textual Amendments

F39 S. 9A inserted (1.9.1994) by 1993 Measure No. 1, s.6 (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

10 Powers of bishop in cases of breakdown of pastoral relationship.

- (1) The provisions of this section shall have effect where the [^{F40}committee or] tribunal by which an enquiry under Part I of this Measure was conducted reports to the bishop that in its opinion there has been such a breakdown as is mentioned in section 9(1) of this Measure.
 - (2) If, but only if, the [^{F40}committee or]tribunal so recommends, the bishop [^{F41}may] execute a declaration of avoidance declaring the benefice of the incumbent concerned vacant as from a date specified in the declaration, being a date not less than three or more than six months after the date on which the declaration is made.
 - (3) Where the incumbent concerned holds two or more benefices in plurality, the bishop may include both or all of those benefices in such a declaration notwithstanding that the recommendation of the [^{F40}committee or] tribunal related to one only of them.
 - (4) Where the bishop executes a declaration under subsection (2) above, he shall disqualify the incumbent concerned from executing or performing without the consent of the bishop any right or duty of or incidental to his office during the period beginning with the date on which the declaration is executed and ending with the date on which the benefice or benefices of the incumbent will become vacant in accordance with the declaration.
 - (5) Where the [^{F40}committee or] tribunal reports to the bishop that in its opinion the serious breakdown of the pastoral relationship between the incumbent concerned and [^{F42}the] parishioners is one to which the conduct of the incumbent has contributed over a substantial period, the bishop may rebuke the incumbent and may, if he thinks fit, disqualify him from executing or performing without the consent of the bishop any such right or duty of or incidental to his office, and during such period, as the bishop may specify.
 - (6) Where the [^{F40}committee or] tribunal reports to the bishop that in its opinion such a breakdown as is mentioned in subsection (5) above is one to which the conduct of the parishioners has contributed over a substantial period, the bishop may rebuke such of them as he thinks fit [^{F43}and may, if he thinks fit, disqualify such of them as he thinks fit from being a church warden or member or officer of the parochial church council of the parish in question and of such other parishes in his diocese as he may specify during such period not exceeding five years as he may specify].
- [^{F44}(6A) Where the bishop disqualifies a person who is or who becomes a lay member of a deanery synod, a diocesan synod, or the General Synod from being a member of a parochial church council during any period under subsection (6) above, that person

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shall not be a member of that council by virtue of that lay membership during that period, notwithstanding rule 12(1)(e) of the Church Representation Rules]

- (7) Without prejudice to the preceding provisions of this section, the bishop may give such pastoral advice and guidance to the incumbent concerned and [^{F42}the] parishioners as he thinks appropriate having regard to the findings and recommendations of the [^{F40}committee or] tribunal.
- (8) Where the bishop disqualifies an incumbent under subsection (4) or (5) above, he shall make such provision for the discharge of the duties attaching to the benefice of the incumbent during the period of disqualification as he thinks fit, and the incumbent shall not interfere with any person who may be appointed to discharge any of those duties.
- [^{F45}(9) The bishop may revoke any disqualification effected under subsection (5) or (6) above.]

Textual Amendments

- F40** Words in s. 10 repealed (1.9.1994) by 1993 Measure No. 1, s. 14(2), **Sch.4** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F41** Word in s. 10(2) substituted (1.9.1994) by 1993 Measure No. 1, s. 7(a) (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F42** Words in s. 10(5)(7) substituted (1.9.1994) by 1993 Measure No. 1, s. 14(1), **Sch. 3 para.7** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F43** Words in s. 10(6) inserted (1.9.1994) by 1993 Measure No. 1, s. 7(b) (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F44** S. 10(6A) inserted (1.9.1994) by 1993 Measure No. 1, s. 7(c) (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F45** S. 10(9) inserted (1.9.1994) by 1993 Measure No. 1, s. 7(c) (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

11 Powers of bishop in cases of disability of incumbent.

- (1) The provisions of this section shall have effect where the [^{F46}committee or] tribunal by which an enquiry under Part I or II of this Measure was conducted reports to the bishop that in its opinion the incumbent concerned is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to his benefice.
- (2) Subject to subsection (3) below, the bishop may—
- (a) notify the incumbent concerned that it is desirable that he should resign his benefice; or
 - (b) with the consent of the incumbent concerned, appoint and license an assistant curate to assist the incumbent; or
 - (c) give the incumbent concerned leave of absence for a period not exceeding two years and make provision for the discharge of the duties attaching to the benefice during that period; or
 - (d) make such other temporary provision for the discharge of those duties as the bishop thinks fit.
- (3) The bishop shall not exercise the power conferred on him by subsection (2)(a) above unless the [^{F46}committee or] tribunal recommended that it was desirable that the incumbent concerned should resign his benefice.

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Changes to legislation: There are currently no known outstanding effects for the Incumbents (Vacation of Benefices) Measure 1977. (See end of Document for details)

- (4) Where the incumbent concerned holds two or more benefices in plurality, then, without prejudice to section 17(4) of the ^{M2}Pastoral Measure 1968 (which makes provision with respect to the resignation of benefices held in plurality), the bishop may, if he thinks fit, include both or all of those benefices in a notification given by him to the incumbent under subsection (2)(a) above notwithstanding that the recommendation of the [^{F46}committee or] tribunal related to one only of them.
- (5) An incumbent who is notified by the bishop under this section that it is desirable that he should resign his benefice or benefices shall execute a deed resigning it or them as from such date as may be specified in the deed, being a date not later than three months after the date on which the deed is executed.
- (6) Where the bishop notifies an incumbent under this section that it is desirable that he should resign his benefice or benefices, and the incumbent refuses or fails within one month after the notification is given to resign it or them in accordance with subsection (5) above, the bishop shall execute a declaration of avoidance declaring the benefice or benefices, as the case may be, vacant as from a date specified in the declaration, being a date not less than three or more than six months after the date on which the declaration is made.
- (7) Where the bishop requests an incumbent under this section to consent to the appointment of an assistant curate and the incumbent refuses or fails within one month after the request is made to comply with it, the bishop shall execute a declaration of avoidance declaring the benefice vacant as from the date mentioned in subsection (6) above.
- (8) Where the incumbent concerned holds two or more benefices in plurality, the bishop may, if he thinks fit, include both or all of those benefices in a declaration executed by him under subsection (7) above.

Textual Amendments

F46 Words in s. 11(1)(3)(4) repealed (1.9.1994) by 1993 Measure No. 1, ss. 14(2), 16(2), **Sch.4** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

Marginal Citations

M2 1968 No. 1.

12 Provisions supplementary to ss. 10 and 11.

- (1) As soon as practicable after the report of an enquiry under this Measure has been received by the bishop he shall notify the incumbent concerned of the action he is required or proposes to take under section 10 or 11 of this Measure, as the case may be, or, if no such action is required of, or proposed to be taken by, him, of that fact and shall send a similar notification to—
 - (a) the archdeacon in whose archdeaconry the parish concerned is, unless he is the incumbent concerned;
 - (b) the secretary of the parochial church council of that parish; and
 - (c) the designated representative, if any.
- (2) The incumbent of any benefice which has been declared vacant under the said section 10 or 11 or which he had resigned in accordance with section 11(5) shall vacate

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the parsonage house or other his official residence not later than three months after the date on which the benefice became vacant by virtue of the declaration of avoidance or deed of resignation, as the case may be.

- (3) The bishop shall cause any declaration executed by him under the said section 10 or 11 to be filed in the registry of the diocese and a copy thereof to be sent to the incumbent concerned, to the patron of the benefice and to the Church of England Pensions Board.

^{F47}13 **Compensation.**

- (1) Subject to the provisions of this Measure, where—
- (a) after obtaining the agreement of the bishop under subsection (1) of section 4 of this Measure, an incumbent resigns his benefice in accordance with subsection (2) of that section; or
 - (b) after an enquiry under Part I thereof, the bishop has declared the benefice of an incumbent vacant under section 10 of this Measure,
- the incumbent shall, on application in writing made to the diocesan board of finance, be entitled to compensation for any loss suffered by him in consequence of his resignation or the vacation of his benefice.
- (2) Schedule 2 to this Measure shall have effect for the purpose of determining the form and amount of compensation under this section and of prescribing the circumstances in which payments of compensation thereunder may be altered, terminated, suspended or refused and of providing for other matters relating thereto.
- (3) Regulations approved by the General Synod under section 6 of the Clergy Pensions (Amendment) Measure 1972 may make such amendments to Schedule 2 to this Measure as the Synod considers necessary or expedient in consequence of any regulations made under subsection (1)(a) of that section.]

Textual Amendments

F47 S. 13 substituted (1.9.1994) by [1993 Measure No. 1, s. 8](#) (with s. 15); [Instrument dated 25.7.1994](#) made by [Archbishops of Canterbury and York](#)

14 Provision with respect to pension of incumbent found to be unable to perform duties attaching to benefice.

- (1) Where—
- (a) after an enquiry under Part I of this Measure in which the ^{F48}committee or tribunal ^{F48}, as the case may be, reported to the bishop in accordance with section 9(2) thereof; or
 - (b) after an enquiry under Part II thereof,
- the incumbent concerned resigns his benefice consequent upon a notification from the bishop under section 11(2)(a) of this Measure or the bishop has declared the benefice of the incumbent vacant under that section, the incumbent shall be deemed for the purposes of the ^{F49}Church of England (Pensions) Measures 1961 to 1988 and any regulations approved by the General Synod under section 6 of the Clergy Pensions (Amendment) Measure 1972 to have become incapable through infirmity of performing the duties of his office on the date on which his resignation took effect or the date on which by virtue of the declaration his benefice became vacant, as the case

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may be, and to have satisfied the Church of England Pensions Board that he was so incapable and that the infirmity was likely to be permanent.

- (2) Subsection (1) above shall not apply to an incumbent who at whichever of the dates mentioned in that subsection applies in his case has attained the retiring age within the meaning of the said Measures and regulations.

Textual Amendments

F48 Words in s. 14(1) repealed (1.9.1994) by 1993 No. 1, ss. 14(2), 16(2), **Sch.4** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

F49 Words substituted by Church of England (Pensions) Measure 1988 (No. 4, SIF 21:5), ss. 10(3), 18(1), **Sch. 2 para. 22**

PART IV

SUPPLEMENTAL

15 ^{F50}

Textual Amendments

F50 S. 15 repealed by Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 (No. 1, SIF 21:1), s. 14(2), **Sch. 3**

16 Certain expenses to be paid by Diocesan Board of Finance.

- (1) The following expenses, that is to say—
- (a) any expenses incurred for the purpose of enabling a [^{F51}diocesan committee of enquiry or] provincial tribunal to discharge its functions under this Measure;
 - (b) any travelling or other personal expenses reasonably incurred by the members of such a [^{F51}committee or] tribunal for the purpose of or in connection with the exercise of the functions of the [^{F51}committee or] tribunal under this Measure;
 - (c) any such expenses reasonably incurred by an incumbent in connection with an enquiry under this Measure which concerns him;
 - (d) any such expenses reasonably incurred by an archdeacon under section 2 of this Measure;
 - (e) any such expenses reasonably incurred by any person in connection with his attendance at a meeting of a [^{F51}committee or] tribunal conducting an enquiry under this Measure, being a meeting which he was entitled, or invited by the [^{F51}committee or] tribunal, [^{F51}as the case may be,] to attend or which he attended as a witness; [^{F52}and
 - (f) any fee payable to the chairman of the tribunal which conducted the enquiry,][^{F51}and
 - (g) in the case of any other enquiry under this Measure, any fee payable to a barrister or solicitor appointed to advise and assist the committee which conducted the enquiry,]

shall be paid by the Diocesan Board of Finance.

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- (2) Any question whether any such expenses as are referred to in paragraph (b), (c), (d) or (e) of subsection (1) above were reasonably incurred or as to the amount thereof shall be determined by the bishop of diocese.

Textual Amendments

- F51** Words in s. 16(1) repealed (1.9.1994) by 1993 Measure No.1, s. 14(2), **Sch.4** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F52** S. 16(1)(f) and word “and” preceding it substituted (1.9.1994) for para. (f) by 1993 Measure No. 1, s. 14(1), **Sch. 3 para.8** (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

17 Exercise of powers of bishop during absence abroad, etc.

During the absence abroad or incapacity through illness of the bishop of a diocese or a vacancy in the see anything required or authorised by this Measure to be done by, to or before him shall be done or, as the case may be, may be done, by to or before the archbishop of the province to which the diocese belongs or a person, being a person in episcopal orders, appointed by that archbishop for that purpose.

[^{F53}18 Procedural rules.

- (1) There shall be a committee, to be known as the Vacation of Benefices Rule Committee, which shall consist of a chairman and four other members appointed by the Standing Committee of the General Synod.
- (2) The Vacation of Benefices Rule Committee shall have power to make rules for carrying into effect the provisions of this Measure and, in particular, for—
 - (a) regulating the procedure and practice (including the mode and burden of proof and admissibility of evidence) of provincial tribunals in connection with enquiries under this Measure;
 - (b) obtaining medical evidence in connection with enquiries under this Measure.
- (3) Any three members of the Vacation of Benefices Rule Committee may exercise all the powers of the committee.
- (4) Any rules made under this section shall be laid before the General Synod and shall not come into force until approved by the General Synod, whether with or without amendment.
- (5) Where the Standing Committee determines that the rules do not need to be debated by the General Synod then, unless—
 - (a) notice is given by a member of the General Synod in accordance with its Standing Orders that he wishes the rules to be debated, or
 - (b) notice is so given by any such member that he wishes to move an amendment to the rules [^{F54}and at least twenty-five other members of the General Synod indicate when the amendment is called that they wish the amendment to be moved],

the rules shall for the purposes of subsection (4) above be deemed to have been approved by the General Synod without amendment.

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- (6) The Statutory Instruments Act 1946 shall apply to any rules approved by the General Synod under subsection (4) above as if they were statutory instruments and were made when so approved, and as if this Measure were an Act providing that any such rules should be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

- F53** S. 18 substituted (1.9.1994) by 1993 Measure No. 1, s. 9 (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York
- F54** S. 18: By virtue of 1995 No. 2, s. 14 it is provided (1.9.1995) that, in para. (b) of subsection 5 the words from “and at least” to the end of that para. shall be omitted; Instrument dated 1.9.1995 made by Archbishops of Canterbury and York

Modifications etc. (not altering text)

- C1** S. 18(1): functions transferred (1.1.1999) by S.I. 1998/1715, arts. 1(4), 2, Sch. 1; Instrument dated 14.10.1998 made by Archbishops of Canterbury and York
- C2** S. 18(5): functions transferred (1.1.1999) by S.I. 1998/1715, arts. 1(4), 2, Sch. 1; Instrument dated 14.10.1998 made by Archbishops of Canterbury and York

19 Meaning of “benefice”.

Without prejudice to section 6(2) of this Measure, in this Measure “benefice” means the office of rector or vicar, with cure of souls, including the office of vicar in a team ministry established under the ^{M3}Pastoral Measure 1968 [^{F55}or the Pastoral Measure 1983] but does not include any office in a Royal Peculiar nor the office of dean or provost of a parish church cathedral within the meaning of the ^{M4}Cathedrals Measure 1963.

Textual Amendments

- F55** Words in s. 19 inserted (1.9.1994) by 1993 Measure No. 1, s. 14(1), Sch. 3 para.9 (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

Marginal Citations

- M3** 1968 No. 1.
M4 1963 No. 2.

[^{F56}19A Meaning of references to pastoral situation.

In this Measure any reference to a serious breakdown of the pastoral relationship between an incumbent and the parishioners shall be construed as a reference to a situation where the relationship between an incumbent and the parishioners of the parish in question is such as to impede the promotion in the parish of the whole mission of the Church of England, pastoral, evangelistic, social and ecumenical.]

Textual Amendments

- F56** S. 19A inserted (1.9.1994) by 1993 Measure No. 1, s.10 (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

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Modifications etc. (not altering text)

- C3** S. 19A applied (1.5.1996) by 1988 No. 1, s. 7(1A) (as inserted (1.5.1996) by 1995 No. 1, s. 15; Instrument dated 12.2.1996 made by Archbishops of Canterbury and York)

20 Amendments and repeal.

- (1) For the section 14 of the ^{M5} Church Dignitaries (Retirement) Measure 1949 there shall be substituted the following section:—

(1) Where a dignitary, being a dean, provost or archdeacon, is also the incumbent of a parochial benefice a declaration of vacation of his office as dean, provost or deacon made under this Measure shall have effect also of vacating his benefice, whether the office is annexed to the benefice or the benefice to the office.

(2) Where the dignitary, being an archdeacon, canon or prebendary,—

(a) is also the incumbent of a parochial benefice, and

(b) resigns his benefice consequent upon a notification from the bishop under subsection (2)(a) of section 11 of the Incumbents (Vacation of Benefices) Measure 1977 (powers of bishops where enquiry under that Measure results in a finding of mental or physical incapacity), or the bishop has declared his benefice vacant under that section,

the powers of the bishop under section 2 of this Measure shall be exercisable as if the report of the diocesan committee or provincial tribunal under the said Measure of 1977 had been a report by the cathedral chapter under this Measure, and the bishop may execute an instrument declaring the archdeaconry, canonry or prebend, as the case may be, vacant in accordance with that section or, if the case so requires, petition Her Majesty to make such a declaration, and there be no appeal against the exercise of those powers by the bishop.”

- (2) The ^{M6}Incumbents (Disability) Measure 1945 is hereby repealed.

Modifications etc. (not altering text)

- C4** The text of s. 20 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Marginal Citations

- M5** 1949 No. 1
M6 1945 No. 3.

21 Short title, extent and commencement.

- (1) This Measure may be cited as the Incumbents (Vacation of Benefices) Measure 1977.
- (2) This Measure shall extend to the whole of the Provinces of Canterbury and York except the Channel Islands and the Isle of Man, but may be applied to the Channel Islands as defined in the ^{M7}Channel Islands (Church Legislation) Measures 1931 and ^{M8}1957, or either of them, in accordance with those Measures ^{F57}and, if an Act of Tynwald

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or an instrument made in pursuance of an Act of Tynwald so provides, shall extend to the Isle of Man subject to such exceptions, adaptations or modifications as may be specified in the Act of Tynwald or instrument.]

- (3) Paragraph 2(1) and (2) of the Schedule to this Measure shall come into force on the passing of this Measure and, except as aforesaid, this Measure shall come into force on the expiration of the period of six months beginning with the date on which it is passed.

Textual Amendments

F57 Words in s. 21(2) inserted (1.9.1994) by 1993 Measure No. 1, s.11 (with s. 15); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

Marginal Citations

M7 1931 No. 4.

M8 1957 No. 1.

Status:

Point in time view as at 01/09/1995. This version of this Measure contains provisions that are prospective.

Changes to legislation:

There are currently no known outstanding effects for the Incumbents (Vacation of Benefices) Measure 1977.