

GENERAL SYNOD

DRAFT ECCLESIASTICAL PROPERTY (EXCEPTION FROM
REQUIREMENT FOR CONSENT TO DEALINGS) ORDER

EXPLANATORY MEMORANDUM

Background

1. At the November 2014 group of sessions, the General Synod gave Final Approval to the Ecclesiastical Property Measure, which received Royal Assent in March 2015.
2. The Ecclesiastical Property Measure 2015 – which includes amendments to the PCC (Powers) Measure 1956 and the Incumbents and Churchwardens (Trusts) Measure 1964- will come into force on 1 July 2015. The Measure was brought forward by the Archbishops’ Council in response to a resolution passed by the Synod in July 2012 on a Private Member’s Motion from the Revd Christopher Hobbs calling for some PCCs to be able to handle transactions in relation to their property without needing diocesan consent.
3. Throughout the legislative process there was some tension between those who wanted major deregulation for the parishes and those (including many diocesan officers) anxious to minimise the risk of Church of England assets being mismanaged as a result of lack of capacity in smaller parishes. In the event the legislation has made no change in relation to the holding of title, which therefore remains with the ‘diocesan authority’ (invariably the DBF).
4. The changes made by the Measure provide that a PCC will in future be able to acquire or dispose of land or personal property held on permanent trusts without the consent of the diocesan authority, where the interest in land is a short lease (defined as being one for up to seven years, in line with the definition in the legislation regulating disposals of land by charities generally) or the consideration on the transaction in question is below a level specified in an Order made by the Archbishops’ Council and approved by the General Synod. The Archbishops’ Council has now accordingly made the draft Order for that purpose.
5. In the explanatory memorandum for First Consideration of the then draft Measure¹ it was explained that the amount to be specified in any Order would need to be endorsed by the General Synod, and that the Council would note the views expressed in the debates on the draft Measure in bringing forward a draft of any such Order. It was noted that there would be a balance to be struck between the need to avoid bringing everything to the diocese and the risk that transactions of real significance could take place without the diocesan authority’s knowledge. The legislation itself includes a provision that such an Order “may make different provision for different purposes, different cases or different areas”.

¹ GS 1921X

The draft Order

6. The draft Order makes identical provision for property held by PCCs under the PCC (Powers) Measure 1956 and for property held on ecclesiastical trusts under the Incumbents and Churchwardens (Trusts) Measure 1964.
7. In the case of property held by PCCs, following comments made at the Inter-Diocesan Finance Forum, the Archbishops' Council decided to provide that the threshold below which the diocesan authority's consent is not required to a transaction should be 100% of the PCC's unrestricted income for the previous accounting period. It was of the view that, for there to be a significant deregulatory effect, the threshold should be set at a relatively high level. It considered that unrestricted income is an easier figure to identify than net asset value, given differing accounting approaches legitimately taken by PCCs to asset valuation, and also thought that measure was likely to be a better indicator of the PCC's overall capacity to deal with complex legal matters. The draft Order provides accordingly.
8. However, this is subject to two important safeguards. First, the Archbishops' Council considers that even the largest churches should not have a free hand in relation to really high-value transactions. The draft Order accordingly provides that, irrespective of the size of a PCC's unrestricted income, any transaction for more than £250,000 will still require the diocesan authority's consent.
9. Second, in order to address concerns that were raised at the Inter-Diocesan Finance Forum about the need to protect property used for church purposes, the draft Order is also drafted in such a way as to retain the need for the diocesan authority's consent for transactions relating to church buildings (in the small number of cases where they have become vested in a PCC), churchyards and licensed places of worship. The diocesan authority's consent will also continue to be needed for disposals of land adjoining such properties, to ensure that rights of access are protected.
10. A PCC will not be able to take advantage of the exception conferred by this order if it has failed to prepare accounts within 10 months of the end of the accounting year to which the accounts relate.

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