

REVISION OF ECCLESIASTICAL STATUTE LAW

CHANCELLOR SPAFFORD AND OTHERS

INTRODUCTION

Ecclesiastical law is comprised in a large number of Statutes, and in Measures of the former Church Assembly and of the General Synod. They are set out in the 1285 pages of Halsbury's Statutes, 4th edition, Volume 14. (Page references hereafter refer to that volume.)

It seemed to this Group that ecclesiastical law should be accessible and understandable. At present much of it fails one or both of these tests. For instance:

- (a) Often a single subject is dealt with in successive Acts or Measures, and so it is difficult to grasp as a whole, even if one spots all the Acts and Measures concerned. Examples are 'Powers of Church Commissioners - 25', 'Corn rents - 21', 'Benefices - 11' and 'Ecclesiastical leases - 9'.
- (b) Often a single Act or Measure, only a few sections are still in force, which is confusing to someone who gets hold of the original text. As an example, the Pluralities Act 1838 has 133 sections, of which less than half are now in force.
- (c) In some Acts the meaning is not clear. For instance in Section 8 of the Act of Supremacy 1558, what in fact were 'preheminences' and 'enormities' in 1558 or in 1989?
- (d) Many sections, particularly in early legislation, are difficult to follow due to excessive length. Section 31 of the Pluralities Act 1838 comprises one sentence of 35½ printed lines, and this is not unusual.

One solution would be to consolidate these Statutes and Measures in a series of draft Measures, one for each subject. Sentences would be shorter if not short, and, hopefully, their meaning would be clear. However this would be a virtually useless exercise, since neither the General Synod nor any other body would be much assisted by a restatement of law that patently was out of date in many minor instances.

What therefore we are attempting to do is to consolidate the law as outlined above, but at the same time making such alterations or omissions as should make it relevant for the 1990s. In so doing we felt it right in general not to suggest any alterations to recent legislation.

We hope that consideration of our drafts by members of the Ecclesiastical Law Society will help:

- (a) to encourage interest in Ecclesiastical law;
- (b) to induce members of the ELS to make suggestions for improving our drafts;
- (c) to provide a basis of work for the General Synod's lawyers or for other lawyers who eventually have the task of preparing legislation for bringing Ecclesiastical law up-to-date.

We have made no mention of Acts or Measures or Sections thereof which, at the time of writing, were listed for repeal during the November 1989 Session of General Synod.

What follows is the result of our review of the first third of volume 14 of Halsbury's Statutes.

SUBMISSION OF THE CLERGY ACT 1533 (21)

Need for King's Assent

Proposal – repeal*Reason* Covered by the Synodical Government Measure 1969 Section 1 (3) (a) and (b), which summarises in contemporary language the wording of the extant Sections.*Note* Section 1 (3) of the Synodical Government Measure 1969 would need amending so that it stands alone.**ECCLESIASTICAL LICENCES ACT 1533 (23)**

Dispensations

Proposals – Repeal and reenact as follows: “1 The Archbishop of Canterbury, or his Commissary or the Guardians of the Spiritualities during a vacancy of the See, may grant such licences, dispensations, faculties, compositions, delegacies, rescripts, instruments or writings as heretofore granted by them.*Note* The Archbishop might advise that some of these items could be omitted as of no contemporary use.

“2 The Archbishop of York or any Diocesan Bishop may grant such dispensations as each has heretofore granted.

Note 1. This covers dispensing with Banns of Marriage. The Bishops might advise that this is sole dispensation with the words used by them. If so, Item 2 above could read ‘of banns of marriage’.

2. Procedure for appeal on refusal to grant licences is surely superfluous nowadays.

3. Visitation of exempt monasteries etc and papal restrictions are obsolete.

THE ACT OF SUPREMACY (1558) (33)

Spiritual Jurisdiction

Section 8

Proposal Repeal and reenact as follows – “1 The Queen is Visitor of Westminster Abbey, St George's Windsor, the Chapels Royal and any other Royal Peculiar”*Note* The remainder of Section 8 is covered by Canon A7.**CHURCH OF ENGLAND ASSEMBLY (POWERS) ACT 1919 (34)**

Ecclesiastical Committee

Proposal Section 1(1) Repeal (as the Church Assembly no longer exists)

Section 1(2) Repeal and substitute “ ‘The constitution’ means ‘The constitution of the General Synod of the Church of England’ ”

Thereafter repeal “Church Assembly” and substitute “General Synod”. No change is suggested in respect of the rest of the extant Act, as its meaning is clear.

Note Consolidation with the Synodical Government Measure 1969 is an alternative.**CONVOCATIONS OF THE CLERGY MEASURE 1920 (38)**

Constitutional Reform

At first sight it would seem best to repeal the Measure, and substitute revised wording of its Section 1 in Section 1 (5) (a) of the Synodical Government Measure 1969. However since it is not proposed by this draft to amend that measure, no repeal and substitution is proposed here.

INTERPRETATION MEASURE 1925 (39)

Interpretation

Proposal – Sections 2, 3, 6 for “Church Assembly” substitute “General Synod”.

DIOCESAN BOARDS OF FINANCE MEASURE 1925 (42)

(Being dealt with by another ELS Group)

CHANNEL ISLANDS (CHURCH LEGISLATION) MEASURES 1931 and 1957 (44) (64)

CHANNEL ISLANDS (REPRESENTATION) MEASURE 1931 (47)

(Meaning clear. No change is proposed in respect of these two measures.)

DIOCESAN EDUCATION COMMITTEES MEASURE 1955 (50)

(Legislation is before the General Synod)

PAROCHIAL CHURCH COUNCILS (POWERS) MEASURE 1956 (55)

(Meaning clear. No change is proposed.)

CHURCHWARDENS (APPOINTMENT AND RESIGNATION) MEASURE 1964 (64)

(Meaning clear. No change is proposed.)

CHURCH OF ENGLAND CONVOCATIONS ACT 1966 (71)

(Meaning clear. No change is proposed)

APPOINTMENT OF BISHOPS ACT 1533 (130)

Repeal and reenact as follows:

1. Election of Archbishops and of Bishops

(i) Upon the see of an archbishop or of a diocesan bishop becoming vacant, the Sovereign may send to the dean and chapter of a Cathedral Church, where the see shall be vacant, a licence under the Great Seal to proceed to the election of an archbishop or bishop of such see, together with a letter containing the name of the person whom they shall elect.

(ii) The said dean and chapter shall elect the said person named in the said letter, and nobody else, to the vacant see.

(iii) Whenever any such vacancy is filled by such election, the dean and chapter shall, within 14 days of such election, notify under seal the Sovereign of such election.

(iv) If a dean and chapter fail to proceed to an election pursuant to Section 1 (ii) hereof within 12 days after the delivery of the licence and letter mentioned in Section 1 (i) hereof, or fail to notify such election in accordance with Section 1 (iii) hereof, then the Sovereign may present by Letters Patent any person to the vacant see. Such letters shall be directed to the person to whom notification is to be sent under Section 2 (i) hereof, and shall have the same effect as such notification.

2. (i) The person so elected within 28 days of such election or presentation shall take an oath of allegiance to the Sovereign, whereupon his election shall be notified by Letters Patent under the Great Seal to the archbishop of the province where the see is vacant or, if the archiepiscopal see is vacant, to the senior bishop of such province.

(ii) The election of a person in episcopal orders shall take effect on such notification.

(iii) If any archbishop or bishop shall be notified pursuant to Section 2 (i) hereof of the election of a person not in episcopal orders, the person so notified shall consecrate without delay the person so elected.

(iv) The election of any person so consecrated shall take effect upon his consecration.

(v) The archbishop or bishop notified of an election pursuant to Section 2 (i) hereof shall, (after the consecration of the person so elected if such be required), cause him to be invested in the accustomed manner.

3. Upon an election taking effect, the person elected shall then be entitled to all the possessions and profits spiritual and temporal belonging to the see, and shall be obeyed thereafter in all respects as any other archbishop or bishop.
4. (i) In this Measure reference to 'the Dean and Chapter of a Cathedral Church' shall, in the case of a parish church cathedral, be taken as a reference to 'the Cathedral Chapter'.
- (ii) This Measure applies only to the Provinces of Canterbury and York.

SUFFRAGAN BISHOPS ACTS 1534 (142) and 1898 (146)

SUFFRAGANS NOMINATION ACT 1888 (145)

Nomination and Consecration of Suffragan Bishops

Proposals – Repeal both Acts and reenact as follows:

- “1 (i) Suffragan bishops shall be assistants to their respective diocesan bishops.
- (ii) The titles of suffragan sees shall be those towns now used or so used since 1534, or further nominated pursuant to Section 4 hereof.
- (iii) Every archbishop or diocesan bishop who wishes to have a suffragan bishop shall choose two suitable persons, and shall present such two names in writing under seal to the Sovereign for nomination to a title, name, style and dignity of bishop.
- (iv) The Sovereign may then give to one of the said two persons the title, name, style and dignity of bishop of a suffragan see in the province of the presenter.
- (v) By Letters Patent addressed to the Archbishop of the Province within which is the town of the title, the Sovereign may require such Archbishop to consecrate the person so chosen as bishop, and to present such person to such title, name, style and dignity; and such Archbishop shall carry out such requirements within three months of receiving such Letters Patent.
- “2 The costs of the consecrating archbishop and of two consecrating bishops selected by the diocesan bishop whom the suffragan bishop is to assist, shall be borne by the said diocesan bishop.
- “3 A suffragan bishop may reside anywhere in the diocese of the diocesan bishop whom the suffragan bishop is to assist.
- “4 The Sovereign from time to time by Order in Council may direct that other towns may be taken and accepted for sees of bishops suffragan.
- “5 A person may be lawfully nominated, presented and appointed a suffragan bishop although already consecrated as a bishop. In such a case the Letters Patent shall not require the consecration of such person, but only the said presentation.

Note We recommend that Sections 10 and 18 of the Dioceses Measure 1978, be transferred to this suggested Measure.

VACANCIES IN SEES MEASURE 1959 (147)

Meaning clear, so no change.

CATHEDRALS MEASURE 1963 (177)

1. Meaning clear, so no change.
2. The extant Sections were left unrepealed by the Cathedrals Measure 1976, and therefore the General Synod does not seem to have been in favour of consolidation. Moreover we are not redrafting Synodical Measures.
3. This is a Measure giving powers to the Church Commissioners. It is a matter of church policy whether or not such powers should be consolidated in one Measure. Probably, we suggest, the present system is preferable, namely that the granting of such powers is stated in the context of a particular subject, eg. cathedrals.

PAROCHIAL LIBRARIES ACT 1708 (216)

The meaning of this Act is reasonably clear. How far it is of use, if at all, depends on how far parochial libraries now exist, and how they are managed. Whether or not there should be a detailed enquiry into this is a matter of policy. One way forward would be an enquiry on an archidiaconal or diocesan basis. Once the results had been correlated, the position in relation to amending legislation might well be clear.

PARISH NOTICES ACT 1837 (242)

Section 2 is applied by the General Rating Act 1967 Section 4 (2) and so we do not suggest repeal.

BAPTISMAL REGISTER MEASURE 1961 (245)

Meaning clear, so no change. (If Synodical Measures are ever subject to general revision, it could be incorporated into a revised Parochial Registers and Records Measure 1978; which did in fact amend the 1961 Measure).

ECCLESIASTICAL COURTS JURISDICTION ACT 1860 (272)

No change is recommended.

Although Sections 2, 3 and 4 are covered by the general law, these sections cover most denominations and so should not be repealed or altered without their prior consent.

Section 7 is a useful reserve power of the Ordinary over church fabric and churchyards.

ECCLESIASTICAL JURISDICTION MEASURE 1963 (275)**FACULTY JURISDICTION MEASURE 1964 (336)**

These two Measures are clear, and have been reconsidered recently by General Synod.

CLERGY SUBSCRIPTION ACT 1865 (360)

The Act is clear and in use. There is an arguable case for consolidating into one Measure all general Acts or Measures dealing with clergy. We are against this on the basis that General Synod has passed and is even now to consider a number of such Measures, so that any consolidating Measure would soon be likely to be out of date.

ARMY CHAPLAINS ACT 1865 (362)

This Act deals with extra parochial districts for army chaplains. Up to 1 August 1985 no Order in Council had been made under it. However it could be useful in the future. The Act is reasonably clear.

CLERICAL DISABILITIES ACT 1870 (365)**CLERICAL DISABILITIES ACT 1870 (AMENDMENT) MEASURE 1934 (369)**

This Act and this Measure set out clergy rights. The Measure could be consolidated as extra Sections of the 1870 Act. They both deal with rights of the clergy and are each reasonably clear. We do not recommend any change until all clergy Acts and Measures are ripe for consolidation in one or more Measures, General Synod having ceased for the moment to legislate about them. At that time a Report on the working of the Act and Measure would be helpful.

CHURCH DIGNITARIES (RETIREMENT) MEASURE 1949 (371)

BISHOPS RETIREMENT MEASURE 1951 (377)

CLERGY PENSIONS MEASURE 1961 (381)

CLERGY PENSIONS AMENDMENT MEASURES 1967, 1972, 1982
(426, 435 and 469)

These four Measures are reasonably clear.

Alteration of the terms of these Measures would be a matter of policy. However, we suggest that consolidation would be worth considering if the General Synod has finished legislating on the subject. Since the Measures include two Synodical Measures, we have not drafted a consolidating Measure.

When the working of the Incumbents (Vacation of Benefices) Measure 1977, Section 6 on infirmity, is considered, it might be as well to consider at the same time the working of Sections 1 and 2 of the 1949 Measure on infirmity.