

ECCLESIASTICAL LAW: CURRICULUM FOR LAY OFFICERS IN THE CHURCH OF ENGLAND

I. Nature of ecclesiastical law (generally)

- (a) Why does the Church need rules?
- (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 law: Acts of Parliament; Church Measures; Canons.

II. Parochial Church Councils (including the interface with secular law)

- (a) Functions:
 - i. Functions of the council: sections 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. The PCC has a voice in decisions as to—
 - the forms of service to be used in the church (Canon B3);
 - the version of scripture to be used in prayer book services (section 1 of the **Prayer Book (Versions of the Bible) Measure 1965**);
 - the appointment and dismissal of the organist (Canon B20); and
 - the vesture to be worn by a minister at divine service (Canon B8).
 - vi. The requirements under Canons F 1 to F 13 relating, *inter alia*, to the provision of church requisites are to be discharged by the PCC.
 - vii. Quinquennial inspection: sections 45 of the **Ecclesiastical Jurisdiction and Care of Churches Measure 2018**.
 - viii. Role in the appointment of incumbents / priests-in-charge: a right to be heard on certain issues arising during the vacancy in the benefice or the proposed transfer of the right to patronage: **Patronage (Benefices) Measure 1986**.

(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) **Trusteeship:**

- i. PCC members are trustees: section 177 of the **Charities Act 2011**.
- ii. 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).
- iii. 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.
- iv. Charitable purpose: sections 2 and 3 of the 2011 Act.
- v. Public benefit: section 4 of the 2011 Act.
- vi. PCC must comply with any registration requirement with the Charity Commission under the 2011 Act.
- vii. **Statement of Recommended Practice** (“SORP”) published by the Charity Commission.

(d) **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).

(e) **Safeguarding:**

- i. 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.

- ii. House of Bishop's Guidance, *Promoting a Safer Church* (2017). See also *Parish Safeguarding Handbook* (2018), esp. pp.1-4.

III. Role of Churchwardens

(a) **Churchwardens Measure 2001:**

- i. Number and qualifications: section 1 of the 2001 Act.
- ii. Disqualifications: sections 2 and 3 of the 2001 Act.
- iii. Appointment process and admission: sections 4 to 6 of the 2001 Act.
- iv. Suspension from office: sections 6A and 6B of the 2001 Act.
- v. Resignation from office and vacation of office: sections 7 and 8 of the 2001 Act.

(b) Functions under the **Ecclesiastical Jurisdiction and Care of Churches Measure 2018:**

- i. Duty to record certain information: section 49 of the 2018 Measure.
- ii. Duty to inspect the fabric of the church: section 50 of the 2018 Measure.

(c) Functions under the **Canons:**

- i. Powers and duties as Officers of the bishop: Canon E1.
- ii. Must reply to the archdeacon's articles of inquiry for the purposes of his annual visitation: Canon G6.
- iii. Allocation of seats: Canon F7.
- iv. Maintaining order: Canon F15.
- v. Ensure bread and wine is available for Holy Communion: Canon B17.
- vi. Duty to obtain a faculty if any alterations, additions, removals or repairs are proposed to be made in the fabric, ornaments or furniture of the church: Canon F13 § 3.

(d) During *interregnum*:

- i. During a vacancy in the benefice, the churchwardens and the rural dean automatically become the sequestrators of the benefice: section 1 of the **Church of England (Miscellaneous Provisions) Measure 1992**.
- ii. Churchwardens have the custody of the church register books during a vacancy in the benefice: section 6(2) of the **Parochial Registers and Records Measure 1978**.

(e) *NB*: specific duty under section 5(1) and (2) of the **Safeguarding and Clergy Discipline Measure 2016**: Churchwardens must have due regard to guidance issued by the House of Bishops on matters relating to the safeguarding of children and vulnerable adults (*supra*).

(f) 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.

IV. 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*, and see also the *Ecclesiastical Judges Association Guidance on the Award of Costs in Faculty Proceedings*.