



# Care of Cathedrals Measure 2011

2011 No. 1

## PART 3

### POWERS OF BISHOP TO PREVENT OR STOP CONTRAVENTIONS OF SECTION 2 AND TO RESTORE STATUS QUO

#### 15 Preliminary interview regarding contravention of section 2

Subject to section 17(1), where it appears to the bishop of a diocese, whether of his own motion or on the advice of the Commission or on the basis of an allegation made by another person, that the Chapter of the cathedral of the diocese may have committed or be intending to commit an act in contravention of section 2, he shall, as soon as practicable and before taking any further action, afford to the members of the Chapter an opportunity of being interviewed in private by him with respect to the matter in question.

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#### Commencement Information

II S. 15 in force at 1.9.2011 by [2011 No. 2, art. 2](#)

#### 16 Power of bishop to order special visitation

- (1) Subject to subsection (2), where it appears to a bishop, after complying with section 15 with respect to the members of a Chapter, that the Chapter has committed or is intending to commit an act 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 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 Chapter.
- (2) It shall not be necessary for a bishop to order a special visitation under this section in respect of any act if—

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- (a) he is satisfied that the Chapter intends to make an application for approval of that act under this Measure; or
  - (b) the Chapter 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 Chapter of the cathedral 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 restricting the ordering of such visitations.

**Commencement Information**

**I2** S. 16 in force at 1.9.2011 by [2011 No. 2, art. 2](#)

**17 Power of bishop to give directions**

- (1) Where it appears to a bishop that a Chapter may have committed or be intending to commit an act in contravention of section 2 and he is satisfied, having regard to the urgency of the matter, that there is insufficient time to comply with section 15, he may from time to time give such interim directions with respect to the matter in question as he thinks fit to the Chapter 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 Chapter.
- (3) Without prejudice to the generality of the powers to give directions under this section, such directions may require the Chapter—
- (a) to take such steps as the bishop may consider necessary for the purpose of avoiding a contravention of section 2;
  - (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) he shall seek the advice of the 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 a Chapter to which directions are given under this section to comply with them.

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#### Commencement Information

**I3** S. 17 in force at 1.9.2011 by [2011 No. 2, art. 2](#)

### 18 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, 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 Chapter of the cathedral for the purpose of obtaining an injunction or restoration order or both against the Chapter.

[<sup>F1</sup>(1A) The Church Commissioners may pay out of their general fund the whole or part of the costs and expenses incurred by a bishop or person designated as mentioned in subsection (1) in or in relation to or directly or indirectly arising out of proceedings authorised, taken or contemplated under subsection (1).

(1B) Before making a payment under subsection (1A), the Commissioners must be satisfied that the costs or expenses are reasonable in amount.]

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

- (a) decide whether or not they would be prepared to pay, under [<sup>F2</sup>subsection (1A)], any costs or expenses incurred in respect of the proceedings and, if so, to what extent; and
- (b) notify the bishop of their decision.

#### Textual Amendments

**F1** S. 18(1A)(1B) inserted (1.9.2018) by [Ecclesiastical Jurisdiction and Care of Churches Measure 2018 \(No. 3\)](#), s. 99(2), [Sch. 1 para. 27\(2\)](#) (with [Sch. 4 Pt. 1](#)); S.I. 2018/720, art. 2

**F2** Words in s. 18(2)(a) substituted (1.9.2018) by [Ecclesiastical Jurisdiction and Care of Churches Measure 2018 \(No. 3\)](#), s. 99(2), [Sch. 1 para. 27\(3\)](#) (with [Sch. 4 Pt. 1](#)); S.I. 2018/720, art. 2

#### Commencement Information

**I4** S. 18 in force at 1.9.2011 by [2011 No. 2, art. 2](#)

### 19 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 18.

(2) Where, in any such proceedings—

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

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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.
- [<sup>F3</sup>(4) Proceedings instituted under section 18 may be held in any place convenient to the court, due regard being had to the convenience of parties and witnesses.]

#### Textual Amendments

**F3** S. 19(4) inserted (1.9.2018) by [Ecclesiastical Jurisdiction and Care of Churches Measure 2018 \(No. 3\)](#), s. 99(2), [Sch. 1 para. 28](#) (with [Sch. 4 Pt. 1](#)); S.I. 2018/720, [art. 2](#)

#### Commencement Information

**I5** S. 19 in force at 1.9.2011 by [2011 No. 2](#), [art. 2](#)

## 20 Powers of court

- (1) In any proceedings instituted under section 18 against a Chapter, 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.
- (2) A special citation under subsection (1) may require the person to whom it is issued to attend the court 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 Chapter intends to commit or continue to commit any act in contravention of section 2, the court may issue an injunction restraining—
- (a) the Chapter 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.
- (4) Where, in any such proceedings, it appears to the court that the Chapter against which the proceedings were instituted has committed any act in contravention of section 2, the court may make an order (a “restoration order”) requiring the Chapter 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 6 years have elapsed since the act was committed.
- (6) The court shall seek the advice of the Commission before making a restoration order.
- (7) Where proceedings for obtaining a restoration order are instituted on behalf of a bishop under section 18 and any fact relevant to the institution of such proceedings has been deliberately concealed from him, the period of 6 years mentioned in subsection (5) shall not begin to run until the bishop has discovered the concealment or could with reasonable diligence have discovered it.

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- (8) For the purpose of subsection (7), 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 [<sup>F4</sup>or of a special citation under subsection (1)] 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.
- [<sup>F5</sup>(11) The court has the same powers as the High Court in relation to—
- (a) the attendance and examination of witnesses, and
  - (b) the production and inspection of documents.
- (12) If a person does or omits to do something in connection with proceedings instituted under section 18 which is in contempt of the court, the presiding judge may certify the act or omission under his or her hand to the High Court.
- (13) The High Court may—
- (a) on receiving a certificate under subsection (12), inquire into the alleged act or omission, and
  - (b) after hearing any witnesses against or on behalf of the person subject to the allegation and any statement in defence, exercise the same jurisdiction and powers as if the person were guilty of contempt of the High Court.
- (14) For the right of appeal against a judgment, order or decree of the court in proceedings instituted under section 18, see section 14 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018.]

#### Textual Amendments

- F4** Words in s. 20(9) inserted (1.9.2018) by [Ecclesiastical Jurisdiction and Care of Churches Measure 2018 \(No. 3\)](#), s. 99(2), [Sch. 1 para. 29\(2\)](#) (with Sch. 4 Pt. 1); S.I. 2018/720, art. 2
- F5** S. 20(11)-(14) inserted (1.9.2018) by [Ecclesiastical Jurisdiction and Care of Churches Measure 2018 \(No. 3\)](#), s. 99(2), [Sch. 1 para. 29\(3\)](#) (with Sch. 4 Pt. 1); S.I. 2018/720, art. 2

#### Commencement Information

- I6** S. 20 in force at 1.9.2011 by [2011 No. 2](#), art. 2

#### [<sup>F6</sup>20A Costs

- (1) The Vicar-General's court may, at any stage of proceedings instituted under section 18, order a party to give security for costs.
- (2) The Vicar-General's court may make an order against a party to proceedings instituted under section 18 for payment of—
  - (a) taxed costs,
  - (b) a specified proportion of the taxed costs,
  - (c) the taxed costs from or up to a specified stage of the proceedings, or
  - (d) a specified gross sum in lieu of taxed costs.

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- (3) The power to tax costs under this section is exercisable by a registrar; and the power must be exercised in the prescribed manner.
- (4) Where an order for payment of costs is made under subsection (2)(a), (b) or (c), a party to the proceedings may appeal against the registrar's taxation to the Vicar-General's court.
- (5) An appeal under subsection (4) is to be lodged and conducted in such manner as may be prescribed.
- (6) On an appeal under subsection (4), the Vicar-General may confirm or vary the registrar's taxation.
- (7) Costs ordered to be paid under this section are, if the county court so orders, recoverable—
  - (a) under a warrant issued by the county court (see section 85 of the County Courts Act 1984), or
  - (b) otherwise as if the sum were payable under an order of the county court.
- (8) For the purposes of subsection (7), a certificate stating that the sum specified is the sum due to be paid by the person referred to, and purporting to be signed by the registrar of the diocese or province in which the award for costs was made, is conclusive evidence of the facts certified.
- (9) In this section, “costs” includes fees, charges, disbursements, expenses and remuneration.

#### Textual Amendments

**F6** Ss. 20A, 20B inserted (1.9.2018) by [Ecclesiastical Jurisdiction and Care of Churches Measure 2018](#) (No. 3), s. 99(2), **Sch. 1 para. 30** (with Sch. 4 Pt. 1); S.I. 2018/720, art. 2 (with art. 3)

### **20B Payment of expenses of courts by Archbishops' Council**

- (1) The Archbishops' Council must pay the costs and expenses of the Vicar-General's court for the purposes of proceedings instituted under section 18, except in so far as they are payable by any other person under section 20A or an order or rule for the time being in force.
- (2) Before making a payment under subsection (1), the Archbishops' Council must be satisfied that the costs or expenses are reasonable in amount.
- (3) The Church Commissioners may make contributions from their general fund in relief of the liability of the Archbishops' Council under this section.]

#### Textual Amendments

**F6** Ss. 20A, 20B inserted (1.9.2018) by [Ecclesiastical Jurisdiction and Care of Churches Measure 2018](#) (No. 3), s. 99(2), **Sch. 1 para. 30** (with Sch. 4 Pt. 1); S.I. 2018/720, art. 2 (with art. 3)

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

Whole provisions yet to be inserted into this Measure (including any effects on those provisions):

- s. 2(1)(ba) and word inserted by [2024 No. 1 s. 15\(1\)](#)