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Faculty Jurisdiction Measure 1964

1964 CHAPTER 5

A Measure passed by the National Assembly of the Church of England to enable ecclesiastical courts to vest privately owned parts of churches in the persons in whom the churches are vested; to amend the law relating to the issue of faculties out of such courts concerning the demolition of churches and works affecting monuments in private ownership; to empower bishops to make certain licensed chapels subject to the faculty jurisdiction of such courts; to declare the law relating to the jurisdiction of such courts over the curtilage of churches; to limit the duration of rights of sepulture; to make better provision for the enforcement of orders as to costs and expenses; to repeal and re-enact the Faculty Jurisdiction Measure 1938, with amendments; and for other purposes connected therewith. [15th April 1964]

Annotations:

Commencement Information

I1 Measure wholly in force at Royal Assent

Jurisdiction in Faculty Cases

1 Vesting of privately owned parts of churches in the persons in whom the churches are vested.

(1) In this section "building" means any building or structure forming part of and physically connected with a church and "incumbent" means the incumbent of the benefice comprising the parish in which the church is situated.

(2) A court may in proceedings taken by an incumbent or parochial church council grant a faculty vesting any building in the person or body in whom the church is vested where the incumbent or parochial church council satisfies the court that:—

(i) the person in whom the church is vested is not the owner entitled to possession of the building or that there is reasonable doubt as to the ownership or right to possession thereof; and

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(ii) the incumbent or parochial church council or some other person has taken all reasonable steps since, or shortly before, the commencement of the proceedings to communicate with all persons who may reasonably be supposed to have any rights of ownership or possession, whether absolute or limited, over the building; and

(iii) notwithstanding such reasonable steps there has been no communication with such person or persons or that all persons with whom communication has been made and who, on reasonable grounds, claim rights of ownership or possession over the building consent to the grant of a faculty under this section; and

(iv) no works of repair, redecoration or reconstruction have been executed upon the building by or on behalf of any person claiming any title thereto adverse to the title of the person in whom the church is vested during the seven years immediately preceding the commencement of the proceedings.

(3) In any proceedings for obtaining a faculty under this section the court may appoint a person being a solicitor to represent all persons other than those represented, known or unknown, who may have rights of ownership or possession over the building in question, and all proper costs of such solicitor in the proceedings shall be paid by the persons bringing the proceedings, unless otherwise ordered by the court.

(4) Where a faculty under this section is granted the building specified therein shall, by virtue of such faculty and without any further or other assurance or conveyance, vest in the person in whom the church is vested as part of the church for all purposes and any rights of property of any other person therein shall thereupon determine.

Annotations:

Modifications etc. (not altering text)

C1 S. 1(3) amended (01.01.1992) by S.I. 1991/2684, arts. 2, 4, **Sch.1**.

[F1]2 Faculties for demolition of churches.

. . . . . .

Annotations:

Amendments (Textual)

F1 S. 2 repealed (1.3.1993) by Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (No. 1, SIF 21:8), s. 32(2), **Sch. 8** (with s. 31(6)); Archbishops' Instrument dated16.2.1993

3 Faculties affecting monuments owned by persons withholding consent thereto.

(1) This section shall apply to faculties for the moving, demolition, alteration or execution of other work to any monument erected, whether before or after the passing of this Measure, in or upon any church or other consecrated building or the curtilage thereof or upon consecrated ground other than consecrated burial grounds to which section eleven of the [M1]Open Spaces Act 1906 applies or has been applied.

(2) Subject to the provisions of the succeeding sub-section a court may grant a faculty to which this section applies:—

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(i) although the owner of the monument withholds his consent thereto or cannot be found after reasonable efforts to find him have been made; and

(ii) in respect of a monument erected under a faculty or affecting which any faculty has been granted, whatever the date of such faculty.

(3) No faculty to which this section applies shall be granted if the owner of the monument in question withholds his consent thereto but satisfies the court that he is, within a reasonable time, willing and able to remove the monument (or so much thereof as may be proved to be his property) and to execute such works as the court may require to repair any damage to the fabric of any building or to any land caused by such removal. The court may, upon a petition for a faculty to which this section applies, grant a faculty authorising such removal and for all purposes connected therewith and may make such orders as may be just as to the execution and cost of all necessary works.

(4) For the purposes of this section "monument" includes a tomb, gravestone or other memorial and any kerb or setting forming part thereof, and "owner" means the person who erected the monument in question and, after his death, the heir or heirs at law of the person or persons in whose memory the monument was erected and "property" shall be construed accordingly.

Annotations:

Modifications etc. (not altering text)

C2 The definition of "monument" in s. 3 applied (1.3.1993) by Inspection of Churches Measure 1955 (No. 1, SIF 21:8), **s.6** (as amended (1.3.1993) by Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (No. 1, SIF 21:8), s. 3, **Sch. 3 para. 5** (with s. 31(6))); Archbishops' Instrument dated16.2.1993

Marginal Citations

M1 1906 c. 25.

[4 Sale of books in parochial libraries under a faculty.

(1) Notwithstanding anything to the contrary contained in section ten of the [M2]Parochial Libraries Act 1708 any book in a parochial library [F2]. . . within the operation of that Act may be sold under the authority of a faculty, and in the case of every sale so authorised the proceeds of sale shall be applied for such of the ecclesiastical purposes of the parish as in such faculty may be directed. Before granting such a faculty the judge shall require the advisory committee to advise him thereon and shall consider such advice as the committee may tender to the court.

(2) Any question whether a library is within the said Act . . . shall be finally determined by the Charity Commissioners.**]**

Annotations:

Amendments (Textual)

F2 Words in s. 4(1)(2) repealed (1.3.1993) by virtue of Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (No. 1, SIF 21:8), ss. 32(1)(2), Sch. 7 para. 1, **Sch.8** (with s. 31(6)); Archbishops' Instrument dated16.2.1993

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Marginal Citations

M2 1708 c. 14.

[F3]5 Payment of costs by party responsible for breach of law.

. . . . . .

Annotations:

Amendments (Textual)

F3 s. 5 repealed (1.3.1993) by Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (No. 1, SIF 21:8), ss. 32(2), **Sch. 8** (with s. 31(6)); Archbishops' Instrument dated16.2.1993

6 Licensed chapels may be made subject to faculty jurisdiction.

(1) Where the bishop has **[**[F4], before the coming into force of section 11 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991,**]**licensed a building for public worship and he considers that circumstances have arisen which make it desirable that such building should be subject to the faculty jurisdiction he may by order direct that such building shall be subject to the jurisdiction of the court of the diocese during such period as may be specified in the order.

(2) Any building in respect of which an order is made under this section shall, during the period specified in the order, be subject, together with its furnishings and contents, to the jurisdiction of the court specified in the order as though it were a consecrated church; but an order shall not render unlawful any act done before the making of the order nor shall require the issue of faculties confirming such acts.

(3) The bishop shall send every order made under this section to the registrar of the diocese and the registrar shall register any order so made in the diocesan registry. There shall be payable to the diocesan registrar for registering such order, for permitting searches for and giving inspection and furnishing copies of any such order such fees as may from time to time be authorised by an order made under the **[**[F5]Ecclesiastical Fees Measure 1986**]**.

(4) An order made under this section shall be revocable by the bishop at any time.

Annotations:

Amendments (Textual)

F4 Words in s. 6(1) inserted (1.3.1993) by Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (No. 1, SIF 21:8), ss. 32(2), **Sch. 7 para.2** (with s. 31(6)); Archbishops' Instrument dated16.2.1993

F5 Words substituted by Ecclesiastical Fees Measure 1986 (No. 2, SIF 21:1), **s. 11(2)**

7 Curtilages of churches.

(1) For the avoidance of doubt it is hereby declared that where unconsecrated land forms, or is part of, the curtilage of a church within the jurisdiction of a court that court has the same jurisdiction over such land as over the church.

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(2) This section shall not render unlawful any act done or proceedings taken in good faith before the passing of this Measure nor shall require the issue of faculties confirming such acts.

Rights of sepulture

8 Exclusive rights to burial spaces.

(1) Any right to the exclusive use of any particular part of a churchyard, burial ground or other consecrated land for the purposes of sepulture, whether absolute or limited and however granted or acquired, shall cease one hundred years after the passing of this Measure, unless granted, enlarged or continued by a faculty issued after the passing of this Measure:
Provided that the court shall not issue a faculty granting enlarging or continuing any such right for any period longer than one hundred years from the date of the faculty.

(2) This section shall not apply to burial grounds and cemeteries provided under **[**[F6]the [M3]Local Government Act 1972**]**.

Annotations:

Amendments (Textual)
F6 Words substituted by virtue of Local Government Act 1972 (c. 70), **s. 272(2)**

Marginal Citations
M3 1972 c. 70.

Parties and procedure in faculty cases

[F7]9 Archdeacon and non-resident electors to be deemed to have an interest in faculty proceedings.

. . . . . .

Annotations:

Amendments (Textual)
F7 S. 9 repealed (1.3.1993) by Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (No. 1, SIF 21:8), s. 33(2), **Sch. 8** (with s. 31(6)); Archbishops' Instrument dated16.2.1993

[F8]10 Functions of archdeacons in faculty cases.

. . . . . .

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Annotations:

Amendments (Textual)

F8 S. 10 repealed (1.3.1993) by Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (No. 1, SIF 21:8), s. 32(2), **Sch.8** (with s. 31(6)); Archbishops' Instrument dated16.2.1993

11 Mode of enforcing orders as to costs and expenses.

Any sum payable by virtue of an order of the court in or consequent upon any proceeding for a faculty shall, if the county court so orders, be recoverable by execution issued from the county court or otherwise as if payable under an order of that court.

Archdeacon's Certificate Procedure

F9 12 Archdeacons to issue certificates in certain cases.

. . . . . .

Annotations:

Amendments (Textual)

F9 S. 12 repealed (1.3.1993) by Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (No. 1, SIF 21:8), s. 32(2), **Sch.8** (with s. 31(6)); Archbishops' Instrument dated16.2.1993

Advisory Committees

F10 13 Diocesan advisory committees.

. . . . . .

Annotations:

Amendments (Textual)

F10 S. 13 repealed (1.3.1993) by Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (No. 1, SIF 21:8), s. 32(2), **Sch.8** (with s. 31(6)); Archbishops' Instrument dated16.2.93

Miscellaneous

F11 14 Rules.

. . . . . .

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Annotations:

Amendments (Textual)

F11 S. 14 repealed (1.3.1993) by Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (No. 1, SIF 21:8), s. 32(2), **Sch.8** (with s. 31(6)); Archbishops' Instrument dated16.2.1993

15 Interpretation.

In this Measure unless the context otherwise requires:—

"advisory committee" means the advisory committee for the care of churches of a diocese appointed under section thirteen of this Measure;

"bishop" means the bishop of the diocese concerned;

[F12"church" includes any building or part of a building which is licensed for public worship according to the rites and ceremonies of the Church of England and is subject to the faculty jurisdiction;**]**

"council" means the Central Council of Diocesan Advisory Committees for the Care of Churches, as constituted in accordance with the resolution of the Church Assembly passed on the 18th June, 1958, or any body subsequently constituted to exercise the functions of the Council as so constituted;

"court" means the ecclesiastical court of any province or diocese;

"judge" means the judge of any such court;

"prescribed" means prescribed by rules made under **[**F13section twenty-six of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991**]**.

Annotations:

Amendments (Textual)

F12 Definition in s. 15 inserted (1.3.1993) by Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (No. 1, SIF 21:8), s. 32(1), **Sch. 7 para. 3(a)** (with s. 31(6)); Archbishops' Instrument dated16.2.1993

F13 Words in definition in s. 15 substituted (1.3.1993) by Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (No. 1, SIF 21:8), s. 32(1), **Sch. 7 para. 3(b)** (with s. 31(6)); Archbishops' Instrument dated16.2.1993

16 Repeal.

The Faculty Jurisdiction Measure 1938, is hereby repealed, but anyrule made under the said Measure shall remain in force until replacedor otherwise revoked by the rules made under this Measure.

Annotations:

Modifications etc. (not altering text)

C3 The text of s. 16 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.

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17 Extent and Short Title.

(1) This Measure shall extend to the whole of the provinces of Canterbury and York, except the Channel Islands and the Isle of Man.

(2) This Measure may be cited as the Faculty Jurisdiction Measure 1964.

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[F14SCHEDULE]

Annotations:

Amendments (Textual)

F14 Schedule repealed (1.3.1993) by Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (No. 1, SIF 21:8), s. 32(2), **Sch.8** (with s. 31(6)); Archbishops' Instrument dated16.2.1993

F15 1 . . . . . .

Annotations:

Amendments (Textual)

F15 Schedule para. 1 repealed (1.3.1993) by Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (No. 1, SIF 21:8), ss. 32(2), **Sch.8** (with s. 31(6)); Archbishops' Instrument dated 16.2.1993.

F16 2 . . . . . .

Annotations:

Amendments (Textual)

F16 Schedule para. 2 repealed (1.3.1993) by Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (No. 1, SIF 21:8), ss. 32(2), **Sch. 8** (with s. 31(6)); Archbishops' Instrument dated 16.2.1993.

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Changes and effects yet to be applied to :

- s. 4(2) words substituted by 2006 c. 50 Sch. 8 para. 46
- s. 7 excluded by S.I. 2009/1300 art. 5(10)
- s. 11 applied by 2011 No. 3 s. 68(12)
- s. 11 applied by 1983 gsm1 s. 56(2J) (as inserted) by 2006 No. 2 s. 1(b)
- s. 15 text amended by 2007 No. 1 Sch. 7

Commencement Orders yet to be applied to the Faculty Jurisdiction Measure 1964:
Commencement Orders bringing legislation that affects this Measure into force:

- S.I. 2007/309 art. 2 3 commences (2006 c. 50)
- 2006 No. 3 Instrument made by Archbishops commences (2006 No. 2)
- 2007 No. 3 Instrument made by Archbishops Commencement Order

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