

GENERAL SYNOD

DRAFT CHURCH OF ENGLAND (MISCELLANEOUS PROVISIONS) MEASURE

Explanatory Memorandum

1. The draft Measure is introduced on the instructions of the Business Committee.
2. This Measure is the tenth in a series of Miscellaneous Provisions Measures dealing with uncontroversial matters that do not merit free-standing legislation.

Notes on clauses

3. Clause 1 and Schedule 1 to the Measure amend the New Parishes Measure 1943 ('the 1943 Measure'). Under s.13 of the 1943 Measure the Church Commissioners have power to acquire land for various church purposes, which subsequently vests under s.16 of the 1943 Measure in either the Incumbent or the diocesan authority on trust for the parochial church council. The Commissioners are also required by s.17 of the 1943 Measure to consent to disposals of land acquired under the 1943 Measure or earlier legislation which is no longer required for the purpose for which it was acquired. Paragraph 2 of Schedule 1 passes the Commissioners' power under s.13(1) to acquire property for the purposes set out in s.13(1) to the diocesan board of finance ('DBF') for the diocese in which the property is situated and inserts a new requirement that the consent of the Commissioners to the transaction will be required if the acquisition is a purchase and the seller is a connected person (as defined) or if the person or body in whom the property is to vest under s.16 has not obtained a surveyor's report confirming that the terms on which the acquisition is to proceed are the best that can reasonably be obtained. Paragraph 3 replaces the Commissioners with the DBF as the recipient of gifts or grants of land for sites of churches from corporations and other bodies referred to in s.14. Paragraphs 4 and 5 make consequential amendments to sections 15 and 16 respectively. Paragraph 6 removes the requirement to obtain the Commissioners' consent to a disposal of land no longer required for the purpose for which it was acquired, save where the person or body acquiring the land is a connected person or the transaction is not being carried out in accordance with a surveyor's report confirming that the terms on which the disposal is to proceed are the best that can reasonably be obtained. Paragraph 7 replaces the Commissioners with the DBF in s.20, which contains provisions as to land acquired for burials. Paragraphs 8, 9 and 10 contain consequential amendments and repeals.
4. Clause 2 amends s.6(3B)(a) of the Church Commissioners Measure 1947 to update a cross-reference which is now out of date following the amendment of s.6(3B)(d) of the 1947 Measure by s.2 of the Church of England (Miscellaneous Provisions) Measure 2005.
5. Clause 3 amends the Church Funds Investment Measure 1958 to reflect the intended winding up of the Central Board of Finance by deleting from the types of funds which may be invested under the 1958 Measure funds held by the Central Board as part of its corporate funds or as trustee.
6. Clause 4 amends the Clergy Pensions Measure 1961 by giving the Church of England Pensions Board an express power to constitute committees and delegate functions to them.
7. Clause 5 amends the Ecclesiastical Jurisdiction Measure 1963 by inserting a word inadvertently removed when s.2(2) of the 1963 Measure was amended by the Church of England (Miscellaneous Provisions) Measure 2006.

8. Clause 6 amends sections 20 and 23 of the Endowments and Glebe Measure 1976. The need for these amendments result for the changes made by the Church of England (Miscellaneous Provisions) Measure 2005 reducing the Commissioners' involvement in diocesan glebe transactions to those set out in Schedule 3 of the 1976 Measure.
9. Clause 7 amends s.69 of the Pastoral Measure 1983 to provide that the three year maximum period for the restriction of a presentation to a benefice referred to in s.69(1) and (3) of the 1983 Measure will, where a decision on an appeal against a decision of the Commissioners on a representation made in connection with a draft pastoral scheme is awaited from the Privy Council, be extended up to and including the date of delivery of the Privy Council's decision.
10. Clause 8 amends Part 1 of Schedule 1 to the National Institutions Measure 1998 (which provides for the constitution and membership of the Archbishops' Council) by inserting a new paragraph 4A. Sub-paragraph (1) will provide that elected members of the Archbishops' Council are to be elected in accordance with General Synod's Standing Orders (currently Standing Order 120). Sub-paragraph (2) will provide that, where an elected member of the Council ceases to be a member of the Synodical House which elected him or her, he or she will automatically cease to be a member of the Council. This is, however, subject to sub-paragraph (3), which provides that an elected member of the Council does not cease to be a member of the Council simply as a result of the dissolution of the General Synod.
11. Clause 9 makes provision in respect of gifts (which will generally be gifts in wills) that are expressed to be made in favour of 'the Church of England. Because there is no corporate body called 'the Church of England', such gifts currently have to be dealt with by way of directions under the Royal Sign Manual or schemes made by the court or the Charity Commission. Clause 9 provides that, where a gift is made to 'the Church of England' (or similar), it will automatically take effect as a gift to the Archbishops' Council. There should not then be any need to seek a direction or a scheme. Any gifts covered by the provision remain subject to any trusts or other conditions that the donor imposes in the document under which the gift is made.
12. Clause 10 relates to cathedrals. Clause 10(1) is declaratory of the existing law in relation to the status of cathedrals and is included for the avoidance of doubt. Ecclesiastical corporations – which include cathedrals – are outside the definition of 'charity' employed in the Charities Act 1993. That means that they are not subject to the jurisdiction of the Charity Commission. A number of legislative provisions have been made in relation to Cathedrals in recent years and it is considered desirable to make clear that the status of cathedrals as ecclesiastical corporations outside the jurisdiction of the Charity Commission remains unchanged.
13. Clause 10(2) makes provision increasing the number of non-residentiary canons at Christ Church Cathedral, Oxford and for the appointment of lay and ecumenical canons there. Further provision is made in respect of the tenure of such canons, for the determination of their rights and duties and for the conferring of emeritus titles. Provision is also made for the creation of a college of canons having specified functions.
14. Clause 11 makes consequential amendments and repeals.
15. Clause 12 deals with citation, commencement and extent.

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