

CHURCH LEGISLATION IN THE ISLE OF MAN

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THE MANX CHURCH

Little remains of the Celtic roots of Manx Christianity except in tradition and archaeology, and the history of the Manx Church begins in the time of the Norse incursions. The kingdom of Man and the Isles originally included the southern Hebrides or *Sudrys*, and formed a single diocese. When the Isles were lost to the kingdom and bishopric, the bishop of Man retained the title 'Sodor and Man'. The see was from 1152 under the jurisdiction of the metropolitan of Nidaros (Trondheim).

The right to appoint the bishop was granted to the monks of Furness Abbey in 1134, but in the 13th century passed to the King of Scotland. The Isle of Man finally came under the English Crown after the Battle of Hallidon Hill (1333), and in about 1400 the archbishop of Canterbury assumed jurisdiction over the Island. The patronage of the bishopric came to be included in grants of the kingship or lordship of Man.² Since 1333 the Manx Church has been constitutionally linked to the Church of England, and the English reforms of the 16th century were naturally given effect in the Island. However, the see remained in the gift of the lord.

The Island forms a single archdeaconry, which was also in the lord's gift, as (following the dissolution of the monasteries) were the benefices of 13 of the 17 ancient parishes. The diocese was transferred to the province of York in 1541.³ When the lordship of the Isle of Man was purchased by the Crown in 1765, the lord's rights of patronage were excluded, but were acquired by the Crown in 1828.

The ancient cathedral on St Patrick's Isle at Peel fell into ruin in the 17th century and was never rebuilt. There is no record of a cathedral chapter after the 14th century.

The diocese has a number of peculiarities marking it out from the dioceses in England. One such is the convocation of the Manx clergy, which under a constitution of 1703, confirmed by Act of Tynwald, is held annually on the Thursday in Whitsun week. Another is the privilege of the bishop (alone among diocesan bishops of the Church of England) of issuing special licences to marry.⁴ The chancellor of the diocese is known by the title 'Vicar General'; until 1846 there were two vicars general, but since then only one has been appointed.⁵ The

1. This article forms the introduction to *Manx Church Legislation* (ed. K. F. W. Gumbley, Douglas, 1993), and is a revised version of an article which first appeared in the *Manx Law Bulletin* (issue 18, June 1992).
2. E.g. letters patent of 1610 (7 Jac. 1) granted the 'Isle, Castle, Peel, and Lordship of Mann' to the Earl and Countess of Derby for their lives, and thereafter to their son Lord Stanley and his heirs, including 'the Patronage of the Bishopricke of the said Isle of Mann, and the Patronage of the Bishopricke of Sodor, and the Patronage of the Bishopricke of Sodor and Mann, and also the Temporalities of the Bishopricke of Sodor and Mann, as often as it shall happen, that the said Bishoprickes be vacant'. (Mills, *Ancient Ordinances and Statute Laws of the Isle of Man* (Douglas, 1821) p. 517.).
3. By the Act (1541) 33 Hen. 8 c. 31.
4. See Marriage Act 1984 (of Tynwald) ss.5(b), 56(5).
5. See Report of the Royal Commission on the Ecclesiastical Courts (1883, C.3760) vol. ii at p. 322.

bishop, archdeacon and vicar general were formerly members of the Lord's Council (now the Legislative Council); the archdeacon and vicar general ceased to be members in 1919,⁶ but the bishop still sits in the Council.

ACTS OF PARLIAMENT

Although the Isle of Man had its own legislature, the Kings of England also legislated in Parliament for the Island from the 14th century onwards. Acts of Parliament extending to the Island, ie. Acts whose provisions form part of Manx law, have always been restricted in scope, not because of any limit on the legislative competence of Parliament, but by a constitutional convention and for the sake of convenience. Until late in the 17th century, such Acts were few and largely confined to matters ecclesiastical and constitutional.

As a general rule, Acts of Parliament do not extend to the Isle of Man except by special mention or necessary implication,⁷ and this rule applies no less to Church than to secular legislation. In particular, the Pluralities Act 1838 and the Clerical Disabilities Act 1870 do not extend to the Island, nor does the Act of Uniformity 1662⁸ (although the Prayer Book is probably now more used in the Isle of Man than in many English dioceses).

Efforts on the part of English legislators to include the Isle of Man in the scope of ecclesiastical Acts of Parliament were often resisted by the Island, and in some cases were so sporadic as to be counter-productive. An attempt was made by Parliament in 1836 to merge the see with that of Carlisle, but after protests, the Act in question was repealed as to the Island in 1838.⁹ The Parish Notices Act 1837 was expressed to extend to the Isle of Man, but was ignored, and was repealed retrospectively in 1870.¹⁰ Some of the Church Building Acts and New Parishes Acts, but not others, were applied to the Isle of Man, and although four new parishes were set up in Douglas in the 1860's and 1870's, the position was so unsatisfactory that the Acts were repealed as to the Island in 1897.¹¹ In the last two cases alternative provision was made by Act of Tynwald.

ACTS OF TYNWALD

Tynwald has legislated in ecclesiastical matters, both spiritual and temporal, since at least the early 16th century, and its legislative competence has apparently never been limited. In the 19th century it was suggested by the English law officers that Tynwald might not legislate for the temporalities of the see of Sodor and Man, but that view was decisively refuted in 1876 by attorney general Sir James Gell.¹² Most church legislation before 1880 dealt with the endowments of benefices, including tithes (which were commuted in 1839), and with the removal or replacement of parish churches, parsonages and burial grounds.

THE MODERN MANX CHURCH

The first steps to organise the Manx Church on modern lines were taken by the Church Act 1880 (of Tynwald). The Act established the Church

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6. Isle of Man Constitution Amendment Act 1919 (of Tynwald) s.6.
 7. *Bishop of Sodor and Man v Earl of Derby* (1751) 2 Ves. Sen. 337.
 8. See opinion of Sir James Gell AG in the 1883 Report vol. ii at pp. 336-337.
 9. Ecclesiastical Commissioners Act 1836 (6 & 7 Will. 4 c. 77), Sodor and Man Act 1838 (1 & 2 Vict. c.30).
 10. 7 Will. 4 & 1 Vict. c.45; Notice Act (Isle of Man) Repeal Act 1870 (33 & 34 Vict. c.51). See also Ecclesiastical Leasing Acts 1842 and 1858 (5 & 6 Vict. c.108, 21 & 22 Vict. c.57), Ecclesiastical Leases (Isle of Man) Act 1866 (29 & 30 Vict. c.81).
 11. Isle of Man (Church Building and New Parishes) Act 1897 (60 & 61 Vict. c.33).
 12. See 1883 Report vol. ii at pp. 326-331.

Commissioners for the Isle of Man, with power to make schemes creating 'parochial districts', subject to confirmation by the Governor and Council, and to act as trustees of church property and funds. The bishop was enabled to set up rural deaneries. In 1895 Tynwald made the bishop's chapel at Bishopscourt a pro-cathedral, and created a chapter, consisting of the bishop as dean *ex officio*, the archdeacon and four non-residentiary canons.¹³ (The chapter takes no part in the appointment of the bishop.)

A diocesan conference was first set up in 1925,¹⁴ and a diocesan board of finance in 1929,¹⁵ taking over the trusteeship of various funds. The diocesan conference was replaced by a diocesan synod in 1971,¹⁶ which (like its predecessor, but unlike English diocesan synods) is directly elected by the annual parochial church meetings. No ruri-decanal conferences were set up in the Isle of Man, and although deanery synods now exist, they rarely meet (they comprise the diocesan synod members from each of the four deaneries). The parish church of German in Peel was made the cathedral by Act of Tynwald in 1980.¹⁷

The financial functions of the Church Commissioners for the Isle of Man have been transferred to a reconstituted diocesan board of finance by the Church Act 1992, which also made further reforms relating to Church finance and property, and transferred the functions of the pastoral committee to the Commissioners.

CHURCH ASSEMBLY AND GENERAL SYNOD MEASURES

In 1919 the Church of England set up a National Assembly, which was given legislative powers by the Church Assembly (Powers) Act 1919 of Parliament (the 'Enabling Act'), under which a Measure passed by the Assembly, approved by both Houses of Parliament and assented to by the Crown, had the effect of an Act of Parliament. Since doubts whether English church legislation extended to the Isle of Man had often been raised over the previous half-century, one would have expected the Enabling Act to say whether it, and any Measures to which it gave legal effect, extended to the Island. But it failed to do so, and very soon the question whether Church Assembly Measures applied to the Isle of Man began to be raised. In particular, was the diocese of Sodor and Man entitled to be represented in the House of Laity of the Church Assembly?

The diocesan conference was in 1925¹⁸ given power to initiate church legislation in the form of Acts of Tynwald to apply Measures to the Isle of Man. The legislative committee of the conference were to submit a draft bill to the ecclesiastical committee of Tynwald, and if approved, the bill was to be introduced as a government bill. This assumed that Measures did not already extend to the Isle of Man: but might a Measure extend without an Act of Tynwald?

In 1927 the Assembly's Legal Board sought counsel's opinion, which was to the effect that, although the 1919 Act did not extend to the Isle of Man by either express mention or necessary implication, Measures of the Assembly were binding on the Isle of Man so far as they affected spiritual, but not temporal, matters. Counsel also thought that the powers of Tynwald to legislate in spiritual matters were thereby restricted, and that the diocese might be represented in the House of Laity provided it complied with the Representation of the Laity Measure 1922.

13. Church Act 1895 (of Tynwald).

14. Church Assembly Act 1925 (of Tynwald).

15. Diocesan Endowments Act 1929 (of Tynwald).

16. Church (Miscellaneous Provisions) Act 1971 (of Tynwald).

17. Cathedral Church Act 1980 (of Tynwald).

18. Church Assembly Act 1925 (of Tynwald).

This view did not entirely commend itself to the Manx courts. In 1936 the case of *Re Robinson* came before Deemster Farrant in the Island's High Court. Mr and Mrs Robinson deceased had left £1,000 to the parochial church council of Lonan on certain trusts: as PCCs owed their existence to the 1919 Act, the legacy could not be valid unless the Act, and so much of the Parochial Church Councils (Powers) Measure 1921 as constituted a PCC a body corporate and gave it power to hold property, extended to the Isle of Man. The Deemster concluded:

- (i) that the Enabling Act extends to the Island in matters spiritual where circumstances so permit;
- (ii) that Measures extend in matters spiritual unless there is some special difference in Manx Law or local circumstances make it impracticable;
- (iii) that Measures do not extend in matters temporal unless the Island is specially named, or by necessary implication.

As the functions of PCCs under s.2 of the 1921 Measure were in part spiritual, the Measure did extend to the Isle of Man and the legacy was valid.¹⁹

The *Robinson* rules have in general worked satisfactorily, and although about a third of all Measures passed since 1936 (apart from Measures of purely local effect) have been silent on the question of extension to the Isle of Man, there has been little difficulty in deciding whether they extend or not.

'PERMISSIVE EXTENSION' OF MEASURES

The question of lay representation of the Island in the Church Assembly was left unresolved by *Re Robinson*. It arose again in 1954, when the Representation of the Laity Measure came to be consolidated. The Church authorities in the Isle of Man wanted to have the Island excluded from the new Measures and to promote Acts of Tynwald instead. But the draftsman pointed out that Tynwald could not legislate for England, and so an Act of Tynwald could not affect the constitution of the Assembly. The solution adopted in the Representation of the Laity Measure 1956 was that it should not extend to the Isle of Man, with the proviso that, if an Act of Tynwald so provided, it should extend to the Island subject to such modifications, if any, as might be specified in the Act.²⁰ Similar provision was made in the consolidating Parochial Church Councils (Powers) Measure 1956.²¹

That or a similar formula has been used in over twenty Measures, and Acts of Tynwald have been passed to extend nine of them. (Exceptionally for an Act of Parliament, the same provision was made in the Sharing of Church Buildings Act 1969.²²) In recent years a version of the proviso came to be used, implying that such an Act of Tynwald was enacted under delegated powers,²³ which is constitutionally incorrect, but a standard formula has now been adopted, more in line with the 1956 provision and avoiding that implication.²⁴

19. The judgment is set out in full in G. V. C. Young, *Subject Guide and Chronological Table of Acts of Parliament etc.* (1st. ed., Douglas, 1978) pp. 13-26.

20. Representation of the Laity Measure 1956 s.5(3).

21. Parochial Church Councils (Powers) Measure 1956 s.10(3).

22. 1969 Act s.14(2); see Sharing of Church Buildings Act 1986 (of Tynwald).

23. Eg. Pastoral Measure 1983 s.94(2).

24. Eg. Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s.33.

The Synodical Government Measure 1969 constituted the General Synod of the Church of England, which replaced the Church Assembly and assumed its legislative powers. In relation to the Isle of Man, the same rules apply to General Synod Measures as to Church Assembly Measures.

To summarise, Church Assembly and General Synod Measures may fall into any of the following categories in relation to the Isle of Man:

- A a Measure which is expressed to extend to the Isle of Man without modification, such as the Clergy Pensions Measures;
- B a Measure which is expressed to extend to the Isle of Man subject to modifications which are set out in the Measure itself (the only Measure in this category is the Priests (Ordination of Women) Measure 1993);
- C a Measure which is expressed not to extend to the Isle of Man, with a proviso that it may be extended by Act of Tynwald (see above);
- D a Measure which is expressed not to extend to the Isle of Man, without any such proviso;
- E a Measure which is silent as to its extension to the Island; in this case the *Robinson* rules apply.²⁵

A Measure in category D may nevertheless be extended by Act of Tynwald: the Faculty Jurisdiction Measure 1964 is expressed not to extend to the Island, but has been extended with modifications by Act of Tynwald.²⁶ Also, of course, Tynwald may pass an Act in terms corresponding to the Measure,²⁷ although this is of limited use (eg. such an Act cannot impose obligations on a tribunal or institution established by the corresponding English Measure).

Into which category a new Measure should fall is a matter for negotiation between the authorities of the General Synod and the Manx Church, and the results were at one time somewhat haphazard. However, all draft Measures are now referred to the bishop, who advises the General Synod after consultation with the legislative committee of the diocesan synod.

MANX MEASURES

The 1925 procedure for 'Church bills' worked well, if slowly (the 1956 Measures were not extended until 1960). The diocesan synod was in 1971 formally given power to promote bills on any Church matter,²⁸ but that merely recognised the existing practice. In 1979 a speedier method was introduced for extending Measures which include provision for their extension by Act of Tynwald (category C above).²⁹ If the diocesan synod approved a draft measure providing for the extension of such a Measure, with or without modifications, it was submitted to the ecclesiastical committee of Tynwald for approval; so far the procedure was the same as for a bill. But then the ecclesiastical committee laid the measure before Tynwald, and if approved by a simple resolution of Tynwald, it was submitted direct to Her Majesty for Royal Assent and took effect as an Act of Tynwald. It did not require promulgation on Tynwald Hill. The first Measure extended in this way was the Pastoral Measure 1983, which was applied by the Pastoral Measure (Isle of Man) 1990 with effect from 1 January 1991.

25. Eg. the Admission to Holy Communion Measure 1972 extends, being a spiritual measure, but the Baptismal Registers Measure 1961 does not.

26. Church Act 1979 (of Tynwald) s.9.

27. Eg. the Church Act 1979 ss. 1-5 corresponds to the Inspection of Churches Measure 1955.

28. Church (Miscellaneous Provisions) Act 1971 (of Tynwald) ss. 15-19.

29. Church (Application of General Synod Measures) Act 1979 (of Tynwald).

CHURCH LEGISLATION PROCEDURE ACT 1993

In 1992, complaints were made by the Legislative Council and House of Keys about the time spent considering recent Church bills, and the diocesan synod responded by promoting a Bill to reform the procedure for Church legislation. The Church Legislation Procedure Act 1993 enables the measure procedure to be used for all legislation affecting the Church in the Island, not merely the extension of General Synod Measures, and Church bills are no longer necessary. The Act repealed the Acts of 1971 and 1979, and also gives power to modify a General Synod Measure which automatically extends to the Isle of Man (category A above), if such modification is required to give full effect to it. The Act thus brings the Manx procedures into line with those which have operated in England since 1920 (under the Enabling Act of 1919).

ROYAL ASSENT

Formerly, the Royal Assent to all bills was given by Her Majesty in Council, but in 1981 the power to give the Royal Assent was delegated to the Lieutenant Governor, although it may be reserved to Her Majesty in Council in special cases. The delegation did not cover measures under the 1979 or 1993 Acts, however, which continued to be submitted to the Privy Council for Royal Assent. The power to give the Royal Assent to measures has now been delegated to the Lieutenant Governor by an Order in Council of 18 May 1994.

CANONS

In general, the Canons of the Church of England, as they relate to matters spiritual, apply to the Isle of Man as they apply to England. This causes two difficulties in relation to the Isle of Man. First, the Canons are generally built on a foundation of English statute and common law. Where Manx law differs (eg. in relation to marriages), they are to that extent inapplicable in the Island.³⁰ Secondly, certain recent amendments of canon law are made in reliance on enabling powers in related Measures.³¹ Where the provision conferring the enabling power is expressed not to extend to the Isle of Man unless so provided by or under Act of Tynwald (ie. where it falls within category C above),³² it must follow that the Canon also does not extend until so provided. The implications of this quirk of ecclesiastical law have not yet been fully explored.

FUTURE DEVELOPMENTS

So long as there is a 'Church by law established' in the Isle of Man, some Church legislation will still be needed. Should it be English or Manx legislation? As part of a larger whole, the Manx Church cannot be isolated from developments in England, and it is inevitable that some English legislation will extend to the Isle of Man. At one time, nationalist sentiment strongly resisted the extension to the Island of Church Assembly or General Synod Measures, but it is now accepted that in many areas this is necessary.

30. Eg. Canon B34.1 (forms of marriage) is overridden by Marriage Act 1984 s.5. Cf. also Canon B35.3 (time of marriage) and 1984 Act s.4(1). Note also that Canon G4.2 requires the diocesan registrar to be a solicitor; as the Isle of Man has its own legal profession, that has been taken not to apply to this diocese, and the registrar is an 'advocate' (member of the Manx Bar).

31. Eg. Canon C4A (of women deacons) is made pursuant to the Deacons (Ordination of Women) Measure 1986 s.1.

32. Eg. Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 s.7 (revocation of licences) and see Canons C12.5, D3.3A, E6.3 and E8.5.

Alternatively, could the Church in future rely on General Synod Measures and dispense with Manx legislation entirely? The legal and constitutional environment of the Isle of Man differs so much from that of England that this would be impracticable: first, some English legislation is inapplicable to the Isle of Man; secondly, even where applicable, it always has to be modified in some way in order to fit into the Manx environment (unless it operates in a purely spiritual dimension); thirdly, the General Synod cannot be expected constantly to make special provision to cope with the peculiar institutions and property of the Manx Church. It appears that, for the foreseeable future, the Manx Church will continue to be governed by a combination of English and Manx legislation.