

SPECIAL AGENDA IV

DIOCESAN SYNOD MOTIONS

CLIMATE CHANGE AND THE CHURCH'S PROPERTY TRANSACTIONS

Background note from the Secretary General

Types of Church property

1. Property held by diocesan boards of finance ('DBFs'), diocesan boards of education and parochial church councils ('PCCs') can take a variety of forms.
2. All three types of body may hold land either as part of their own, corporate property or, as trustee, upon charitable trusts. As charitable property, both types of land must be dealt with in accordance with the principles of charity law.
3. DBFs also hold land representing 'glebe'. Prior to 1978 the endowments of many benefices included glebe - ie property (other than the parsonage house and grounds) owned by the incumbent in right of his office and as endowment of the benefice. Glebe might include a wide variety of property including farms, fields, residential and commercial property. Usually glebe was let, the income forming part of the incumbent's stipend.
4. From 1st April 1978 glebe ceased to belong to individual incumbents and, by virtue of section 15 of the Endowments and Glebe Measure 1976, became vested in the DBF of the diocese concerned, which became responsible for its management for the benefit of the diocesan stipends fund. Income from glebe is accordingly now payable to the diocesan stipends fund. Whilst (by virtue of s.96(2)(b) Charities Act 1993) glebe is outside the definition of 'charity' for the purposes of the Charities Acts, it still represents property held for charitable purposes and must accordingly be dealt with in accordance with the principles applicable to such property.

The legal background

5. It is a well established principle of charity law that, in the absence of any express provision to the contrary in statute or the governing documents of the charity concerned, where land held for charitable purposes is disposed of the disposal must be on the best terms reasonably obtainable. This is closely related to the duty of trustees to act in the best interests of the charity. The one exception to this is where the disposal is made in the interests of furthering the charitable object(s) of the charity concerned.

6. The provisions regulating PCCs are contained in the Parochial Church Councils (Powers) Measure 1956 and the Church Representation Rules 2006. Neither would seem to permit PCCs to impose conditions on the disposal of land which, in order to give 'proper weight to environmental considerations', led to a reduction in the amount for which the land could be disposed of. Similarly, although it would depend on the trusts of the particular ecclesiastical charity concerned, it is unlikely that the trusts of such a charity would authorise that either. In neither case could it safely be assumed that the imposition of the conditions would further purposes which are essentially 'religious' (even in the light of the wording of s.2 of the 1956 Measure).
7. The disposal of glebe land is governed by the Endowments and Glebe Measure 1976. In keeping with the duty on the DBF to manage the glebe for the benefit of the diocesan stipends fund, any sale of glebe must generally be on the best terms reasonably obtainable, which again precludes the possibility of imposing conditions depressing the sale value - and thus reducing the amount received by the diocesan stipends fund - in order to give 'proper weight to environmental considerations'.
8. There is only one, statutory, exception to this, namely section 20(1) of the 1976 Measure as amended by the Church of England (Miscellaneous Provisions) Measure 2000. That provides that the DBF may include such terms on a disposal thought necessary to safeguard the amenities of any land affected by the disposal. The purpose of this exception is to protect the amenities (and thus potentially also the financial value) of neighbouring land the Church retains following the disposal. This exception is therefore consistent with the general principles of charity law because it serves to safeguard the interests of the charitable body disposing of the land and thus further its purposes.
9. If PCCs and DBFs are to have the power to give the 'proper weight to environmental considerations' that this motion seeks to achieve, therefore, that objective can only be achieved (as the motion recognises) by passing primary legislation to amend both the 1956 and 1976 Measures and make new provision to deal specifically with ecclesiastical charities.

Issues for consideration

10. In practice the Church would need the support of the Charity Commission for any legislation of the kind envisaged in the motion, given that it would modify the impact of general principles of charity law. Before seeking that support, the Church would need to have the answers to a number of questions that the Commission would be bound to raise.
11. They are:
 - The purpose lying behind the motion is the achievement of environmental gains. That will not be one of the charitable purposes for which the land is held. In legal terms, therefore, the motion would involve a partial diversion of charitable resources from the purpose for which they were given to another

purpose. Legislation could certainly achieve that; but, in view of the respect that should be given to the wishes of donors, the Commission would no doubt wish to be satisfied that there was a good case for partially diverting resources in this way. Thus the question that the Church would have to answer is whether the aim advanced by the motion of giving “*a stronger moral lead in achieving Her Majesty’s Government’s objectives in cutting carbon emissions*”, or some other aim, would justify diverting endowments that have been given for one purpose to some other purpose.

- If the Church were to take power by legislation to divert assets held by it for one purpose to some other purpose, the question would arise as to whether that freedom should be limited in the way envisaged in the motion or whether it should extend beyond the promotion of environmental gains, and allow the Church when disposing of land to give weight to any other consideration(s) that it might consider consistent with its mission.
- The Charity Commission would no doubt expect any legislation to honour the principle that charitable assets should only be applied for purposes which are charitable in law. If so, the legislation would have to ensure that, if conditions were imposed with a view to achieving environmental gains, they would in fact promote a legally charitable purpose. The difficulty is that a purpose which might be widely assumed to be beneficial from the environmental point of view would not necessarily be charitable in law: not all beneficial purposes are charitable purposes. Thus difficult issues could arise in practice, as a result of the relevant body having to satisfy itself (possibly after taking legal advice) that the particular conditions to be imposed did in fact promote a purpose that was charitable in law.
- Similarly, the Charity Commission could be expected to require that there be a proportionate relationship between any intended environmental benefit and any loss in value flowing from the imposition of conditions intended to achieve that benefit. But that could also raise difficult questions in practice, in terms of how the value of any intended environmental benefit would be assessed and balanced against any financial loss.
- That in turn would raise the question whether the decision on disposal should be left solely to the body concerned or be subject to some sort of approval requirement (whether on the part of the Church Commissioners or some other independent body). The Church would have to be prepared for the possibility that the Charity Commission might favour such a requirement on the ground that, where the criteria used in the management of income producing assets cease to be purely financial, there is increased potential for decision making to become confused and contentious and for the views of individual trustees on where the proper balance lies to be given an inappropriate weight.

The legislative process

12. Legislation giving effect to the aim of the motion would have to take the form of a Measure. Following the necessary discussions with the Charity Commission, therefore, it would have to be dealt with in accordance with the provisions of the Standing Orders relating to Measures.
13. It is difficult at this stage to be precise about what the timescale for a review and the subsequent legislation would be, not least given current pressures on the Legal Office (and the Charity Commission). Once the policy review was completed and draft legislation prepared it would probably take between eighteen months and two years from the time of its introduction into the Synod until it had secured Royal Assent and come into force.

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