

RECENT LEGISLATIVE DEVELOPMENTS

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At the July 1991 Group of Sessions of the General Synod, Amending Canon No. 9 was promulgated. The Canon amends Canon C4 to make it possible for the Archbishop of the Province to grant his faculty to remove the impediment set out in paragraph 3 of the Canon whereby no person may be admitted to Holy Orders who has remarried and, the other party to that marriage being alive, has a former spouse still living or who is married to a person who has previously married and whose former spouse is still living. Diocesan bishops are required to make application to the Archbishop for a faculty in accordance with directions given by the two Archbishops acting jointly. These directions have now been issued.

On the 25th July 1991 the Diocesan Boards of Education Measure and the Care of Churches and Ecclesiastical Jurisdiction Measure received the Royal Assent. The Diocesan Boards of Education Measure came into force on 1st August 1991 but no date has yet been fixed for the coming into force of the Care of Churches and Ecclesiastical Jurisdiction Measure.

At the November 1991 Group of Sessions the Synod dealt with the Revision Stage of the Incumbents (Vacation of Benefices) (Amendment) Measure. This had been given General Approval in January (see 1991 Ecc. L. J. 234) and had been amended by a Revision Committee. The amended Measure contains a number of new provisions including a conciliation process before the full legal procedures of the Measure would be invoked.

If conciliation fails, one of the parties (normally the lay members of the parochial church council or the incumbent himself) would be able to request a formal inquiry into the pastoral situation in the parish. The first step would be for the bishop to instruct the archdeacon to investigate the situation. The second new provision added by the Revision Committee was that, normally, the archdeacon would be expected to hold a secret ballot of all those who have been on the church electoral roll for at least 12 months to see whether they think there has been a serious breakdown. However this provision was rejected by the Synod and deleted from the Measure.

Under the Measure as modified by the Revision Committee, if the tribunal recommends that the incumbent should be removed from his benefice, and the bishop agrees, the bishop would be able to remove him. If that happened or if the incumbent resigned voluntarily during the procedure he would be entitled to compensation. Under the original 1977 Measure this compensation was on a generous scale but, because this has proved to be a disincentive to dioceses from using the Measure, the Revision Committee has substituted a rather less generous scale of compensation. It should be remembered that even if an incumbent loses his benefice under the 1977 Measure he may well be able to continue his ministry elsewhere.

The Revision Committee also considered that the legislation as it stands is rather unbalanced in that the laity are often at least as much to blame for the breakdown. At present all the bishop can do is rebuke them, but the Revision Committee's amendments would also give him power, if the provincial tribunal found the conduct of the parishioners had contributed to the breakdown of relationships over a substantial period, to disqualify named individuals from holding office as church wardens or being members or officers of the parochial church council of the parish in question or any other parish in the diocese for up to five years.