

GENERAL SYNOD

DRAFT PASTORAL (AMENDMENT) MEASURE

Explanatory Memorandum

BACKGROUND

1. The draft Measure is introduced, on the instructions of the Business Committee, to give effect to Recommendation 39 of the Report of the Review of the Dioceses, Pastoral and related Measures (GS 1528).
2. Its purpose is to permit a lease to be granted, under the authority of a faculty, of part (or parts) of a church which remains open for public worship, without recourse to a declaration of redundancy.
3. As explained in GS 1528, one of the key aims of the Review has been to facilitate the extended use of church buildings. However, at present, an extended use is sometimes only practicable if the new occupier acquires a substantial legal interest in the part of the building in question. This could well be a funding requirement of, for example, one of the Lottery bodies.
4. Although extended use of a church building can already be authorised by a consistory court under a licence, that does not necessarily provide the substantial legal interest funding bodies may require as a condition of their support. It is not uncommon for them to look for a leasehold or freehold interest, which at present can only be provided by declaring all or part of the church redundant. This is because section 56(2) of the Pastoral Measure 1983 ('the

1983 Measure’) prohibits, *inter alia*, the sale or lease of a church or part of a church except under the powers contained in that Measure. Quite apart from being an onerous procedure in itself, a full or partial declaration of redundancy when there is no intention of ceasing public worship in the building can be seen as a ‘device’ and one that sends out misleading and unhelpful messages. Nonetheless, it is a device which is increasingly having to be invoked as parishes seek, for community outreach, pastoral and financial reasons, to accommodate wider uses within churches where worship will continue.

5. As explained in paragraphs 4.08 to 4.13 of GS 1528, therefore, it is proposed that section 56(2) of the 1983 Measure be amended so as to enable consistory courts to authorise the granting of leases of part or parts of a church building and ancillary land, provided that the church building will continue to be used primarily as a place of worship. Thus it will not permit a lease or leases to be granted of a church building in such a way that it ceases to be used primarily as a place of worship. Nor will it allow the freehold to be disposed of. Both of these courses of action will continue only to be possible if the redundancy procedure is followed.
6. The consultations carried out as part of the Review showed a great deal of support for amending section 56 of the 1983 Measure to facilitate extended use in this way. As explained in paragraph 4.13 of GS 1528, the Review Group believed that it would be beneficial to pursue this particular proposal in advance of the legislation required to give effect to its other recommendations.
7. Consultations with some of the relevant funding bodies also suggest that, from their point of view, the added flexibility the draft Measure would allow would be

helpful, though of course each grant application and the circumstances surrounding it would continue to be considered on its merits.

NOTES ON CLAUSES

8. Section 1 of the draft Measure amends section 56 of the 1983 Measure by qualifying the general rule which prohibits the sale, leasing or other disposal of churches subject to the 1983 Measure. In essence it makes it subject to a number of new subclauses.
9. New subclause (2A) permits the consistory court, by faculty, to authorise a lease of part, or parts, of a church building, provided that, taken as a whole, the building as a whole continues to be used primarily as a place of worship. The application for such a faculty, and the lease itself, must be made by the incumbent (or, during a vacancy, the bishop).
10. New subclause (2B) confers a corresponding power in relation to any land belonging to or annexed to a church, whether or not any part of the church building is leased with it.
11. New subclause (2C) provides for the parochial church council to be a party to any such lease and to have the same rights as the lessor to enforce it, including the power to forfeit and distrain for non-payment of rent.
12. New subclause (2D) provides for the rent under any such lease to be paid by the lessor to the parochial church council.
13. New subclause (2E) provides that the terms of any such lease are to be as the court may decide and permits it to

14. vary them as a result of an application by any party to the lease.
15. New subclause (2F) safeguards the continuing church use by prohibiting, in the case of a lease of a church building, use of the leased premises for purposes inconsistent with use as a place of worship and, in both cases, residential use (except in limited circumstances).
16. New subclause (2G) removes rights of enfranchisement for religious, business or agricultural tenants that would otherwise be available under Acts of Parliament.
17. New subclause (2H) deals with the situation where there is no parochial church council by allowing the churchwardens to take its place.
18. New subclause (2I) makes further provision for the bishop to act when the benefice is vacant.
19. New subclause (2J) allows the consistory court, rather than the secular courts, to deal with issues as to the interpretation or enforcement of any such lease.
20. New subclause (2K) confers the new faculty jurisdiction on the consistory court and provides that the grant of a lease cannot be authorised by an archdeacon.
21. Clause 2 deals with citation, commencement and extent.

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January 2004

Published by the General Synod of the Church of England and on sale at Church House Bookshop, 31 Great Smith Street, London, SW1P 3BN
