

GENERAL SYNOD

DRAFT CARE OF CATHEDRALS MEASURE

EXPLANATORY MEMORANDUM

1. This Measure has been designated by the Business Committee as a Consolidation Measure under Standing Order 47. It consolidates, with corrections and minor improvements, the following enactments: the Care of Cathedrals Measure 1990, the Care of Cathedrals (Supplementary Provisions) Measure 1994, the Care of Cathedrals (Amendment) Measure 2005 and provisions relating to the care of cathedrals in the most recent Church of England (Miscellaneous Provisions) Measure (which was finally approved by the Synod in February 2009 and is now awaiting its Parliamentary Stages).
2. Under Standing Order 47(d), the term “corrections and minor improvements” is defined to mean any amendments of which the sole effect is to:
 - (i) resolve an ambiguity;
 - (ii) remove doubt;
 - (iii) bring an obsolete provision into conformity with modern practice;
 - (iv) remove an unnecessary provision or an anomaly which is not of substantial importance; or
 - (v) improve the form or manner in which the law is stated; together with any transitional provision necessary in consequence of an amendment under (i) to (v) above.
3. A statement relating to the corrections and minor improvements that have been incorporated into this draft Measure is appended to this memorandum.
4. By virtue of Standing Order 47(c), any amendments proposed by members of Synod following First Consideration of the draft Measure must also fall within the definition of corrections and minor improvements explained above.
5. A table of derivations has not been prepared because the view was taken that the cost of so doing would be disproportionate to the use which members of Synod would be likely to make of it. However, if any member wishes to know the derivation of any provision in the draft Measure, the Legal Office stands ready to assist

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Corrections and Minor Improvements

Changes in drafting style

1. The long standing practice has been to draft Measures in broadly the same style as is adopted by the Parliamentary Counsel when drafting Acts of Parliament. In recent times Parliamentary Counsel have endeavoured to adopt a simpler and more direct style of drafting and Standing Counsel has followed this practice. An example of this approach is that it is no longer considered necessary to refer to “section x above or below” or to “Schedule Y to this Measure”. I have adapted the drafting of the Care of Cathedrals Measure 1990 and the amending Measures consolidated in this Measure to accord with the modern practice.

Corrections and minor improvements

2. The principal changes under the heading of “corrections and minor improvements” as set out in Standing Order 47(d) are as follows –
 - (a) There has been some doubt whether the term “precinct”, when used with reference to cathedral churches, includes the land on which the cathedral church is situated, because clause 25(1) (and its predecessor section 13(3) of the 1990 Measure) refers to the land “surrounding” the cathedral church. As a matter of policy, archaeological or human remains situated in or under a cathedral church should be within the scope of the controls imposed by the Measure. Rather than extend the definition of “precinct” to include the land on which a cathedral church is situated, which might not, in all cases, achieve the right result, I have, where appropriate, for example in clauses 2(1)(a)(iii) and (iv) and 3(2)(a) and (3)(c), referred to archaeological or human remains “in or under” the cathedral church;
 - (b) Doubts have been expressed whether the provisions in clause 10 dealing with appeals to the Cathedrals Fabric Commission and those in clause 11 relating to reviews by the Commission of Review of decisions made by the Cathedrals Fabric Commission accurately reflect the intention that such appeals and reviews are final and not subject to any further appeal or review. I have adjusted the wording of clauses 10(4) and 11(5) to make the intention clearer; and
 - (c) Where appropriate I have endeavoured to avoid long passages which appear in the 1990 Measure, as amended, which are difficult to understand, by restating them in tabular form or splitting the passages into different subsections. Examples are in clauses 14 (section 10C of the 1990 Measure) and 24(1) (section 13 of the 1990 Measure). Inventories

and precinct plans are now dealt with in different clauses (24 and 25),
instead of the present single and rather indigestible section (13).

Sir Anthony Hammond, KCB, QC
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