

GENERAL SYNOD

DRAFT CHURCH OF ENGLAND (ECCLESIASTICAL PROPERTY)  
MEASURE

EXPLANATORY MEMORANDUM

BACKGROUND

1. Section 6 of the Parochial Church Councils (Powers) Measure 1956 ('the 1956 Measure') provides that where a PCC holds or acquires an interest in land, other than a short lease (defined as a lease lasting for no more than one year), or any interest in personal property held on permanent trusts, the interest must be vested in the diocesan authority, usually the diocesan board of finance.
2. Where property is vested in the diocesan authority, the PCC may not "*sell, lease, let, exchange, charge or take any legal proceedings with respect to the property without the consent of the authority*".
3. At the July 2012 group of sessions the General Synod passed the following resolution, on a Private Member's Motion moved by the Revd Christopher Hobbs:  
  
*"That this Synod call on the Archbishops' Council to bring forward legislation to amend the Parochial Church Councils (Powers) Measure 1956 so as to permit a PCC which is a registered charity to acquire and hold any interest in land and any interest in personal property to be held on permanent trusts, without any requirement for the interest to be vested in the diocesan authority."*
4. The Archbishops' Council subsequently considered how to give effect to the Synod's resolution. Its conclusions were reported to the Synod in July 2013 in GS Misc 1060, which can be found here:  
  
<http://www.churchofengland.org/media/1824171/gs%20misc%201060%20-%20parochial%20church%20councils%20powers%20measure%20response%20to%20pmm.pdf>
5. In summary, the Council accepted that Mr Hobbs had drawn attention to some real problems.
6. First, PCCs disposing of land are in effect now subject to double regulation, because they are also subject to the requirements of the Charities Act 2011 governing disposals of land. It is a relatively recent development that PCCs are regulated by the Charity Commission, and therefore the question of double regulation could not have occurred to the framers of the 1956 Measure.
7. The Council also noted that the controls under the 1956 Measure are unusually restrictive: they affect not only acquisitions and disposals of land, but also legal

proceedings in relation to land (so that a PCC needs the consent of the diocese, for example, to evict squatters from a property that they own).

8. However, the Council did not support the proposed method or degree of deregulation. The suggested distinction between registered and unregistered charities was a distinction without a difference, given that all PCCs are regulated by the Charity Commission and subject to the same governance requirements. Additionally, it is open to a PCC with income below the registration threshold to register voluntarily with the Commission.
9. The Council also noted that some smaller PCCs might struggle to comply with all the legal requirements for the sale of land and that the diocesan authority could provide valuable support in these cases.
10. The Council therefore agreed to bring forward legislation which would provide for a degree of deregulation, but would not remove the diocesan authority's role altogether. The draft Measure is introduced to give effect to that commitment.
11. It was noted in GS Misc 1060 that the Incumbents and Churchwardens (Trusts) Measure 1964 ('the 1964 Measure') contains very similar provisions about property held on charitable trusts, the trustees of which are the incumbent and / or churchwardens of a parish, and therefore that, for the sake of consistency, that Measure should be amended in a corresponding way.

## **NOTES ON CLAUSES**

### **Clause 1 (Amendment of Parochial Church Councils (Powers) Measure 1956)**

Clause 1 replaces section 6 of the 1956 Measure with a new section 6.

Subsection (1) of the new section 6 provides that, where a PCC has any interest in land, or in personal property held on permanent trusts, the legal title to that interest must be vested in the diocesan authority. (Personal property held on permanent trusts is property other than land, such as cash or shares, which is held on trust for a charitable purpose in the form of a 'permanent endowment' so that only the income, and in some cases the capital gains, accruing to the trust can be spent and the base capital must remain untouched.)

In relation to land, this has formal consequences in that the interest will be registered at the Land Registry in the name of the diocesan authority. In relation to other property, there is no formal registration of title and different dioceses will handle it in different ways. There is a specific exclusion for short leases, which is discussed further in the comment on subsection (9) below.

Subsection (2) requires anyone dealing with land, other than a short lease, or personal property held on permanent trusts, to make any transfers of legal title which are necessary to give effect to subsection (1). In practice, as noted above, this applies only in relation to land.

Subsection (3) provides that a PCC may not acquire or dispose of land or personal property held on permanent trusts without the consent of the diocesan authority,

unless either the interest in land is a short lease or the price of the interest is below a level specified in an order made by the Archbishops' Council. No decision has yet been taken on the value to be specified in that order. The amount to be specified must be endorsed by the General Synod, and the Council will note the views expressed in the debates on this draft Measure. There is, of course, a balance to be struck between the need to avoid bringing everything to the diocese and the risk that transactions of real significance could take place without the diocesan authority's knowledge.

Subsection (4) is included for the avoidance of doubt, to make it explicit that, apart from the requirements to vest land in the diocesan authority and to obtain consent to certain transactions, the requirements of the section do not affect PCCs' power to deal with their property.

Subsection (5) makes it clear that "disposing" of property includes mortgaging or charging it.

Subsection (6) replicates provision which is already in the 1956 Measure, protecting a member of a team ministry who occupies a house belonging to a PCC and vested in the diocesan authority. It requires the PCC to consult that person and have regard to his or her views before altering or disposing of such a house.

Subsection (7) provides that, while property is vested in the DBF under the Measure, the PCC continues to be responsible for any liabilities relating to the property (e.g. payment of a mortgage over it), all costs relating to it such as insurance, tax, utilities and so on, and the costs of any legal proceedings relating to the property.

Subsection (8) provides that the requirement for consent under the section is in addition to, and not instead of, a legal requirement for any other consent (e.g. the consent of the Charity Commission may be required to certain land transactions).

Subsection (9) defines a 'short lease' as a lease for seven years or less, or a 'periodic tenancy' where the lease is initially for a short term but can be renewed for further terms. In the existing provision, a short lease is defined as a lease for a year or less. The new provision brings the definition into line with the definition of a short lease in the Charities Act 2011.

The consequence of the exception is that if a PCC leases a building for a particular purpose for a short period, the legal title to the lease is not required to be vested in the diocesan authority, and the authority's consent is not required for any dealings with the lease, even if the value is greater than the sum specified in the order under subsection (3)(b).

Subsection (10) makes provision for cases where there is doubt as to whether property is or is not to be "held on permanent trusts": it is for the Bishop (or, during a vacancy in see, the guardian of the spiritualities) to appoint a person to determine the position.

## **Clause 2 (Amendment of Incumbents and Churchwardens (Trusts) Measure 1964)**

This clause amends several provisions of the 1964 Measure.

Subsection (2) removes the definition of “custodian trustee” from the 1964 Measure, to reflect the deletion of this term from the rest of the 1964 Measure by subsequent amendments. This is because the term is defined in the Public Trustee Act 1906, and the role of a “custodian trustee” as defined in that Act is incompatible with the role played by the diocesan authority under the 1964 Measure. A custodian trustee may not interfere in the management of property except to prevent a breach of trust, while the role of the diocesan authority under the Measure is more pro-active and the authority’s consent is required for certain transactions.

Subsection (3) amends the definition of a “short lease” in the same way that it will be amended in the case of the 1956 Measure, so that instead of a lease for a year or less it is defined as a lease for seven years or less. This brings the provision into line with the definition in the Charities Act 2011.

Subsection (4) adds a provision which has the effect of excluding any transaction under a value to be specified in an order made by the Archbishops’ Council. No decision has yet been taken on the value to be specified in that order.

Subsection (5) deletes a reference to the diocesan authority acting as custodian trustee.

Subsection (6) provides that the trustees of the trust will continue to be responsible for any liabilities in relation to the property (e.g. a mortgage), insurance, taxes and so on, as well as for the diocesan authority’s costs of taking on the legal title to the interest and the costs of any legal proceedings.

Subsection (7) replaces section 5 of the 1964 Measure with a new provision which excludes references to legal proceedings (for which the consent of the diocesan authority will no longer be required).

### **Clause 3 (Orders made by the Archbishops’ Council)**

This clause makes necessary procedural provision for orders made under the new section 6(3) of the 1956 Measure or section 2(2)(g) of the 1964 Measure, specifying the threshold value above which diocesan consent will be required for dealing with property.

It was thought appropriate to make this provision by order rather than by amendment of the Measure, because changes in the value of money could rapidly render the Measure obsolete and the process for amendment of a Measure is very time-consuming, whereas an order can be approved at a single group of sessions of the General Synod.

A draft order made by the Archbishops’ Council will be laid before Synod for approval, and may be approved with or without amendments. If it is approved without amendment the Council will make the order forthwith. If it is amended by the Synod, the Council may either make the order as amended or withdraw it for further consideration.

The Statutory Instruments Act 1946 will apply to an order made by the Council in accordance with this clause, which means among other things that any order made by the Council will be published as a statutory instrument and will be publicly available.

**Clause 4 (Short title, commencement and extent)**

This clause specifies the short title of the draft Measure and makes provision for commencement by order of the Archbishops of Canterbury and York acting jointly, and for extension to the Isle of Man by Act of Tynwald if desired.

**The Legal Office  
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