

GENERAL SYNOD

**DRAFT SCHEME AMENDING THE DIOCESE IN EUROPE
CONSTITUTION 1995**

Explanatory memorandum

Introduction

1. The Diocese in Europe is regulated by its constitution, as last amended in 2006. Paragraph 48 of the constitution allows it to be amended by a process involving:
 - the inclusion of the proposed amendments in a draft ‘scheme’;
 - the approval of the scheme by not less than two-thirds of the members of the diocesan synod present and voting;
 - the laying of the scheme before the General Synod; and
 - if the scheme amends certain specified provisions in the constitution or, if it does not, if a member of the General Synod requests that the scheme be debated, the approval of the draft scheme by the General Synod.
2. The diocese wishes to make a number of amendments to its constitution and a draft scheme has accordingly been prepared, which is set out in GS 1610. The draft scheme was approved by the diocesan synod at its meeting on 27th May 2010. The scheme is now accordingly laid before the General Synod. As none of the amendments to be made by the scheme relate to the specified provisions referred to above, the draft scheme does not require the approval of the General Synod. However, it is open to any member of the Synod to give notice of a desire that the draft Scheme be debated.
3. The effect of the changes to be made to the constitution by the draft scheme is as follows:

Clauses 1 to 7

4. These amendments do not make any change to the applicability of the *Church Representation Rules* in the Diocese in Europe. They simply allow for changes in the numbering of the Rules (both past and future).

Clause 8

5. This corrects a typographical error.

Clause 9

6. The new paragraph 17 conflates the existing paragraphs 17 and 18. It also clarifies, in accordance with canon law, the position in relation to the taking of oaths and the making of the Declaration of Assent. The amendments are not intended to make any change to the law as it applies in the Diocese in Europe.
7. The new paragraph 18 is a wholly new provision arising out of the consideration given as to how the Ecclesiastical Offices (Terms of Service) Measure 2009, and the secondary legislation made under it, should be applied in the Diocese in Europe. The Diocese is set in a very different legal context from the other 43 dioceses of the Church of England, and it was not therefore considered practical to attempt to implement the Terms of Service legislation in relation to it. The Measure was drafted in the context of the English legal system, against the background both of employment law as it stands in England and of long-established principles relating to the 'office holder' status of parish clergy - considerations which differ fundamentally from those applicable in the various states within the area of the Diocese in Europe.
8. However, certain elements of the new legislation would appear to be as relevant to the clergy of the Diocese as to other clergy of the Church of England. There is thus good reason to seek to apply certain key principles embodied in the Terms of Service legislation, both to maintain the highest degree of common practice with other dioceses and to implement good practice generally.
9. It is thus proposed that, as provided for in the new paragraph 18 to be inserted by clause 9, the Constitution should require there to be diocesan capability and grievance procedures and diocesan policies

relating to ministerial development review and continuing ministerial education. Under the new paragraph 18 it would then be the duty of the Bishop's Council to establish the details of the relevant procedures and policies, which it is intended should take account of those applicable to the clergy of the mainland dioceses of the Church of England under the Terms of Service legislation, and to review them periodically.

Clause 10

10. As currently drafted, paragraph 30(b) of the Constitution sets out some of the qualifications for election as a representative of the laity on a chaplaincy church council.
11. The proposed amendment is intended to set out more clearly the principal qualifications for election.
12. However, the amendment also extends the range of required qualifications, in particular to take account of the impact of local law on chaplaincies. The effect is to provide for disqualification from membership of a chaplaincy council:
 - where a person is disqualified *under local law* from being a charity trustee (rather than only under the Charities Act 1993);
 - where a person is disqualified from being a member of the committee of an '*association*' where such an association is directly related to a chaplaincy. This is partly because a number of chaplaincies take the legal form of an association, and so the chaplaincy church council and the committee of the association are analogous;
 - where a person has been convicted of certain offences under the Children and Young Persons Act 1933 *or of a comparable offence of substantially the same nature regardless of where the offence was committed*. This adopts the principle of the relevant disqualification contained in the Churchwardens Measure 2001, but extends it to membership of a chaplaincy church council, and to take account also of comparable convictions outside England;
 - where a person's nomination, election or membership of the council would give rise to the removal of, or otherwise

adversely affect, the charitable or special fiscal status of a chaplaincy or a chaplaincy church council. This extends the grounds for disqualification and arises out of concerns which have been expressed in at least two different jurisdictions within the Diocese about national legislation which could have a potentially draconian impact on the status of a chaplaincy, and is intended to assist in avoiding such problems arising.

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