

GENERAL SYNOD

**PRIVATE MEMBER'S MOTION:
PAROCHIAL CHURCH COUNCILS (POWERS) MEASURE 1956**

Background note from the Secretary General

What is the legal background?

1. Under section 6(1) Parochial Church Councils (Powers) Measure 1956 a parochial church council cannot acquire an interest in land (other than a short lease), or in any personal property to be held on permanent trusts, without the consent of the diocesan authority. 'Short lease' in this context means a lease not exceeding a year or a periodic tenancy and 'diocesan authority' means the diocesan board of finance or any body appointed by the diocesan synod to act as a trustee of diocesan trust property.
2. Under section 6(2) of the Measure, where a PCC holds or acquires any interest in land (other than a short lease), or any interest in personal property to be held on permanent trusts, that interest must be vested in the diocesan authority, subject to all trusts etc affecting it.
3. Under section 6(3) of the Measure, where any property is vested in the diocesan authority under section 6(2), the PCC must not sell, lease, let, exchange, charge or take any legal proceedings with respect to that property without the consent of the diocesan authority. Apart from that, however, nothing in section 6 affects the powers the PCC has in relation to the management, administration or disposition of any such property.
4. Section 6(4) of the Measure requires the PCC to keep the diocesan authority indemnified in respect of all liabilities subject to which the property is vested in the authority or which are incident to it, all rates etc payable in respect of the property and all costs in connection with the property.
5. Under section 6(5) of the Measure the consents required by the section 6(3) are additional to any other consents required by law – including those required from the Charity Commission (eg under the provisions of the Charities Act 2011 relating to the disposal or charging of charity land).
6. The arrangements made by these provisions have some similarities to those applying where a 'custodian trustee' is appointed in relation to trust property under section 4 of the Public Trustee Act 1906. There is a difference in that, while a custodian trustee holds the title to the trust property, its consent is, unlike that of the diocesan authority, not required in relation to its disposal or charging or the bringing of legal proceedings – all those matters being left to be decided by the 'managing trustees'. Given what is said below about the nature of the limited nature of the diocesan authority's responsibilities, this distinction is, however, less significant in practice than might at first sight appear.

What is the relevance of the registration of a PCC with the Charity Commission?

7. The fact that a PCC is registered with the Charity Commission is not an indication of its 'competence'. Whether a PCC must be registered turns solely on the size of its income in the previous financial year: since 2009 PCCs with a gross income of more than £100,000 in the previous financial year have had to register with the Charity Commission. There are currently around 12,500 PCCs, of which around 2,200 are registered charities. All 42 English DBFs are registered charities.
8. It is also not the case that PCCs which have registered with the Charity Commission are subject to a significantly greater degree of regulation than those which are not registered. This is because *registration* is not synonymous with *regulation*: the fact is that all PCCs are subject to the regulation of the Charity Commission, in the sense that the Commission can exercise both its protective powers (eg to suspend charity trustees or freeze bank accounts) and its remedial powers (eg to remove charity trustees) in relation to a PCC whether or not the PCC is registered.
9. The major implication for a PCC of its being registered as a charity is simply to require it routinely to submit its annual report and accounts to the Commission. Registration has not, therefore, significantly altered the position in relation to the protection of the property of those PCCs which have registered.
10. If the arrangements for the holding of a PCC's property turned, as proposed in the motion, on whether it is registered with the Charity Commission, the position in that respect could in principle fluctuate over time because, as explained above, the question whether a PCC is required to register depends on its income in the preceding year.
11. Whilst the Charity Commission is willing to allow a PCC not to register if it can show that having a gross income of more than £100,000 in a particular year is an exceptional event, it is possible that if, over time, the gross income of a PCC fluctuates around £100,000, it would fall in and out of the category of charities that are excepted from the obligation to register. It seems undesirable in principle that trusteeship arrangements should, even in theory, be capable of altering over time, as a PCC's income increased or decreased.

Is there a wider case for removing or relaxing the requirements of the Measure?

12. The more fundamental question is whether the arrangements made by the Measure for the holding and management of property are still needed, whether or not a PCC is registered with the Charity Commission. This is not something that has been the subject of any formal scrutiny in recent years.
13. The assessment would presumably be about how much of a desirable safeguard the diocesan involvement provided against possible local mismanagement or abuse in a time of continuing financial and other uncertainty and whether this was sufficient to warrant a continuing restriction in this respect on bodies that are on other important matters expected to get on

with managing their own affairs. In forming a view on this question, relevant considerations would include the following.

14. First, whilst PCCs are subject to regulation by the Charity Commission, which can protect PCCs' property through the exercise of their investigatory, protective and remedial powers, in practice the Commission often only becomes involved after a problem has arisen. In contrast, the arrangements under the Measure – by requiring the consent of the diocesan authority in relation to certain key types of decision – are designed to prevent a bad decision being made in the first place.
15. Secondly, the requirement for the diocesan authority's consent in principle is intended as a safeguard against mismanagement or abuse rather than as an impediment to good and proper administration. The consenting function given to the diocesan authority is a 'fiduciary' power, given to it to ensure the proper administration of the trust property, and in particular to protect that property against the possibility of a decision by the PCC which is inconsistent with the duties of the PCC as trustee. That means that the diocesan authority is required in law to exercise its consenting power in the interests of the charity.
16. One aspect of the diocesan authority's role is to ensure that the PCC is acting within the scope of its powers in relation to the trust property. It should, therefore, decline to give its consent to a disposition, or to legal proceedings, by the PCC which are outside the latter's powers. But beyond that the diocesan authority's powers are limited, and it has to take account of the fact that, under the proviso to section 6(3) of the Measure, the powers of management etc remain with the PCC.
17. So, as the Legal Advisory Commission of the Church of England states in its Opinion *Seeking the consent of the DBF to the sale of PCC property*:

... the consent of the DBF should be given (even where the DBF might itself have taken a different view of the matter) unless the PCC is acting beyond the scope of its legal powers or in bad faith, has been guilty of some procedural or other irregularity (such as basing its decision on considerations which were irrelevant) or has reached a decision which is so far beyond the range of reasonable options that no reasonable PCC could have made it
18. Diocesan involvement does of course mean that there has to be more process and therefore some element of delay, with the potential that has to damage a parish's interests. The question is, therefore, whether that is a price worth paying for ensuring that certain property decisions have to be scrutinised at the level of the diocese rather than taken by the PCC.

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June 2012

Secretary General