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INCUMBENTS (VACATION OF BENEFICES)
MEASURES 1977 AND 1993

CODE OF PRACTICE

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Introduction

1. Section 1 of the Incumbents (Vacation of Benefices) Measure 1977 ('the 1977 Measure' as amended by the Incumbents (Vacation of Benefices) (Amendment) Measure 1993, imposes a duty on the House of Bishops to draw up rules of guidance for the purposes of the 1977 Measure generally and, in particular, as to the steps which the House considers should be taken, where a diocesan bishop receives notice of intention to make a request for an enquiry under Part I of the Measure, to -

(a) promote better relations between the incumbent and the parishioners; and

(b) remove the causes of their estrangement,

and to promulgate those rules of guidance in a Code of Practice

2. This Code of Practice is issued by the House of Bishops in fulfilment of that duty; the rules of guidance contained in it in no way qualify or detract from the provisions of the 1977 Measure or the Rules made under it

Scope and Purpose of 1977 Measure

3. The House considers it is essential that all those who are concerned in proceedings under the 1977 Measure, or who contemplate such proceedings, should bear in mind the scope and purpose of the Measure itself.

(a) Part I of the 1977 Measure is intended for use in certain cases where some or all of those concerned consider that there has been a serious breakdown in the pastoral relationship between an incumbent and the parishioners in the parish in question; this is defined by the amended 1977 Measure as a situation where the relationship between the incumbent and the parishioners is such as to impede the promotion in the parish of the whole mission of the Church of England, pastoral,

evangelistic, social and ecumenical. The Measure recognises that if such a breakdown has occurred it may be one to which the conduct of the incumbent, or the conduct of the parishioners, or both, has contributed over a substantial period, and even where the conduct of the incumbent has been responsible or partly responsible for the breakdown he may be deprived of his benefice only in certain very restricted circumstances.

(b) It follows that Part I of the 1977 Measure is not intended as, and should not be used as, a substitute for proceedings under the Ecclesiastical Jurisdiction Measure 1963 in a case where an incumbent is or should be accused of an ecclesiastical offence under that Measure. The fact that proceedings have been instituted under Part I of the 1977 Measure, or even that a provincial tribunal has found that there is a serious breakdown of the pastoral relationship, is not to be taken as necessarily showing that the incumbent has acted in a blameworthy manner, and even in those rare cases where an incumbent is deprived of his benefice under the Measure that should not be regarded as debarring him from further ministry elsewhere in the Church.

(c) Similarly, Part I of the 1977 Measure should not be used as a substitute for pastoral reorganisation under the Pastoral-Measure 1983 where that is desirable.

(d) In dealing with proceedings or possible proceedings under Part I of the 1977 Measure, the bishop and all others concerned should in all cases consider whether it would be more appropriate to proceed under Part II. Part II of the 1977 Measure gives the bishop power to call for an enquiry into whether an incumbent 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 the benefice or be given assistance in discharging those duties. Here again, the proceedings do not carry the implication that the incumbent's conduct has been blameworthy, and Part II of the 1977 Measure, like Part I, is not intended as a substitute for action under the Ecclesiastical Jurisdiction Measure 1963 or the Pastoral Measure 1983.

Reconciliation under Part I of 1977 Measure

4 A basic principle underlying the 1977 Measure in its amended form is that if problems arise between an incumbent and the parishioners every effort should be made to effect a reconciliation, and that if possible this should be

done without the formal procedures under the Measure being invoked. The bishop, the archdeacon, the rural dean (unless he is the incumbent concerned) and all others acting on the bishop's behalf should therefore be guided by this principle at every stage, both before and during the time when formal steps are being taken under the Measure and, if necessary, after they have been completed.

5 In particular, section 1A of the amended 1977 Measure provides that an enquiry by a provincial tribunal under Part I shall be undertaken only after the persons concerned have had an opportunity to resolve the pastoral situation in the parish. Accordingly, a request for such an enquiry (which may be made either by the incumbent himself, by a majority of not less than two-thirds of the lay members of the parochial church council, by the archdeacon or, if the archdeacon is the incumbent, by a majority of the members of the bishop's council) must be preceded by at least six months' (but not more than twelve months') notice to the bishop of an intention to make that request.

6 Where the bishop receives a notice of intention to request an enquiry, he should as soon as possible interview the 'parties' - that is, the incumbent and the lay members of the parochial church council - at least once together and once separately. For this purpose, the lay members of the parochial church council should be represented by the lay vice-chairman of the council, the churchwardens and not more than two other representatives nominated by and from the lay members of the council as a whole. The bishop may also invite not more than two other lay members of the council to be present if, after consulting the archdeacon and the rural dean, he considers that desirable, but this power should be exercised sparingly, and used only where there is reason to think that a significant body of opinion within the parish would otherwise be unrepresented. All those who are to be present at the meetings should be provided beforehand with the names of all the parochial church council representatives who will be attending. As explained in paragraph 18 below, the bishop should avoid becoming closely involved in the issues between the parties, but he should listen to any representations they wish to make to him, and should take advantage of any opportunity to effect an immediate reconciliation. Failing that, he should outline the procedure which will be followed under paragraphs 7 to 11 below and should stress the importance of a positive approach, and a genuine desire to achieve a reconciliation, on the part of all concerned.

7 Unless the interviews under paragraph 5 above produce an immediate reconciliation, the bishop should as soon as possible appoint a person (other than the archdeacon) whom he considers suitable for the task, to be responsible

for -

(a) explaining the implications and possible consequences of invoking the 1977 Measure to the 'parties'. Among other things, he should explain the financial implications and consequences of such a step and also, where proposals for pastoral reorganisation are under consideration or contemplated, the possible effect that action under the 1977 Measure might have on them; and

(b) appointing (if possible) a conciliator (other than the archdeacon) who is acceptable to both 'parties'. Unless he is also the diocesan registrar, the person appointed by the bishop may also be the conciliator if he is acceptable to both 'parties'. If he is unable to find a conciliator acceptable to both 'parties' he should report this to the bishop and send copies of the report to both 'parties' - in the case of the lay members of the parochial church council, the copy should go to the secretary of the council for circulation to the lay members for the time being.

8. Once a conciliator is appointed, he should use his best endeavours -

(a) to interview any parishioners concerned and the incumbent separately and give them an opportunity to express their respective views;

(b) to bring them into dialogue with each other; and

(c) to further a reconciliation between them.

9. The reconciliation, or attempted reconciliation, process should if possible be completed within six months of the notice of intention to request an enquiry. If it is successful, the 'parties' may wish to agree to work together for a 'trial period' of up to six months

10. Once the reconciliation, or attempted reconciliation, process has been completed, the conciliator should make a factual report to the bishop on the steps he has taken, what has been achieved and, if the process has not been successful, whether the conciliator considers there is any prospect of a reconciliation in the future. The report should not attempt to apportion blame or to make value-judgements, but should state, if that is the case, that a particular 'party' (as in paragraph 6 above) has refused to discuss the matter with the conciliator or the other 'party'. Copies of the report should be sent to each 'party' as well as to the bishop - in the case of the lay members of the

parochial church council the copy should go to the secretary of the council for circulation.

11. If the conciliator's attempts have been unsuccessful, it will be for the bishop to decide, in the light of the conciliator's report, whether to initiate any further steps towards reconciliation before a formal request is made for an enquiry under the 1977 Measure. The same will apply if it has not proved possible to appoint a conciliator.

Decision whether to Direct Enquiry by Provincial Tribunal under Part I of the 1977 Measure

12. If and when the bishop receives a formal request for an enquiry, the amended 1977 Measure provides that he is to direct the archdeacon in whose archdeaconry the parish in question lies (or, in certain circumstances, another archdeacon in the diocese) to report to him on whether an enquiry by a provincial tribunal into the pastoral situation in the parish would be in the interests of the incumbent and the parishioners and should accordingly be instituted. In making his report, the archdeacon must have regard to the extent to which the provisions of this Code of Practice have been complied with; paragraphs 7 to 11 above will of course be particularly relevant here

13. If -

(a) the archdeacon reports in favour of an enquiry by a provincial tribunal or informs the bishop within six months of his report that he considers an enquiry is required; or

(b) the archdeacon of the archdeaconry in which the parish lies is himself the incumbent or originally requested the enquiry; or

(c) within six months after the archdeacon's report the incumbent, the secretary of the parochial church council or the person who is the 'designated representative' of the lay members of the council under the 1977 Measure informs the bishop that even though the archdeacon has reported against an enquiry one is nevertheless required;

the bishop has a discretion whether to direct that an enquiry by a provincial tribunal should take place (Unless one of conditions (a) to (c) is satisfied it is not possible to institute an enquiry, and the bishop has no discretion in the matter).

14. In exercising his discretion, the bishop should in general be guided by the recommendations in the archdeacon's report (or any information the archdeacon subsequently provides) unless there is some substantial reason for not doing so. Such a reason might, for example, be that -

(a) the incumbent has decided he wishes to resign his benefice, but does not feel able to do so with dignity while he is faced with the prospect of an enquiry; or

(b) there has been some other change in circumstances since the archdeacon reported; or

(c) the bishop considers that an enquiry under Part II of the 1977 Measure would be more appropriate than an enquiry under Part I (see paragraph 3(d) above).

Hearing by and Report of Provincial Tribunal

15 Where the bishop directs an enquiry by a provincial tribunal in a case under Part I or Part II of the 1977 Measure, the composition and procedure of the tribunal will be governed by the Measure and rules made under it. The rules will specify the circumstances in which a hearing of the tribunal is to be held in public; in any case where the rules give the tribunal a discretion to direct a public hearing but the incumbent does not have a right to request one, the tribunal should take account of the incumbent's wishes, although these will not be conclusive.

16. After it has completed the enquiry, the tribunal will report to the bishop in accordance with section 9 of the 1977 Measure

(a) In a case under Part I, the tribunal must normally report whether in its opinion there has been a substantial breakdown in the pastoral relationship between the incumbent and the parishioners. If so, it must also report whether in its opinion the conduct of the incumbent, or the parishioners, or both, has contributed to the breakdown over a substantial period, and also make recommendations for action by the bishop.

(b) In a case under Part II, the tribunal must report whether in its opinion the incumbent is unable by reason of age or infirmity of mind or body to discharge his duties adequately; if so, it must again make recommendations for action by the bishop. A tribunal in a Part I case

may also, instead of making a report under (a), report that in its opinion the incumbent is unable to discharge his duties adequately by reason of age or infirmity and make appropriate recommendations

In deciding what action to take on the report, and in particular whether to implement the tribunal's recommendations, the bishop should in all cases consult his diocesan registrar about the extent of his legal powers in the particular circumstances

17. The bishop also has a discretion whether to publish the report; if he decides not to do so, he may nevertheless decide to publish one or more extracts from or a summary of the report, or make material from it which has not been published available on a confidential basis to one or more persons, or both. The bishop should give careful consideration to all the circumstances in reaching his decision and, in particular, should have regard to the following considerations -

(a) whether the enquiry or part of it took place in public. If so, there will normally be a strong case for making public at least the basic findings and recommendations by the tribunal outlined in paragraph 16(a) and (b) above, although the other considerations mentioned below should still be taken into account;

(b) the interests of justice and the importance of ensuring that justice is seen to be done;

(c) the interests of the incumbent, the parishioners and anyone else involved;

(d) pastoral considerations. For example, if the incumbent is to continue in the parish, the bishop should consider whether publication of the report or any particular section of it would tend to help or hinder his future ministry there; and

(e) the bishop's own position. In particular, if he has decided to implement the tribunal's recommendations, it may well be helpful to make those recommendations public

In reaching his decision, the bishop should consult his diocesan registrar. If the bishop decides to publish or disclose only part of the report or a summary of

it, or if he is minded not to accept the tribunal's recommendations, it is particularly important that he should have legal advice from the registrar on the wording of what is made public or otherwise made available to those concerned.

General Considerations

18 Because of the discretionary powers given to the bishop in relation to cases under Part I of the 1977 Measure (including that mentioned in paragraph 13 above), the bishop should avoid close personal involvement during the preliminary stages of any case or potential case under Part I (apart from the interview mentioned in paragraph 6). He will therefore need to rely to a considerable extent on others, including the archdeacon of the archdeaconry in question (or in some cases another archdeacon in the diocese - see, for example, paragraph 12 above) and the rural dean (unless he is the incumbent concerned). However, subject to the need to preserve confidentiality in appropriate cases (see, for example, paragraph 10 above), the bishop, the relevant archdeacon, the rural dean (where applicable), and also the diocesan registrar and the lay chairman of the deanery synod, should all be kept in close touch with the progress of the matter; the same applies in cases under Part II of the 1977 Measure.

19. In addition to the importance of securing a reconciliation where possible, the bishop, the relevant archdeacon, the rural dean (where applicable) and all others concerned on the bishop's behalf should at all stages have regard to the need to ensure that the incumbent (and his family), any other ministers in the parish and the laity all receive proper pastoral care and any necessary support until the problems in the parish can be resolved. Here again, the same considerations should apply in cases under both Part I and Part II of the 1977 Measure.

+ George Cantuar:
On behalf of the House of Bishops
January 1994