

ECCLESIASTICAL LAW: CURRICULUM FOR CLERGY IN THE CHURCH OF ENGLAND

Stage 1 – The point of Ordination

1. Brief Introduction:

- a. Why does the Church need rules? An introduction to ecclesiastical law.
- b. Why ecclesiastical law matters.
- c. The law of the Church of England is *sui generis*. There should be a general appreciation that it is part of the law of the land – *cf.* other churches/religious organisations, which tend to operate by being unincorporated associations.
- d. Sources of ecclesiastical law – the substantive law.
- e. An introduction to the legal personnel of the diocese and their roles.

2. Substantive Ecclesiastical Law:

- a. Baptism: rights, duties and common issues:
 - i. **Canons** B21-26 (and for Confirmation and Reception, B27, B28).
- b. Funerals and Burials: rights, duties, and churchyard issues:
 - i. Canon B38.
- c. Marriage: rights (including qualifying connections), duties, capacity to marry, preliminaries, registration, fees.
- d. Doctrine, discipline, liturgy and worship – the oaths of obedience and the declaration of assent:
 - i. Canons B1-20.
 - ii. Canon C8.
 - iii. Canons C13-15.
 - iv. Canons C25-28.
 - v. **Church of England (Miscellaneous Provisions) Measure 2018**, section 4.
 - vi. An introduction to the **Clergy Discipline Measure 2003**.

- e. Introduction to Clergy Terms of Service:
 - i. Rights and duties of the incumbent under Common Tenure: [Ecclesiastical Offices \(Terms of Service\) Measure 2009](#); [Ecclesiastical Offices \(Terms of Service\) Regulations 2009](#).
 - ii. Employment status of clergy: [Employment Rights Act 1996](#).
- f. The faculty jurisdiction – a basic introduction and emergency issues that can arise:
 - i. Canon F13.
 - ii. [Ecclesiastical Jurisdiction and Care of Churches Measure 2018](#) and the [Faculty Jurisdiction Rules 2015](#).
 - iii. Diocesan Churchyard regulations.
- g. Confession:
 - i. Canon B29 and Canon 113 of the [Code of 1603/04](#).
- h. An introduction to relevant secular law:
 - i. [Charities Act 2011](#).
 - ii. [Data Protection Act 2018](#) and the [General Data Protection Regulation](#).
 - iii. Safeguarding legislation and guidance and Canon C30.

Stage 2 – Incumbency

1. Introduction to Ecclesiastical Regulation:
 - a. Why does the Church need rules?
 - b. Sources of Church Law and key resources: the substantive law.
 - c. Why does Church Law matter for incumbents?
 - d. Key personnel: Chancellor, Registrar, Archdeacon, Incumbent.
2. Alterations to and use of Church buildings: The Faculty Jurisdiction:
 - a. The Ecclesiastical Exemption from Listed Buildings Consent.
 - b. The Faculty System:
 - i. Canon F13.
 - ii. [Ecclesiastical Jurisdiction and Care of Churches Measure 2018](#).
 - iii. [Faculty Jurisdiction Rules 2015](#).
 - c. Works where no faculty is needed: List A and List B.
 - d. Archdeacon's jurisdiction: Place of Safety Orders and Licences for Temporary Minor Re-ordering.

- e. The Faculty Process: Role of the DAC; Consultation Requirements; Role of the Chancellor and Registrar.
 - f. Changes to listed buildings: *Re St Alkmund, Duffield* [2013] Fam 158.
 - g. The use of church buildings by other Christian/religious groups and for purposes other than worship:
 - i. Canons F15 and F16.
 - ii. Canon B43 (for use by other Christian denominations).
 - iii. Section 68 of the *Mission and Pastoral Measure 2011*.
 - h. Churchyards and burials: Memorials/headstones – Diocesan Churchyard Regulations; Exhumation – *Re Blagdon Cemetery* [2002] Fam 299, Ct Arches and *Re Christ Church, Alsager* [1999] Fam 142, Ch Ct of York; Reservation of grave space.
 - i. Disposal of church treasures: *Re St Lawrence, Oakley with Wootton St Lawrence* [2015] Fam 27 and *Re St Peter, Shipton Bellinger* [2016] Fam 193.
 - j. Emergencies etc (interim and emergency faculties; injunctions and restoration orders)
 - k. Costs: Part 19 of the *Faculty Jurisdiction Rules 2015*, the *Ecclesiastical Judges Association Guidance on the Award of Costs in Faculty Proceedings*.
3. Clergy Terms of Service:
- a. Rights and duties of the incumbent under Common Tenure: *Ecclesiastical Offices (Terms of Service) Measure 2009*; *Ecclesiastical Offices (Terms of Service) Regulations 2009*.
 - b. Employment status of clergy: *Employment Rights Act 1996*.
4. Clergy Discipline:
- a. Canon C24.
 - b. *Clergy Discipline Measure 2003*.
 - c. *Clergy Discipline Rules 2005*.
 - d. *Clergy Discipline Measure 2003 Code of Practice*.
 - e. Guidelines for the Professional Conduct of the Clergy.

5. The Occasional Offices Part 1: Baptisms and Funerals:
 - a. Rights and duties around baptism:
 - i. Canons B21-26 (and for Confirmation and Reception, B27, B28).
 - b. The law of burials and memorials:
 - i. Canon B38.
 - ii. Diocesan Churchyard regulations (and see above under Faculty Jurisdiction).
 - iii. Fees.

6. The Occasional Offices Part 2: Marriage:
 - a. Legal preliminaries and bars to marriages, the administration of marriage, fees and Registration
 - i. Canons B30-36.
 - ii. Lord Hardwicke's **Marriage Act 1753**.
 - iii. **Marriage Act 1949**.
 - iv. **Church of England Marriage Measure 2008**.
 - v. **Immigration Act 2014**.
 - vi. **Marriage (Same Sex Couples) Act 2013**.
 - vii. Canon F11 (Registration).
 - viii. Solemnisation of Marriage by Deacons: Guidelines issued by the Archbishops of Canterbury and York 1992.
 - ix. Advice to Clergy Concerning Marriage and the Divorced (House of Bishops, 2002).

7. Governance:
 - a. Parochial Church Councils – Functions:
 - i. Functions of the council: section 2 of the **Parochial Church Councils (Powers) Measure 1956**. *Re St Peter, Roydon* [1969] 1 WLR 1849, 1852-1863 *per* Forbes Ch.
 - ii. Powers of the council: section 7 of the 1956 Measure.
 - iii. Accounts: section 8 of the 1956 Measure.
 - iv. Episcopal intervention: section 9 of the 1956 Measure.
 - v. Quinquennial inspection: section 45 of the **Ecclesiastical Jurisdiction and Care of Churches Measure 2018**.
 - b. **Church Representation Rules**:
 - i. Electoral roll: rr. 1-10; M21 (Electoral Roll Officer).
 - ii. Parish governance: r. 11 and Part 9.
 - iii. APCMs and Special and Extraordinary Meetings: rr. M1-M14.
 - iv. Membership of, and procedural rules pertaining to, PCC Meetings: rr. M15-M33.

- v. Schemes: *NB* District Church Councils and Joint PCCs.
- vi. Useful forms: Part 10.

c. Churchwardens:

- i. Canon E1
- ii. **Churchwardens Measure 2001:**
 - Number and qualifications: section 1 of the 2001 Measure.
 - Disqualifications: sections 2 and 3 of the 2001 Measure.
 - Appointment process and admission: sections 4 to 6 of the 2001 Measure.
 - Suspension from office: sections 6A and 6B of the 2001 Measure.
 - Resignation from office and vacation of office: sections 7 and 8 of the 2001 Measure.
- iii. Functions under sections 49 and 50 of the **Ecclesiastical Jurisdiction and Care of Churches Measure 2018**.
- iv. Churchwardens have the right of free access to the church for the performance of their duties: *Moysey v Hillcoat* (1828) 2 Hag Ecc 30, Ct of Arches.

d. Synods:

- i. The H Canons.

8. Confession:

- a. Canon B29 and Canon 113 of the Code of 1603/04.

9. Secular law:

- a. Trusteehip and Charities Act 2011: PCC members are trustees: section 177 of the **Charities Act 2011:**
 - i. Fiduciary obligations: Duty of loyalty and avoiding conflicts of interest: see *Bray v Ford* 1896 AC 44, 51 (which sets out the principle); and *Boardman v Phipps* [1967] 2 AC 46 (an account of profits remedy could be imposed regardless of whether the PCC suffered any loss, and even if the member concerned was acting in good faith).
 - ii. Section 7A of the **Parochial Church Councils (Powers) Measure 1956** provides an important exception to the general rule that conflicts of interests must be avoided: a PCC can enter into a contract of employment with a PCC member or connected person. The exception is set out in sections 185 to 188 of the 2011 Act.
 - iii. Charitable purpose: sections 2 and 3 of the 2011 Act.
 - iv. Public benefit: section 4 of the 2011 Act.
 - v. PCC must comply with any registration requirement with the Charity Commission under the 2011 Act.

- vi. **Statement of Recommended Practice** (“SORP”) published by the Charity Commission.
- b. Data Protection Act 2018 and the General Data Protection Regulation:**
- i. Concepts of personal data (Art. 4(1) GDPR), data controllers (Art. 4(7) GDPR—*e.g.* Incumbent/Priest in Charge; PCC), data processors (Art. 4(2) and (8) GDPR—*e.g.* PCC members; sub-committees under the PCC; volunteers; employees), personal data breach (Art. 4(12) GDPR).
 - ii. Lawfully processing data: the principles (Arts. 5, 6, 24 and 32 GDPR).
 - iii. Need for a privacy policy (Arts. 12, 13 and 14 GDPR).
 - iv. Art. 28 GDPR—sub-processing.
 - v. Art. 30 GDPR—records of processing activities.
 - vi. Requests to exercise rights by data subjects under the GDPR and how to deal with them (Arts. 15-22 GDPR; §64 of the preamble).
 - vii. What to do in the event of a personal data breach (Arts. 33 and 34 GDPR).
- c. Safeguarding legislation and guidance:**
- i. Canon C30.
 - ii. Section 5(1) and (2) of the **Safeguarding and Clergy Discipline Measure 2016**: PCCs must have due regard to guidance issued by the House of Bishops on matters relating to the safeguarding of children and vulnerable adults. Guidance on this duty to have “due regard” is the subject of an advice by the Legal Office of the National Church Institutions, February 2020.
 - iii. House of Bishop’s Guidance, **Promoting a Safer Church** (2017). See also **Parish Safeguarding Handbook** (2018), *esp.* pp.1-4.

Stage 3 - Archdeacons

1. Introduction: the role of the Archdeacon as a practitioner of ecclesiastical law:
 - a. Canon C22.
2. Parochial Visitations: purpose, role of the Archdeacon and legal issues:
 - a. Canon C22.
 - b. **Ecclesiastical Jurisdiction and Care of Churches Measure 2018.**
3. The Faculty System: See provisions above under Stage 2 – Incumbency.
4. Patronage and Suspension: key legislation and the role of the Archdeacon:
 - a. **Patronage (Benefices) Measure 1986.**
 - b. Patronage (Benefices) Measure 1986 Code of Practice.

c. **Mission and Pastoral Measure 2011.**

5. **Clergy Discipline:**

a. **Incumbents (Vacation of Benefices) Measure 1977.**

b. **Clergy Discipline Measure 2003.**

c. **Clergy Discipline Rules 2005.**

d. **Clergy Discipline Measure 2003 Code of Practice.**

e. **Guidelines for the Professional Conduct of the Clergy.**

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