

GENERAL SYNOD

DRAFT CARE OF CHURCHES AND ECCLESIASTICAL JURISDICTION MEASURE

REPORT OF THE STEERING COMMITTEE OF MEMBERS IN CHARGE

Chair: The Right Worshipful Charles George QC,
Dean of the Arches and Auditor (*ex officio*)

Members: Dr Christopher Angus (Carlisle)
The Right Worshipful Timothy Briden,
Vicar General of the Province of Canterbury (*ex officio*)
The Reverend Jeremy Fletcher (York)
The Reverend Dr Mandy Ford (Leicester) *until 13 September 2014*
The Venerable Karen Gorham, Archdeacon of Buckingham (Oxford)

1. The draft Care of Churches and Ecclesiastical Jurisdiction Measure ('the draft Measure') received First Consideration from the General Synod at the November 2013 group of sessions and was committed to a Revision Committee. At the July 2014 group of sessions the Synod took note of the report of that Committee (GS 1919Y) and completed the Revision Stage for the draft Measure which then stood committed to the Steering Committee under Standing Order 59(a) in respect of its Final Drafting.
2. The Steering Committee has conducted its remaining business by correspondence under Standing Order 59(f). It now returns the draft Measure (GS 1919B) to the Synod for Final Drafting and Final Approval.
3. Under Standing Order 59, on the Final Drafting Stage the Steering Committee may propose 'Drafting Amendments' or 'Special Amendments' or both. These two categories of amendments are defined in SO 59(g) as follows –
 - (i) a Drafting Amendment means an amendment where only the wording of the Measure is altered and not its substance; and
 - (ii) a Special Amendment means an amendment considered necessary or desirable by the Steering Committee because the Measure is not sufficiently clear or because some other criticism not considered by the Synod or any Revision Committee has been brought to the notice of the Steering Committee.
4. The Steering Committee has agreed the Drafting Amendments shown in bold type in GS 1919B, which have been identified on final scrutiny of the draft Measure as necessary corrections to the text. An explanation for each of these Drafting Amendments is given in Annex A.
5. The Steering Committee also proposes the Special Amendments set out in Part 1 of Annex B. An explanation for the proposed Special Amendments can be found in Part 2 of Annex B.

On behalf of the Committee
Charles George
Chair

October 2014

ANNEX A

EXPLANATION OF DRAFTING AMENDMENTS TO THE DRAFT MEASURE (shown in bold in GS 1919B)

Clause **5**, page 2, line 40

1. The amendment to the new section 18B(6) makes that provision clearer. It is only where the archdeacon is the incumbent or priest in charge of the benefice where it is proposed to undertake a matter without a faculty that the chancellor is to act in place of the archdeacon for the purpose of being consulted about the proposal and deciding whether to give notice that it may be undertaken without a faculty.

Clause **5**, page 4, lines 17 and 18

2. References to section 4(1)(a) and (b) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 have been removed after, respectively, “inventory” and “log book”. The references were unnecessary because those terms are defined in section 31 (Interpretation) of the 1991 Measure into which section 18C is to be inserted.

Clause **9**, page 5, line 28

3. The amendment to the new subsection (1A) makes it clear that the jurisdiction to be exercised by the Dean of the Arches and Auditor sitting alone belongs to the Dean and Auditor as a judge of the Court of the Arches or the Chancery Court of York (rather than in any other capacity).

Clause **10**, page 6, line 9

4. The amendment to subsection (6) adds clause 6 (which was inserted at the Revision Committee Stage) to the provisions of the Measure which are capable being extended to the Channel Islands. Clause 6 amends section 25 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 which itself is capable of being extended to the Channel Islands; a provision amending section 25 should, therefore, also be capable of extension.

ANNEX B

PART 1

PROPOSED SPECIAL AMENDMENTS TO THE DRAFT MEASURE

1. Clause 5, page 3, line 24, at end insert—

“(7A) The reference in subsection (7)(e) above to a matter affecting the legal rights of a person does not include a reference to the grant of a licence for the grazing of a churchyard by livestock.”

2. After clause 6 insert—

“6A Allocation of appeals

- (1) In section 7 of the 1963 Measure (jurisdiction of Arches and Chancery Courts), for subsection (1) substitute—

“(1) The Arches Court of Canterbury and the Chancery Court of York each have jurisdiction to hear and determine an appeal from a judgment, order or decree of the consistory court of a diocese within the province for which they are constituted respectively—

(a) in a cause of faculty, or

(b) in proceedings of the kind mentioned in section 6(1)(bb), (d) or (e),

unless the appeal to any extent relates to matter involving doctrine, ritual or ceremonial.”

- (2) In subsection (2)(b) of that section, omit “, if leave is refused by that court,”.
- (3) In section 8 of the 1963 Measure (jurisdiction of Privy Council), for “paragraph (b)” substitute “paragraph (a)”.
- (4) In section 10 of the 1963 Measure (jurisdiction of Court of Ecclesiastical Causes Reserved), before subsection (1) insert—

“(A1) The Court of Ecclesiastical Causes Reserved has jurisdiction to hear and determine an appeal from a judgment, order or decree of a consistory court—

(a) in a cause of faculty, or

(b) in proceedings of the kind mentioned in section 6(1)(bb) or (e),

where the appeal to any extent relates to matter involving doctrine, ritual or ceremonial.”

- (5) In subsection (1) of that section, omit the words from “and also has jurisdiction” to the end.
- (6) In subsection (3) of that section—
 - (a) omit “in a cause of faculty”,
 - (b) omit “paragraph (b) of”, and
 - (c) for “a question of doctrine, ritual or ceremonial is involved” substitute “the proposed appeal relates to any extent to matter involving doctrine, ritual or ceremonial”.
- (7) In subsection (4) of that section, omit “given, made or pronounced in a cause of faculty”.

(8) In subsection (5) of that section—

- (a) omit “given, made or pronounced in a cause of faculty”, and
- (b) for “may, if it considers that the appeal” substitute “shall, if it considers that the appeal to any extent”.

PART 2

EXPLANATION OF SPECIAL AMENDMENTS

Amendment 1

1. During the first consideration debate on the Measure, the hope was expressed by a member that the Measure would make it possible for licences for the grazing of churchyards to be granted without a faculty. The point was reiterated in a submission to the Revision Committee.
2. It will be for the Rule Committee in due course to prepare Rules setting out the matters that may be undertaken without a faculty. The Steering Committee hopes that the grant of grazing licences is a matter that the Rule Committee will consider including. However, it has been drawn to the Steering Committee’s attention that subsection (7)(e) of the new section 18B would be likely to prevent the Rule Committee from including grazing licences in the new Rules as the grant of a licence will affect the legal rights of the parties to it.
3. The Steering Committee considers that subsection (7)(e) ought to be retained for general purposes but that an exception should be provided for the case of grazing licences on the basis that they involve little in the way of financial consideration and that although legal issues are involved, it would be possible for the chancellor to approve a standard form that could be used without the need for a faculty.
4. Accordingly, amendment 1 inserts a further subsection in the new section 18B to except the grant of grazing licences for the restriction imposed generally by subsection (7)(e).

Amendment 2

5. Amendment 2 inserts a new clause in the Measure which amends the provisions in the Ecclesiastical Jurisdiction Measure 1963 concerned with appeals from consistory courts.
6. The amendments retain the distinction which was created by the 1963 Measure between appeals in ordinary faculty cases and faculty cases that involve matters of doctrine, ritual or ceremonial (‘doctrine cases’): appeals in ordinary cases continue to go to the Court of Arches or the Chancery Court of York and appeals in doctrine cases to the Court of Ecclesiastical Causes Reserved. But the amendments provide greater clarity in terms of determining the court to which an appeal lies in a particular case.
7. There are various problems with the existing provisions of the 1963 Measure that deal with appeals from consistory courts. Section 7, on the face of it, requires an appeal in a faculty case to go to the Court of Ecclesiastical Causes Reserved (a court made up of 3 bishops and 2 senior judges) if the proceedings in the consistory court involved matter of doctrine, ritual or ceremonial even if the appeal itself does not involve any such matter.
8. However, the General Synod made amendments to the appeals provisions in the 1963 Measure in the Care of Churches and Ecclesiastical Jurisdiction Measure 1991. Those amendments provided for the Court of Ecclesiastical Causes Reserved to refer an appeal that had been

brought in that court to the Court of Arches or the Chancery Court of York if it did not involve matter of doctrine, ritual or ceremonial. It also provided for the Court of Ecclesiastical Causes Reserved to refer an appeal if it had disposed of any matters of doctrine, ritual or ceremonial involved in the appeal and considered it expedient that the remaining issues should be dealt with by the Court of Arches or the Chancery Court. And it provided for an equivalent power for the Court of Arches and the Chancery Court to refer appeals to the Court of Ecclesiastical Causes Reserved if either of those courts considered that an appeal brought in those courts related to matter involving doctrine, ritual or ceremonial.

9. The policy established by the amendments made by the General Synod in 1991 was that it was the subject matter of the appeal, rather than of the original proceedings in the consistory court, which should determine which court should decide the issues raised in the appeal.
10. However, not all of the relevant provisions of the 1963 Measure were amended to reflect that policy. As a result, the provisions relating to appeals continue to give rise to problems in practice. A particular problem arises when a chancellor is asked to give a certificate stating whether a question of doctrine, ritual or ceremonial is involved for the purpose of determining the court to which an appeal lies from the chancellor's decision. It is not clear whether the subject of the chancellor's certificate is meant to be the matters that were involved in the case before the consistory court at first instance or only the matters that a party proposes to take to appeal.
11. The amendments made by the new clause give further effect to the policy adopted by the Synod in 1991. In doing so they put the position beyond doubt so that in the case of appeals from consistory courts:
 - it is the subject matter of the appeal (rather than the entire subject matter of the consistory court proceedings) that is to be considered in determining whether the appeal is an ordinary appeal or a doctrine appeal;
 - accordingly, where an appeal is to be brought, the chancellor will certify (on the basis of the grounds of appeal submitted by the appellant) whether the proposed appeal relates to any extent to matter involving doctrine, ritual or ceremonial;
 - unless the appeal relates to any extent to matter involving doctrine, ritual or ceremonial, it will go to the Court of Arches or the Chancery Court;
 - if the appeal does relate to any extent to matter involving doctrine, ritual or ceremonial, it will go to the Court of Ecclesiastical Causes reserved.
12. The existing provisions which enable appeals to be referred between the appellate courts are retained. Cases concerning injunctions and restoration orders are now treated in the same way as other faculty cases. So are any other cases that fall within the consistory courts' residual jurisdiction under section 6(1)(e) of the 1963 Measure.
13. The opportunity has also been taken to make other, minor improvements to the provisions concerned with appeals.
14. In particular the jurisdiction of the Dean of the Arches and Auditor to give leave to appeal will cease to be conditional on the chancellor having previously refused leave. The procedure for seeking leave to appeal is left to be dealt with in the procedure rules which can then provide for the necessary degree of flexibility to meet the situations that arise in practice.