

GENERAL SYNOD

DRAFT STIPENDS (CESSATION OF SPECIAL PAYMENTS)
MEASURE

REPORT OF REVISION COMMITTEE

MEMBERS

Mr Timothy Allen (St Edmundsbury and Ipswich)	Chairman
Mr Bryan Sandford (York))
Ms Susan Cooper (London)) Ex officio
The Revd Canon Frank Dexter (Newcastle)) (Steering
The Archdeacon of Sheffield (the Ven Richard Blackburn)(Sheffield))) Committee)
Mr David Webster (Rochester))
Mrs April Alexander (Southwark))
Mr John Booth (Chichester))
The Bishop of Derby (the Rt Revd Jonathan Bailey)) Appointed
The Revd Simon Stokes (Norwich)) members
Prebendary Susan Trickett (Bath & Wells))

INTRODUCTION

Background

- I. The draft Stipends (Cessation of Special Payments) Measure ("the Measure") relates to the opening sections of the Endowments and Glebe Measure 1976 ("the 1976 Measure"). A detailed explanation of those provisions, the historical background to the 1976 Measure and subsequent developments was provided for the General Synod at the November 2002 Group of Sessions in the Church Commissioners' Report *Promoting assistance for needy parishes: reform of guaranteed annuities and other direct payments to parish clergy* (GS 1468). That report also contained the Church Commissioners' recommendations as to the abolition of the guaranteed annuities payable under section 1 of the 1976 Measure and certain other payments at present made by the

Commissioners, and as to the application of the money released as a result.

2. The Synod considered the report at the November 2002 Group of Sessions together with a report by the Financial Issues Working Group on *Clergy Stipends, pensions and other financial issues* (GS 1487). After resolving to take note of GS 1468, the Synod passed a further resolution which approved the recommendations in that report, subject to a qualification regarding the application of the money released which is referred to in paragraph 3 below. It instructed the Business Committee to introduce a draft Measure to give effect to its decisions, so far as legislation was required.
3. After careful consideration of the resolutions passed by the Synod, the Business Committee was satisfied that the Synod had instructed it to introduce a draft Measure for First Consideration which expressly required the money released by the abolition of the guaranteed annuities and other payments to be applied for stipend support in the dioceses most in need of it, without limit of time. Accordingly, clause 3 of the draft Measure as introduced into the Synod in July 2003 contained a provision to that effect. However, the Explanatory Memorandum (GS 1505X) made it clear that this did not fetter the power of the Revision Committee, or of the Synod at the Revision Stage in full Synod, to delete or vary the clause.
4. The Synod gave First Consideration to the Measure at the July 2003 Group of Sessions, following which it stood committed to a Revision Committee ("the Committee"). The version of the Measure (GS 1505A) which accompanies this report shows the amendments made by the Committee; provisions which have been added are shown in bold type; and those which have been omitted are shown in square brackets and italics.

The Revision Committee's work

5. The Committee held one meeting in order to carry out its duties under S.O. 53(e). By agreement, the remainder of the Committee's business was carried out by correspondence.
6. The Committee received only one set of proposals for amendment of the Measure under SO 53(a) from a member of the General Synod. These were submitted by Mr Andreas Whittam Smith (ex officio), the First Church Estates Commissioner, and are reproduced in the

Appendix to this report. Mr Whittam Smith attended the meeting of the Committee to speak to his proposals and, with the Committee's agreement, was accompanied by Mr Philip James (the Head of the Church Commissioners' Policy Unit) who, at the Committee's invitation, also assisted it on some other points arising during the meeting. The Committee also agreed to consider proposals submitted by Mr John Allen, the Deputy Secretary of the Derby Diocesan Board of Finance (referred to in this report by his full name in order to distinguish him from the Chairman of the Committee, Mr Timothy Allen.) These proposals are explained in paragraphs 8-10 below. With the Committee' agreement Mr John Allen also attended the meeting and spoke to his proposals. The Committee wishes to record its appreciation of the assistance it received from Mr Whittam Smith, Mr James and Mr John Allen.

7. At the commencement of the meeting the Steering Committee submitted proposals for a number of minor amendments, most of them of a purely technical or drafting nature. They are explained in later paragraphs of this report.

CONSIDERATION OF THE MEASURE CLAUSE BY CLAUSE

CLAUSE I

Proposals by Mr John Allen

8. Mr John Allen introduced his proposals by explaining that he had been a church administrator for 27 years, and had dealt with the implementation of the 1976 Measure. His concern was to ensure that the abolition of guaranteed annuities was implemented in as simple and streamlined a way as possible, so as to avoid unnecessary work for church administrators, either centrally or in the dioceses. Because of this he was concerned with the "mixed economy" that would be produced by clause 1(2)-(4). These provisions in effect allowed an incumbent who was at present entitled to a guaranteed annuity to opt to continue to receive it from the Church Commissioners while he or she remained in office. As a result, both the Commissioners and the diocese would need to keep records in relation to incumbents who exercised the option and the payments to them. He also referred to the administrative work involved under the present system where, for example, a benefice for which there was a guaranteed annuity became vacant.

9. Mr John Allen therefore proposed that all guaranteed annuities should be abolished completely on the coming into force of the Measure. An incumbent who was at present entitled to a guaranteed annuity should continue to receive the same amount, but as part of a total payment from the diocese. This need not differentiate between the part which represented the previous guaranteed annuity on the one hand and the "augmentation" on the other; this distinction was of no interest to the clergy, who were merely concerned with the total payment. The total would be calculated on the same scales as for other incumbents. There would be no need to keep separate records of the incumbents concerned or of the payments to them equivalent to the former guaranteed annuities.
10. If his proposal on guaranteed annuities was accepted, Mr John Allen proposed the same treatment for the few annual person grants still payable under section 2 of the 1976 Measure to incumbents in office before the 1976 Measure came into force.
11. Standing Counsel pointed out that if these proposals were accepted that would involve very substantial amendment to the draft Measure. Standing Counsel also explained to the Committee that the option for incumbents at present receiving guaranteed annuities to continue receiving them while they remained in their present office was included in the Measure in order to avoid the possibility of contravening Article 1 of the First Protocol to the European Convention on Human Rights, which was part of English Law by virtue of the Human Rights Act 1998. The First Protocol provided that every person was to be entitled to peaceful enjoyment of his possessions. These "possessions" included the legal right to receive a payment such as the guaranteed annuity, and Standing Counsel took the view that the legislation therefore had to give the incumbent a right to continue receiving the payments if he or she wished or to compensation for the loss of the right.
12. It was pointed out to the Committee that if the guaranteed annuities, to which there was an absolute legal right, became payable by the dioceses, it would still be necessary to keep the payments separate in the diocesan records from the other payments to the incumbent. This was because the incumbent did not have an absolute right to the other payments in the same way as to the guaranteed annuity, and in the unlikely event of the augmentation being withheld the incumbent could still claim the payments representing the guaranteed annuity. Members also noted that as the Measure stood there would be no appreciable additional

work when one of the relevant benefices became vacant, as the guaranteed annuity would then come to an end.

13. It was also pointed out that the proposal would have a financial impact on the dioceses, although one which it was not possible to quantify at present. Under the Measure, there would be some element of "phasing in" of the transfer of responsibility for payment of the amount of the guaranteed annuities from the Church Commissioners to the dioceses, which could cushion the immediate impact on those dioceses which would be worse off financially from the new financial arrangements as a whole. This came about because of each incumbent's option to continue receiving the payment from the Church Commissioners until he or she ceased to hold office. At this stage, no one could predict precisely how many incumbents from each diocese would exercise the option. Indeed, it was possible in theory for a diocese to encourage its incumbents to do so, so as to defer the full impact of the changes on the diocese, although members noted that there was no indication that any diocese which would lose financially from the Measure proposed to take that course - rather the reverse. Mr John Allen's proposal would remove the "cushioning" or "phasing" effect, by transferring the whole responsibility for the payments that had originally been the guaranteed annuities to the dioceses as soon as the Measure came into force, and this was not part of the "package" to which the dioceses had originally agreed when they were consulted about the proposal to abolish the guaranteed annuities and other payments .
14. Members were strongly supportive of Mr John Allen's aim of keeping bureaucracy and administrative work to a minimum, and thanked him for raising the issues involved in his proposals. However, in view of the factors set out above, they were not minded to accept the proposals. As they would have an impact on the Church Commissioners, Mr Philip James was invited to comment before the Committee reached its decision. He confirmed that the reason for including clauses 1(2)-(4) in the draft Measure was as explained by Standing Counsel (see paragraph 11 above). While the short-term effect of Mr John Allen's proposals would be to release more money immediately for the Commissioners, they were content to take a rather longer-term view. He could understand that the Committee might see other factors as relevant, and confirmed that the Commissioners were not pressing for Mr John Allen's proposals to be adopted.
15. In the light of this, the Committee decided not to accept Mr John Allen's proposals.

Steering Committee proposal

16. The Steering Committee proposed, as an amendment, to insert at the end of clause 1(1):-

“or, if the benefice is vacant on the date of the coming into force of this section, after that date”.
17. The Committee noted that this was intended to deal with a point that was not covered in the original draft; it ensured that if a benefice was vacant at the time section 1 of the Measure was brought into force, the entitlement to a guaranteed annuity in respect of that benefice would cease forthwith.
18. The Committee accepted the proposal.

Other Issues

19. Mrs Alexander drew attention to clause 1(2) and (3), which placed the onus on an incumbent who wished to continue receiving the guaranteed annuity to give notice to the Church Commissioners to that effect. She asked whether this was sufficient to satisfy the Human Rights requirements, or whether the incumbent should continue receiving the annuity unless he or she opted not to do so, and whether the latter type of provision would in any case be stronger.
20. Other members suggested that in practice the notice sent out by the Church Commissioners under clause 1(2) could include a form for completion by the incumbent, in which he or she had to choose between continuing to receive the annuity or not continuing to receive it. However, this still left the cases where the incumbent made no response, and the question there was whether such an incumbent should be taken as giving up the guaranteed annuity or whether he or she could continue to receive it. Mr James was invited to comment on the matter from the Church Commissioners' point of view, and explained that, given the object of the legislation, the Commissioners would not wish to continue paying the annuities except so far as that was necessary in order to satisfy the Human Rights Act.
21. Standing Counsel considered that it was not possible at present to advise with absolute certainty on questions under the Act. However, in his opinion the existing provisions of clause 1, under which the incumbent had to take positive action (by notifying the Church

Commissioners) if he or she wished to continue receiving the annuity, would satisfy the requirements of Article I to the First Protocol (see paragraph 11 above).

22. On the basis of that advice, Mrs Alexander was content with clause 1(2) and (3), and the Committee agreed that no amendment was necessary.

Conclusion

23. The Committee agreed that clause 1, as amended by the Steering Committee amendment to clause 1(1), should stand part of the Measure.

CLAUSE 2

Steering Committee proposals

24. The Steering Committee submitted the following proposals for amendment to clause 2:-

Alter Headnote to read "Cessation of certain payments to Diocesan Stipends Funds"

At beginning of clause 2 insert:-

"(1) Where , on the date of the coming into force of this section, a scheme made under section 4 of the 1976 Measure makes provision, under subsection (4) of that section, for the Commissioners to charge their general fund with annual payments to the income account of any diocesan stipends fund, no such payments shall be made after that date."

Renumber the subsections of clause 2.

25. The Committee noted that this group of amendments merely remedied an oversight in the original draft of the Measure. Paragraph 4(iii) of GS 1468 made clear that the proposed legislation should, among other things, abolish the duty to make a very small number of payments to individual dioceses imposed on the Commissioners under section 4(4) of the 1976 Measure following the abolition of specific benefice trusts. There had been no controversy over this proposal in the Synod or otherwise, and the amendments gave effect to it.
26. The Committee accepted the proposals.

Conclusion

27. The Committee agreed that clause 2, as amended in accordance with the Steering Committee proposals, should stand part of the Measure

CLAUSE 3

Proposals by Mr Andreas Whittam Smith (First Church Estates Commissioner)

28. Mr Whittam Smith spoke to his proposals, which are set out in the Appendix to this report. In summary, the proposals are as follows:-
- (a) That clause 3 should be deleted. Mr Whittam Smith's proposals explained that the first of the proposed strategic review of spending plans would certainly not overturn the Synod's declared wish to use the freed-up guaranteed annuity money for stipends. However, deleting clause 3 would mean that this use would then rest on the same legal authority as the other stipend support currently provided, and that it would leave open the possibility of using the money for other purposes in the future if that was what the Church as a whole wished in the light of its needs and opportunities at the time;
 - (b) Nevertheless, if that was rejected, Mr Whittam Smith proposed that clause 3 be amended so that the money was "ring-fenced" for the Church Commissioners historic purposes under section 67 of the Ecclesiastical Commissioners Act 1840, and not solely for stipend support. He pointed out that this was only one, albeit very important, way in which the "provision for the cure of souls in parishes where such assistance is most required" for which section 67 provided had been and was being made. For example, the Measure as drafted would preclude the use of the money to meet clergy housing costs, as well as for other forms of assistance to parish ministry in needy areas.
29. The Assistant Legal Adviser confirmed that, even though the Synod had passed a motion calling for a provision along the lines of clause 3 at the November 2002 Group of Sessions, there was nothing in the Standing Orders which precluded the Committee from deleting or amending the clause. Whatever the Committee decided, it would of course be open to any Synod member to raise the issues again by an amendment put down at the Revision Stage in full Synod.

30. Mr Whitman Smith introduced his proposals to the Committee by setting them in the context of the work of the Strategic Spending Review Working Group, of which he was the facilitator. It would be bringing its proposals to a joint meeting of the Archbishops' Council and the Church Commissioners' Board of Governors in December, and it was envisaged that this would be followed by an intensive programme of consultation within the Church, including discussion by the House of Bishops in January 2004 and a meeting with the deans of cathedrals. It was envisaged that the proposals would then be brought to the General Synod in February 2004, together with the report of the Review of the Dioceses, Pastoral and Related Measures, and the Synod would be able to consider the Measure in the light of those proposals. In view of the welcome which the Synod had given to the general proposals regarding the review of spending plans at the July 2003 Group of Sessions, he hoped that the Synod would also accept the Working Group's proposals in February 2004 and, with them, the deletion of "ring-fencing" in the Measure.
31. Mr Whittam Smith explained that, in seeking general principles as a guide for its work, the Strategic Spending Review Working Group had been influenced by the principles identified by the pastoral letter on "Ministry" issued by the House of Bishops in January 1994, including the following:-
- "Imaginative and flexible patterns of ministry – how this is best done must be judged locally. In considering it, all the resources of ministry available – lay as well as ordained – need to be drawn upon. New ways of providing ministry, looking at resources across as well within dioceses, deanery and parochial units, will need to be further developed by dioceses in the months and years ahead."
32. He also explained that one of the fundamental principles of the Working Group's recommendations was that each diocese should be given independence to decide how the money allocated it should be spent - the money should come to the diocese "without strings". "Ring-fencing" the money from this particular source for a specific purpose would run counter to that.
33. Mr Sandford, the Chairman of the Steering Committee, explained that the Steering Committee had not come to a completely common mind on the issues raised by Mr Whittam Smith's proposals. However, he himself spoke against them, referring to his long experience in financial matters in the Church, and placing the present Measure in its context as

the first concrete manifestation of the movement since the 1980s for mutual support as between the dioceses. The dioceses had accepted that guaranteed annuities should be abolished and the money distributed on the "mutual support" principle, on the basis that it would be devoted, as at present, to stipend support.

34. Both Mr Sandford and other members also pointed out that in practice reserving the sum in question - about £4.75 million - for stipends would not in practice impair the Church's flexibility in using its resources. Under current conditions, there was no prospect of the dioceses, taken together, needing a total of less than that amount for stipend support. If the time ever came when the Church was in that position it could only be in the distant future, and many other parts of the Church's legal framework would probably need to be reviewed.
35. Mr Whittam Smith accepted that clause 3 could be retained without making any real difference in practice to how the Church's money was spent. However, he argued that the clause would be illogical in the light of the general principles proposed by the Strategic Spending Review, and would send out the wrong message, undermining the general principle of allowing independence to the dioceses.
36. Some members took the view that even if the money was not "ring-fenced" for specific purposes, it would be desirable for the Measure to deal expressly with how it was to be applied. Otherwise it could be seen as falling into a "black hole", or there might be fears that it would be used for a completely different purpose such as work on the Commissioners' own properties. Mr Whittam Smith reassured the Committee that this would not be legally possible, but was not opposed to some provision setting out what was to happen to the money, and was willing to consider the idea of "tagging" (as opposed to "ring-fencing") the money. He also confirmed that there was no objection to the money being paid over to the Archbishops' Council for distribution.
37. A number of members of the Committee indicated that they found the idea of complete flexibility attractive, although others continued to favour "ring-fencing" of the money for stipends. However, all were aware that the Synod had expressed itself in favour of "ring-fencing" in November 2003, and that the brief debate on First Consideration did not signal any change in the Synod's views on that. It was impossible for the Committee to be certain how the Synod would in fact respond to the Strategic Spending Review Working Group's proposals in February 2004, and even if the Synod welcomed the general principles behind

those proposals there was a possibility that it would nevertheless wish to retain "ring-fencing" in the particular case of the moneys freed up by the Measure. The Committee also noted that it would be possible to achieve greater flexibility by an amendment which retained some provisions about the application of the money, and that the Synod might find this preferable to deleting clause 3 completely.

38. In the light of these considerations, the Committee considered the following as a possible way forward:-
- (a) The Committee should request the Business Committee to ensure that the debate on the Measure came after that on the Spending Review in the Agenda for the February 2004 Group of Sessions, so that the Synod could consider the Measure and particularly the issues over clause 3 in the light of the debate on the Spending Review and the motions it had passed at the conclusion of that debate.
 - (b) The Committee should not make any amendment to clause 3 at this stage, before the Synod's mind on the Strategic Spending Review proposals was known. However, the Synod should have before it in February 2004 amendments to the Measure, drafted by Standing Counsel in discussion with the Church Commissioners' staff, which would give the Synod the opportunity to decide what course it wished to take on clause 3. There might well be two or even more alternative amendments; who would move them would need to be the subject of further discussion - possibly members of the Review Group would be the best persons to do so - but they should in any case be set out on a notice paper which went to Synod members in the same circulation as the Agenda, so that members had advance notice of them and sufficient time to consider them.
 - (c) In the light of the debate and on the Strategic Spending Review and the motions passed by the Synod, the Steering Committee would consider whether they could support the amendment (or any of the amendments) at the Revision Stage.
39. The Committee accepted that course of action on a vote, with 8 members voting in favour and none against. The Chairman and Mr David Webster, who is a Church Commissioner and a member of the Commissioners' Board of Governors, recorded abstentions.

Steering Committee proposals

40. The Steering Committee proposed the following amendments:-

In clause 3(1), after "2(1)" insert "and 2(2)".

In clause 3(1), after the first "above" insert "at the date of the passing of sections 1 and 2 above" and for "sections 1 and 2 above" substitute "those sections".

41. The Committee noted that the first of these amendments was purely consequential on the amendments proposed by the Steering Committee to clause 2 (see paragraphs 24-26 above). The second made express provision for the date at which the Commissioners were to calculate the amount which, if the Measure had not been passed, would have been payable by way of guaranteed annuities and payments within clause 2 of the Measure, in order to calculate the amount payable to the Archbishops' Council under clause 3. Standing Counsel explained that this might have been implicit from the original wording, but the amendment made it absolutely clear that the date to be used was to be that of the passing of sections 1 and 2 of the final Measure.

42. The Committee accepted the proposals.

Conclusion

43. The Committee agreed that clause 3, as amended in accordance with the Steering Committee proposals, should stand part of the Measure.

CLAUSE 4

Steering Committee proposal

44. The Steering Committee proposed the following amendment to clause 4:-

In clause 4, omit the definition of "income account of the diocesan stipends fund" and insert new subsection (2):-

"(2) Any reference to the income account of a diocesan stipends fund means the income account required to be kept under section 1 of the Diocesan Stipends Funds Measure 1953 (1953 No.2)."

45. The Committee noted that this amendment was a technical drafting amendment and was purely consequential on the amendment to clause 2. It was needed because the original definition in clause 4 would not tie in satisfactorily with the amended text of clause 2.

General

46. The Committee agreed that clause 4, as amended in accordance with the Steering Committee proposal, should stand part of the Measure.

CLAUSE 5

47. The Committee noted that the Legislative Draftsman in the Isle of Man who dealt with Church legislation had been consulted about clause 5(3) and was content with it. While he anticipated that the Diocese of Sodor and Man would wish clauses 3 and 4 to apply to it, that could only be achieved by extending the clauses to the Island, with modifications, by or under an Act of Tynwald, as the Diocesan Stipends Funds Measure 1953 did not apply to the diocese and it had no diocesan stipends fund. As regards the Channel Islands, Standing Counsel and the Assistant Legal Adviser thought the best course would be to follow the wording of the National Institutions Measure, which applied to the whole of the province of Canterbury (as well as that of York). The Committee therefore agreed to omit the words “the Channel Islands and” in clause 5(3). However, members noted that the staff would continue consultations on this, and if the outcome of these cast any doubt on the wording a suitable amendment could be moved at the Revision Stage.

General

48. The Committee agreed that clause 5, amended as indicated in paragraph 47 above, should stand part of the Measure.

LONG TITLE

49. The Committee agreed that the Long Title should stand part of the Measure. Members noted that if the Synod deleted clause 3, it would be necessary to make a consequential amendment to the Long Title to omit the reference to the application of sums made available by the abolition of the guaranteed annuities and other payments.

Timothy Allen (On behalf of the Committee)

January 2004