

## GENERAL SYNOD

## DRAFT MISSION AND PASTORAL ETC. (AMENDMENT) MEASURE

## REPORT OF THE REVISION COMMITTEE

**Chair:** Mr Geoffrey Tattersall QC (Manchester)

**Ex-officio members**

**(Steering Committee):** The Rt Revd Pete Broadbent, Bishop of Willesden (Chair)  
 Dr Christopher Angus (Carlisle)  
 The Revd Dr Hannah Cleugh (Universities and TEIs)  
 Mrs Anne Foreman (Exeter)  
 The Ven Ian Jagger, Archdeacon of Durham (Durham)

**Appointed members:** Mr Stephen Hogg (Leeds)  
 Mrs Debrah McIsaac (Salisbury)  
 The Revd Dr Robert Munro (Chester)  
 The Revd Christopher Robinson (St Edmundsbury and Ipswich)  
 The Revd Canon Jennifer Tomlinson (Chelmsford)

**Consultants:** Mr Paul Lewis (Secretary, Pastoral and Closed Churches Division of the Church Commissioners)  
 Mr Peter Wagon (Pastoral Team Manager, Church Commissioners)  
 Mrs Amanda Redgate (Diocesan Registrar for the Diocese of Southwell and Nottingham)

**Staff:** Mr Christopher Packer (Legislative Counsel to the General Synod)  
 Ms Saira Salimi (Deputy Official Solicitor to the Church Commissioners)  
 Mr Sion Hughes-Carew (Secretary)

*References in this report to “the Committee” are references to the Revision Committee.*

*References to clause numbers and paragraph numbers reflect the original clause and paragraph numbers in GS 2014 unless otherwise indicated.*

*Decisions taken by the Committee were taken unanimously unless otherwise indicated.*

1. The draft Mission and Pastoral etc. (Amendment) Measure received First Consideration at the February 2016 group of sessions of the General Synod. The period for submission of proposals for amendment under Standing Order 55(1) expired on 21<sup>st</sup> March 2016. Copies of the submissions are available at <https://www.churchofengland.org/about-us/structure/churchlawlegis/legislation/inprogress/submissions-made-to-revision-committees.aspx>.
2. Prior to the closing date mentioned in paragraph 1, 11 members of the General Synod submitted proposals for amendment of the draft Measure. Proposals for amendment to the draft Measure were also made by the Steering Committee.
3. Five further submissions were received out of time. The Committee agreed to exercise its discretion to consider the proposals contained in those submissions.

4. The Committee met on two occasions and the proposals which it accepted form the basis of the draft Measure (GS 2014A) now before the Synod. Amendments made by the Committee are shown in bold type.
5. Two members of the Synod – the Revd Paul Benfield and Mr Clive Scowen – exercised their right under Standing Order 55(3) to attend while their proposals were considered and to speak to their proposals. Mr Benfield also spoke to the submissions made by Rosemary Lyon, and Mr Scowen to those made by the Revd John Dunnett.
6. The Committee decided to sit in public.
7. Set out in the Appendix to this report the Synod will find a summary of the amendments considered by the Committee as well as the Committee’s decision on each.

## **The Draft Measure**

### **CLAUSE 1**

#### *Pastoral schemes and orders: consultation*

8. The Ven Jane Steen, Archdeacon of Southwark (Southwark) made a submission asking the Committee whether the words “any other person who the mission and pastoral committee considers might be affected by the matters in question” were intended to cover participants in a BMO. The Committee was advised that the intention behind the inclusion of these words was to enable the diocesan mission and pastoral committee to carry out a general consultation on the issues facing a particular area, rather than a consultation on specific proposals for pastoral reorganisation. In such a case, it may not yet be clear who the “interested parties” (as defined in the Mission and Pastoral Measure 2011 (“the 2011 Measure”)) might be, and therefore the legislation needs to allow for the possibility of consultation with all those who might become interested parties in a range of possible scenarios. The provision would also allow for consultation with participants in a BMO in the affected area.
9. The Steering Committee proposed two amendments on a related point. The new provisions inserted in sections 6 and 21 of the 2011 Measure make more explicit that it is legitimate for the first stage of consultation under the 2011 Measure to be a preliminary consultation on the nature of the problem, as seen by the diocesan mission and pastoral committee, and potential solutions. The Simplification Group had reported that a number of consultees felt that the process of consultation was too repetitive.
10. The Steering Committee also proposed amending the new subsection (8A) of section 6 of the 2011 Measure, and new subsection (9A) of section 21 of that Measure, by inserting the words “proposals included in” to make it clear that the diocesan mission and pastoral committee will still be able to rely on proposals for reorganisation contained in a deanery plan, even if the deanery plan also contains other material (as the majority do).
11. They also proposed amending section 21(6)(a) of the 2011 Measure. At present, the mission and pastoral committee is required to “ascertain the views of any local planning authority or authorities concerned” on a pastoral church buildings scheme. There is no indication of what should happen if the planning authority fails to respond, and the Steering Committee proposed inserting the words “so far as may be practicable” to deal with this issue. The amendment would also have the effect

that section 21(6) became consistent with section 21(1), which requires the mission and pastoral committee to ascertain the views of the interested parties “so far as may be practicable”.

12. The Committee agreed to amend the Measure in accordance with all the Steering Committee’s proposals.
13. Mr Chris Gill (Lichfield) proposed that the requirement for a deanery plan to have been approved by the deanery synod should be amended so that, where the standing committee of a deanery synod approves a deanery plan, the plan should be treated as a “deanery plan” for the purposes of the Measure. The Committee noted that the power to delegate functions to a deanery standing committee is governed by the standing orders of the deanery synod, established by the relevant diocesan synod, and were advised that no amendment was necessary to enable this. The Committee therefore made no amendment to the Measure.
14. The Revd Paul Benfield (Blackburn) observed that much of the procedural material set out in clauses 1 to 3 of the draft Measure could be set out in secondary legislation, rather than in primary legislation, and invited the Committee to consider amending the draft Measure to achieve this.
15. The Committee noted the point with some sympathy but were advised that the change would involve substantial rewriting of Parts 1 to 6 of the 2011 Measure for internal consistency, and therefore rejected the proposal as impracticable.

## **CLAUSE 2**

### *Pastoral schemes and orders: preparation by the Commissioners*

16. The Revd Paul Benfield (Blackburn) suggested that this clause (and clause 3) might be more user-friendly if there were separate clauses dealing with the procedure when the scheme or order is drafted by the Commissioners and the procedure when the scheme or order is drafted by the diocese. The Committee noted this, but also noted that the structure of the clauses had been dictated by the structure of the 2011 Measure itself, and that the separation would make the 2011 Measure even longer. It therefore rejected the proposal.
17. Mr Clive Scowen (London) queried the Commissioners’ involvement in the preparation of draft schemes and orders, and proposed that instead diocesan partnerships should be formed so that the better-resourced dioceses could prepare schemes and orders on behalf of others. The Committee noted that the proposal that the Commissioners should take on a greater role had come from dioceses themselves, and also considered that dioceses could seek assistance from one another on an informal basis without the need for legislative amendment. It therefore rejected the proposal.

## **CLAUSE 3**

### *Pastoral schemes and orders: notice, publication and amendment*

18. Mr Clive Scowen proposed that the requirement to give notice orally of proposals for pastoral reorganisation at “at least one service” during the notice period should be amended so that the notice is required to be given “on three consecutive Sundays at at least the principal service”.
19. The Ven Jane Steen considered that the legislation should specify that the notice should be given orally at the most attended service during the notice period.
20. The Steering Committee considered that both proposals raised valid points, and proposed an amendment which was intended to meet the concern behind them. The amendment provides for the notice to be given at every Sunday service, other than occasional offices, during the notice period,

to ensure that the information is disseminated to as many worshippers in the affected parishes as possible. If there is no Sunday service but there is a weekday service, the notice is to be given at the weekday service (or each of them, if there is more than one).

21. The Committee agreed to amend the Measure in accordance with the Steering Committee's proposals.

#### **CLAUSE 4** (*now clause 5*)

##### *Team and group ministries*

22. A number of proposals were received for amendment to this clause.
23. The Revd Paul Benfield proposed that the clause should be withdrawn to enable a more thoroughgoing review of the provisions for team and group ministries. He also made a number of more detailed proposals, as follows:
  - a. Clause 4(1), which substituted a requirement for the team vicars to be consulted for the existing requirement for their consent, should be withdrawn as it enabled a team rector to appoint someone against the wishes of the other team members, which would not be likely to contribute to a good team spirit. He also made the point (in relation to this and other provisions) that this and other amendments in the draft Measure would result in a loss of status for team vicars.
  - b. The proviso to clause 34(7) of the Measure should be repealed as obsolete, as it refers to the repealed legislation on the ordination of women. (In fact the Committee were advised that the proviso had already been repealed by way of consequential amendment in the Bishops and Priests (Consecration and Ordination of Women) Measure 2014.)
  - c. Clause 4(5) should be withdrawn as the provisions did no harm and had the benefit that failure to comply with the provisions would mean that the team rector was in breach of the "laws ecclesiastical". Such a breach could potentially be the subject of proceedings under the Clergy Discipline Measure 2003.
24. The Revd Mike Booker (Ely) wished to retain the involvement of patrons in team vicar posts, and makes a number of points in support of this view. The Revd John Dunnett (Chelmsford) also wished to restore the provision for patrons in the appointment of team vicars, writing specifically from the perspective of evangelical patrons.
25. Mr Clive Scowen considered that the clause should be amended, as it had the effect of demoting team vicars to curate status. He proposed the restoration of the provisions relating to patrons' involvement in the appointment of team vicars, and also that subsections (1) and (5)(b) to (d) should be omitted, so that the consent of a majority of the team vicars continues to be required to the appointment of a new team member and the team vicars continue to have a right to request meetings and to be informed of statutory notices.
26. The submission from the Diocese of Worcester also objected to the changes to patronage for team vicars, and to clause 4(1) of the draft Measure.
27. They also noted that there is a reference to a deacon in paragraph 2(3) of Schedule 3 to the 2011 Measure, which they considered anachronistic. The Committee were advised that the reference was not anachronistic as it could cover either a curate in training before ordination as a priest or a

permanent deacon, and there is an equivalent reference at paragraph 1(8) of the Schedule which did not appear to be a matter of concern. The Committee did not consider that any amendment was necessary.

28. Finally, they noted their disappointment that paragraph 3 of Schedule 3 to the 2011 Measure was not being amended, as they consider it “totally impracticable” for the patron of a benefice to consult all the incumbents and / or priests-in-charge in a group ministry before seeking the approval of the parish representatives. However, no proposal for amendment of this provision was made.
29. The Committee considered, and rejected, the proposal that the clause should be withdrawn. They considered that a number of the changes were worthwhile and that, from the perspective of reminding team rectors of their obligations, a Code of Practice could be as effective as provision in the legislation itself.
30. The Steering Committee had proposed an amendment to replace clause 4(10) to (14), in order to meet concerns raised in the First Consideration debate on the Measure. The amendment restores the references to a patronage board created by the scheme in the provisions relating to the appointment of team vicars (while removing some obsolete references to the diocesan board of patronage). The Committee agreed to amend the Measure in accordance with the Steering Committee’s proposal.
31. The Committee also agreed, having heard the comments of Mr Benfield and Mr Scowen, that clause 4(1) should be withdrawn, retaining the requirement for the consent of a majority of the team vicars to an appointment.
32. They rejected the proposals to amend clause 4(5), considering that such prescriptive detail had no place in primary legislation.

#### **CLAUSE 5** (*now clause 6*)

##### *Compensation for loss of office following pastoral reorganisation*

33. A number of proposals were received in relation to clause 5, and the Committee also proposed amendments of its own, reflecting members’ concerns for cases in which dispossession would lead to particular hardship.
34. The Ven Jane Steen asked why anyone would agree to the pastoral scheme or order and what would happen if the office holder did not agree. This comment stems from a misreading of paragraph 2 of the new Schedule 4. Paragraph 1 of the new Schedule provides that certain people are automatically entitled to compensation if they are dispossessed by a pastoral scheme or order. That paragraph assumes that the person continues to hold his or her office up to the date when the scheme or order takes effect. Paragraph 2 makes provision for the case where, by agreement with the diocesan mission and pastoral committee, a person resigns from his or her office before the scheme or order comes into force. This might be negotiated to enable the scheme or order to be brought into force more quickly. (Section 39 of the Mission and Pastoral Measure 2011 provides that a scheme cannot come into force for six months after it is made if it dissolves a benefice or abolishes an office which is not already vacant.)
35. She also noted that the power of the Archbishops’ Council to amend the scheme by order “could look like a move to disempower the democratic Synodical body in favour of the executive”.
36. Mr Stephen Hogg (Leeds) made a number of proposals for amendment as follows:

- a. Six months' housing was inadequate: the minimum should be 12 months, with the possibility of extension (the Committee was advised that a diocese could properly exercise discretion to house an individual for longer than was required by the statute).
  - b. He asked whether it would be possible to make provision for assisting clergy to obtain mortgages.
  - c. He considered that the proposed compensation for loss of office is inadequate and should be "much more generous". The clause should be struck out and replaced by a flexible provision for assessment of cases by a panel, to enable adjustment for individual circumstances.
37. The Revd Paul Benfield was of the view that clause 5 should be withdrawn, and that the compensation provisions should be the subject of substantial consultation with clergy and consideration by RACSC, to include a review of the whole remuneration package. If the clause were to remain, he was of the view that the provisions should be more generous (and he agreed with Stephen Hogg's submissions on this point). There was one exception to this: he was of the view that, where a cleric obtains another office immediately, no compensation should be payable. He also suggested that it should be possible to make a payment of money instead of providing housing for six months. This was because, if the practical effect of a given scheme is that a particular individual is likely to be forced to retire, funds towards a permanent home are likely to be of more use than temporary housing.
38. Mrs Rosemary Lyon (Blackburn) considered that the compensation was insufficiently generous, and that 12 months' stipend would be more appropriate than six. She made the point, in particular, that for clergy with school aged children this would enable the children to finish the academic year.
39. Mr Clive Scowen also considered that 12 months' stipend, and 12 months' housing, would be more appropriate than six as the minimum compensation for loss of office.
40. The Revd Christopher Robinson (St Edmundsbury and Ipswich) had submitted a petition signed by Synod members and others, inviting the Committee to delete clause 5, with a view to its being reintroduced as a separate Measure to enable it to be considered as a stand-alone matter by the Synod.
41. The submission from the Diocese of Worcester noted that the heading of the new Schedule 4 to the 2011 Measure should include stipendiary lay workers, rather than referring only to clergy. The Committee were advised that this was correct, because anyone (whether clergy or lay) who holds **stipendiary** office under Common Tenure is potentially eligible for compensation. However, this change does not affect the text of the new Schedule 4, which is already apt to cover such individuals. The heading has been amended to "Compensation of office-holders" by way of printing correction.
42. They also noted that the expression "stipendiary ecclesiastical service" is not defined in the Pensions Regulations. This is, strictly speaking, correct, although the expression is used and both "ecclesiastical service" and "stipend" are defined (respectively as "service rendered under the direction of a diocesan bishop or carried on in furtherance of the spiritual or administrative work of the Church of England and recognised as such by a diocesan bishop" and as including "salary or other emoluments"). The Committee considered that no amendment was necessary.
43. They also asked what "suitable" means in this context. The Committee was advised that "suitable" is an objective test: the accommodation would have to appear suitable to a reasonable third party in possession of all the relevant facts about the office holder and his or her family. It is intended to have the same meaning as in the Ecclesiastical Offices (Terms of Service) Measure 2009. The

Committee rejected the proposal that the text should be amended to provide that the accommodation should appear suitable to the DBF, replacing the objective test with a subjective one.

44. Dr Sam Robinson (Exeter) submitted that the reduction in compensation effected by the replacement of the compensation provisions should not be unilaterally imposed on clergy who are already in post at the time when the Measure comes into force. He acknowledged that for new appointments new terms and conditions could be introduced. He proposed that clause 5 should be withdrawn unless the compensation can be increased in such a way that “a substantial majority” of the clergy would be content with the scheme.
45. The Bishop’s Council of Guildford submitted that the maximum compensation should be 24 months’ stipend, rather than 21. It also asks whether there would be any obligation on the diocese to cover the costs of moving. There is no such obligation as a strict matter of statutory interpretation, but there would, of course, be nothing to prevent a diocese from funding moving costs.
46. The Guildford submission also noted that they were uncomfortable with the power of the Archbishops’ Council unilaterally to amend the new Schedule 4, but made no specific proposals for amendment or removal.
47. The Committee rejected the proposal that the clause should be withdrawn, by six votes to two. The Committee considered that the present arrangements for compensation for loss of office were unworkable and too expensive, and constituted a block on otherwise highly desirable pastoral reorganisation (though one member of the Committee noted that there were no figures either to prove or to disprove this view). They were of the view that new provision would be needed.
48. The Committee accepted that 12 months’ stipend and housing would be more appropriate than six as the minimum in every case. However, they decided to omit the provision for additional payment for longer stipendiary service, instead amending the Measure to provide that the bishop should have a discretion to make additional payments to any person, with a review by an independent person (appointed jointly by the two Archbishops) if refusal would cause exceptional hardship.
49. The Committee therefore rejected the proposal that the maximum compensation should be increased to 24 months’ stipend.
50. The Committee considered whether there should be provision for periodical payments of compensation, enabling the payment to be stopped if a dispossessed person found another suitable ecclesiastical office within 12 months of dispossession (in response to the proposal from the Revd Paul Benfield). However, they rejected this proposal by 5 votes to 3 and considered that payment should be by way of a single lump sum, without provision for any claw-back if a person obtained a new post within 12 months.
51. The Committee agreed with the Revd Paul Benfield’s submission that the draft should be amended to enable a dispossessed person to agree with the diocese that he or she should receive a sum of money rather than the provision of housing for 12 months, and amended the draft Measure accordingly.
52. A member of the Committee proposed that it should be possible to make payments of compensation from an account other than the diocesan stipends fund, and the Committee agreed that the draft Measure should be amended to enable this.
53. Mr Stephen Hogg had raised the question of taxation of payments under the compensation scheme. The Committee was advised that payments under the clause, and the provision of housing, should

attract the £30,000 tax exemption for payments for loss of office and redundancy (assuming that the relevant tax legislation did not change), but that sums in excess of that figure would be taxable.

54. The Committee discussed the Archbishops' Council's power to amend the compensation provisions by order. They were advised that it would not be possible to exercise the power in such a way that it substituted a completely new compensation scheme for the scheme set out in the draft Measure. They were also advised that the draft order would be laid before the Synod, and it would be open to members of Synod to propose amendments to the draft order. In the light of that advice, they considered that there were adequate safeguards on the exercise of the power and that it should remain in the draft Measure, notwithstanding the concerns expressed by members of Synod.

## **CLAUSE 6** (*now clause 7*)

### *Bishops' pastoral orders*

55. The Ven Jane Steen expressed concern that references elsewhere in the Measure to a "pastoral order" might include the new "bishop's pastoral order". The Committee were advised that this is not the case: references to a pastoral order are references to the type of pastoral order which can already be made under the 2011 Measure. The new class of "bishop's pastoral order" may make only the type of provision set out in new section 54A.
56. She also expressed concern that the new bishop's pastoral order enabled a bishop to make extensive changes without any specific requirements as to consultation. She proposed adding a provision for consultation to the clause on bishops' pastoral orders, presumably with those who would be "interested parties" if the changes in question were to be made by pastoral scheme or order.
57. The Revd Paul Benfield considered that most of the matters to be provided for by bishop's pastoral order were relatively minor and suitable for this shorter and simpler procedure, but objected to the inclusion of paragraphs (i) to (m) of new section 54A (1), because these would in effect enable the bishop to make significant alterations without the possibility of objection or appeal by the parishioners or patrons.
58. Mr Clive Scowen also had concerns about this clause and considered that paragraphs (a), (b), (f), (g), (h), (i) and (k) should be omitted (as should subsection (2) of clause 6, which makes a consequential amendment referring to paragraph (k)). In all other circumstances he considered that the usual rights to be consulted and to make representations to the Commissioners should apply.
59. The submission from the diocese of Worcester asks for provision for the consent of the diocesan mission and pastoral committee, and suggests that those who would have been interested parties if the proposals had proceeded by way of a pastoral scheme should also be entitled to be consulted.
60. The Worcester submission also asked whether the words "first vacancy occurring after" should be inserted after "until" in the new subsection (3A)(b) inserted by clause 6(2) of the draft Measure. The Committee were advised that these words would add nothing to the provision as drafted, because the patron has no role as a matter of law until there is a vacancy.
61. The Bishop's Council of Guildford broadly welcomed clause 6, but took the view that a code of practice for bishops should be approved before the draft Measure is finalised. They also proposed that there should be a right for "any aggrieved party" to make representations (possibly, but not necessarily, to the Church Commissioners).
62. The Society for the Maintenance of the Faith made two points. First, clause 6(1)(i) would enable the bishop to abolish the office of vicar in a team ministry, which they say would constitute major

pastoral reorganisation without any right to a hearing. Second, clause 6(1)(k) would permit the bishop to designate the first incumbent of a new benefice or of two or more benefices to be held in plurality. They said that this would deprive the patron of his or her rights.

63. The Committee considered whether any of the paragraphs set out in new section 54A(1) of the 2011 Measure should be omitted, and considered that they should not. They noted that the power to remove a team vicar's post could be exercised only at a time when the office was vacant: it could not be used to dispossess a person of his or her office. They also considered that the other changes listed were not of such significance that they should attract a right to make representations to the Church Commissioners.
64. The Steering Committee proposed an amendment to new section 54(1) to provide that in every case the bishop must consult the diocesan mission and pastoral committee. The Committee agreed to amend the Measure in accordance with the Steering Committee's proposal. However, they rejected the proposal made by the diocese of Worcester that the bishop should be required to obtain the consent of the diocesan mission and pastoral committee, considering that a requirement for consultation was adequate.
65. The Committee considered, and rejected, the possibility of requiring consultation with any other person. The Committee noted that the bishop would be required to act reasonably and in accordance with the requirements of administrative law, and therefore failure to consult a person with a clear interest in a proposal would be potentially subject to challenge.
66. The Committee noted that the Church Commissioners' Code of Practice prepared under the 2011 Measure would include provisions covering the new bishops' pastoral orders, but also noted that the amended code could not properly be approved until the Measure had passed through all its Synodical and Parliamentary stages and received Royal Assent.

#### **CLAUSE 7** (*now clause 8*)

##### *Churches Conservation Trust: number of members*

67. Mr Clive Scowen proposed that either DCMS should be consulted about removing the cap on trustee numbers for the CCT altogether, or that, if time did not permit such consultation, an order-making power should be inserted to amend the clause relating to the CCT, so that a change can be made at a later date without the need for further primary legislation.
68. The Committee noted that the change made was very modest (reflecting the CCT's own request), and were advised that the CCT had never previously asked for a change. The Committee therefore rejected the proposal for amendment as the inclusion of an order-making power seemed disproportionate to the change, as it was unlikely to be used in future.

#### **CLAUSE 8** (*withdrawn from the Measure*)

##### *Buildings closed for regular worship: consultation etc.*

69. Mr Matthew Saunders, as Secretary to the Ancient Monuments Society and on behalf of the National Amenity Societies collectively, wrote to propose that clause 8 should be omitted as it removes important provision for consultation of those societies on future uses of closed church buildings. He notes, in particular, that by law the Societies receive notice of all applications for listed building consent, but not of planning applications for change of use, and the only route by which these are formally notified to them is through the Church Commissioners.

70. He also noted that this amendment to the Measure affects other bodies, notably Historic England, which would also lose their entitlement to be consulted on proposals for new uses of closed church buildings.
71. He submits that the communication between the Commissioners and the Societies is valuable and should be retained.
72. The Ven Jane Steen suggested that the legislation should spell out that “burials”, in clause 8(3), includes burials of cremated remains as well as of bodies. The drafting of this clause reflects the existing language of Part 6 of the Mission and Pastoral Measure 2011, and section 76 of that Measure imposes constraints on dealing with any land where “human remains” (which would clearly include cremated remains) are buried.
73. The Committee considered the issues and decided to withdraw the clause. It therefore made no decision in respect of the Ven Jane Steen’s proposal.

**CLAUSE 9** (*now clause 10*)

*Bishops’ mission order*

74. The Ven Jane Steen made the general point that the amended text seems to “loosen the relationship between the Visitor and the Diocesan”, but did not propose any specific amendments.
75. Mr Clive Scowen said that he thought the reference to the diocesan mission and pastoral committee in section 82(6) of the Mission and Pastoral Measure 2011 was deliberate, to enable the representation to be considered by persons other than the bishop. He therefore proposed the omission of clause 9(4).
76. The Steering Committee proposed that, as a requirement to consult the DMPC had been included in the new provision for bishops’ pastoral orders, it should be retained here. The Committee therefore accepted Mr Scowen’s proposal. It did not consider that any amendment was required in response to Dr Steen’s comments.

**CLAUSE 10** (*now clause 11*)

*Removal of requirement to give notice of certain dealings in glebe land*

77. The Revd Paul Benfield considered that this clause should be omitted, because it is pastorally very important for incumbents and PCCs to know what is proposed in relation to glebe land.
78. Mr Clive Scowen also considered that this clause should be omitted, because incumbents, churchwardens and PCCs are likely to have local knowledge about particular parcels of glebe land and may be able to prevent foolish proposals from getting very far.
79. The Committee rejected the proposal to omit the clause.
80. The Bishops’ Council of Guildford approved the removal of the requirement to consult PCCs, but thought that there should be a “recommendation” (it is not clear whether this should be a statutory provision or a matter to be dealt with in the Code of Practice) to keep PCCs involved of relevant developments.
81. A member of the Committee proposed that incumbents and PCCs should continue to be notified of proposals for disposal of glebe land, but that there should cease to be a right to make representations to the Church Commissioners in any case. The Committee accepted this proposal. It considered

whether there should be any distinction between land that had been benefice glebe before the coming into force of the 1976 Measure and land that had been acquired at a later date as diocesan glebe, but concluded that such a distinction might in practice be unhelpful.

**CLAUSE 11** (*now clause 12*)

*Patronage (Benefices) Measure 1986*

82. The Society for the Maintenance of the Faith noted that the lapse provisions apply only where the patron is someone other than the bishop, and ask what happens if the bishop is only one of several registered patrons. (The answer is that the registered patron is someone other than the bishop, and the provisions for lapse would apply, though they would be of little practical effect if the patronage is exercised in turn by the registered patrons and it is the bishop's turn.)
83. They also noted that in their experience the involvement of the archbishop had been helpful in cases of "seemingly irreconcilable difficulties", and so their preference was for clause 11 to be deleted altogether.
84. Mr Chris Gill considered that this provision is apt when the patron is absent, but that where there is a "professional" patron, failure to appoint is likely to be the result of a breakdown in relationships, in which case he considered that there is still a role for the archbishop.
85. The Revd Paul Benfield considered that the whole of this clause should be deleted. As in the case of teams and groups, he considered it inappropriate to tinker with one aspect of patronage without a full review of how it operates. He thought that lapse to the archbishop was still necessary and desirable, so that where there is real local disagreement an outside party is involved.
86. He also noted that where the bishop is the patron then clause 16 would not, once the amendments are made, ever take effect at all, which means that the parish representatives will continue to have a power of veto over the appointment even after nine months.
87. Mr Clive Scowen considered that clause 11 in its present form should be omitted, because it should be possible for the parish representatives to ask the archbishop to exercise independent judgement where they have vetoed a candidate proposed by the patron with the support of the bishop. However, he proposed that there should be an alternative amendment to s. 16 of the Patronage (Benefices) Measure 1986, to extend the period before patronage lapses to the archbishop from nine months to 12.
88. The Committee rejected the proposals that the clause should be withdrawn. However, having considered the other proposals for amendment, it agreed to make the following changes, which were proposed by a member of the Committee:
  - a. The period before lapse is extended from nine months to 12 months;
  - b. The period should begin with the service of the notice under section 7 or the benefice becoming vacant, whichever is the earlier; and.
  - c. The general position should remain that the patronage lapses to the diocesan bishop. However, the Committee acknowledged that there are cases where there is deadlock following past disagreement between the bishop and the parish representatives. The Committee considered that in those cases the patronage should remain with the archbishop, and agreed to make an amendment enabling the PCC to send a notice which would trigger appointment by the archbishop rather than the diocesan bishop.

## **CLAUSE 12** *(now clause 14)*

### *Citation, commencement and extent*

89. The Steering Committee proposed amendments to this clause, to enable the making of transitional or saving provision in a commencement order under the draft Measure. The Committee agreed to make the amendments proposed by the Steering Committee.

## **THE SCHEDULE**

### *Consequential amendments*

90. The Steering Committee proposed the replacement of the text of the existing Schedule to the Measure with a more comprehensive schedule of amendments to the Incumbents (Vacation of Benefices) Measure 1977 and other consequential amendments. This new Schedule deals with references to Schedule 4 to the 2011 Measure in other legislation. Quite substantial amendment of the Incumbents (Vacation of Benefices) Measure is necessary because that Measure provides for members of provincial tribunals, and members of appeal panels, to be appointed from the panels appointed under Schedule 4 to the 2011 Measure as it now stands, and therefore the arrangements for appointment of panel members will need to be set out in the Incumbents (Vacation of Benefices) Measure itself.
91. The Committee agreed to amend the draft Measure in accordance with the Steering Committee's proposals.

## **PROPOSALS FOR NEW PROVISIONS**

### **PROPOSED NEW CLAUSE** *(now clause 4)*

#### *Pastoral schemes and orders: presumption in favour of deanery plan*

92. The Steering Committee proposed an amendment to insert a new clause correcting an omission. The Simplification Group's report indicated that, where proposals for reorganisation were contained in a deanery plan, there should be a statutory presumption in favour of the Commissioners' approving those proposals when they consider representations made against the scheme or order. By oversight that proposal was not included in the draft Measure that was first presented to the Synod. The proposed new clause therefore inserted additional provisions in section 11 and section 26 of the 2011 Measure, providing that unless there are "material considerations" which suggest that the scheme or order should not be made, the Commissioners are to make it.
93. This is subject to certain conditions: in particular, all the interested parties must have been consulted on the deanery plan, and any person whose office might be abolished must have been given the opportunity to meet the mission and pastoral committee. Finally, the proposals contained in the scheme or order must be "to the same effect, or substantially the same effect, as proposals included in the plan" – so the statutory presumption will not apply if there have been significant changes since the deanery plan was approved.
94. The Committee agreed to insert the new clause in the draft Measure in accordance with the Steering Committee's proposal.

### **PROPOSED NEW CLAUSE** *(now clause 9)*

#### *Pastoral church buildings scheme: severance*

95. The Steering Committee proposed a new clause to modify the application of sections 58 and 59 of the 2011 Measure. Those provisions enable a single pastoral church buildings scheme to make provision both for the closure of a church building and for its demolition or appropriation to an alternative use (in cases falling outside sections 58 and 59, the church building is closed by one scheme, and a separate pastoral (church buildings disposal) scheme provides for demolition, vesting in the CCT or appropriation to another use). There is an obvious efficiency in making provision for everything in a single scheme, but it has the disadvantage, under the legislation as it presently stands, that if the proposed use or demolition is rejected by the Commissioners the whole scheme falls. Therefore the diocese has to begin again with consultation on the closure of the building, even where no representations have been received against the closure or the Commissioners are satisfied that the closure is appropriate.
96. The new clause enables the severance of the two parts of the scheme, so that the closure can take effect immediately and then a fresh scheme can be prepared for the use of the building. The Committee took the view that this is appropriate in the context of the simplification agenda, as it should significantly increase the speed with which the future of the building can be resolved.
97. The Committee agreed to insert the new clause in the draft Measure in accordance with the Steering Committee's proposal.

#### **PROPOSED NEW CLAUSE** (*now clause 13*)

##### *Age limit on appointment of licensed office holders after retirement age: clarificatory provision*

98. The Steering Committee proposed a new clause to amend the Ecclesiastical Offices (Age Limits) Measure 1975. The proposed new clause did not change the law in any way, but clarified a point which had caused some confusion.
99. Section 1 of the Ecclesiastical Offices (Age Limit) Measure 1975 provides for automatic retirement at the age of 70 for the holders of certain offices. Regulation 29 of the Ecclesiastical Offices (Terms of Service) Regulations 2009 modifies the operation of section 1. Regulation 29 enables the grant of a fixed-term licence to a person who is beyond retirement age and provides that section 1 of the Age Limit Measure has effect subject to that power. However, it did not textually amend section 1, and therefore some readers of the provisions have been confused about whether the grant of a fixed-term licence is compatible with the statutory retirement age. The amendment therefore made a textual amendment to remove that source of confusion.
100. The Committee agreed to insert the new clause in the draft Measure, with one member of the Committee abstaining from voting.

#### **GENERAL POINTS MADE IN SUBMISSIONS**

101. Mrs Mary Chapman (*ex officio*) made a general point about consultation. She noted that in various places in the draft Measure (clause 3(6) and (9), and section 54A(4) inserted by clause 6(1)) there are requirements for consultation which are then modified by words such as "as they think appropriate" or "as the bishop thinks fit". She was of the view that those phrases are "overly permissive" and that they could lead to the consultation being so perfunctory as to be meaningless.
102. The Committee was advised that functions under the 2011 Measure are public functions for the purposes of administrative law, and therefore those exercising the functions under the Measure are under a duty to behave reasonably. There is case law to the effect that for consultation to be adequate as a matter of public law a reasonable period of time must be given for consultation (which will vary depending on the subject matter), and the decision-maker must give serious

consideration to its results and be open to changing his or her mind as a result of the consultation. A “perfunctory” consultation would probably not be lawful as a matter of administrative law (though there would be some changes on which it would not be necessary or proportionate to consult very widely). The language of “thinks fit” or “thinks appropriate” is also used elsewhere in the 2011 Measure. The Committee was therefore satisfied that no change was necessary in response to this point.

103. The Revd Kate Stacey (Oxford) wrote on behalf of the Oxford Diocese Rural Strategy Group. She made four points:
- a. That benefices should be able to submit a single set of statistics rather than filling in multiple returns;
  - b. That parish share rebates should be made to benefices, rather than individual parishes;
  - c. That there should be greater clarity about the legal status of united benefices; and
  - d. That there should be a framework for pastoral reorganisation drawing on best practice and learning from the mistakes of reorganisation badly done.
104. The Committee considered these proposals and agreed that, to the extent that these proposals require legislative changes, they might be better considered by the Simplification Group in the second phase of its work. On her final point, the Committee were advised that there is already a comprehensive and detailed framework for pastoral reorganisation in the form of the Church Commissioners’ Code of Practice under the 2011 Measure.

**Geoffrey Tattersall QC**

On behalf of the Revision Committee

June 2016

**APPENDIX****SUMMARY OF PROPOSED AMENDMENTS AND THE COMMITTEE'S DECISIONS**

# – proposed in Committee by a member of the Committee

\* – attended the Revision Committee meeting and spoke to their submission under Standing Order 55(3)

**DRAFT CHURCH OF ENGLAND (MISCELLANEOUS PROVISIONS) MEASURE**

<b>Clause in original draft Measure (GS 1866)</b>	<b>Name</b>	<b>Summary of proposal</b>	<b>Committee's decision</b>
Long Title	Legislative Counsel	Update to include reference to “minor clarificatory amendments”.	Accepted.
1	Steering Committee #	Amend sections 6 and 21 of the Mission and Pastoral Measure 2011 to clarify that preliminary consultation may be consultation on the issues, rather than a specific proposal.	Accepted.
1	Steering Committee #	Insert words “proposals included in” before “a deanery plan”.	Accepted.
1	Steering Committee #	Insert words “so far as may be practicable” in section 21(6)(a) of the Mission and Pastoral Measure 2011.	Accepted.
1	Mr Chris Gill	Amend to ensure that approval by the standing committee of a deanery synod is sufficient.	Not accepted.
1	The Revd Paul Benfield *	Amend the Measure so that the material in clauses 1 to 3 could appear in secondary, rather than primary, legislation.	Not accepted.
2	The Revd Paul Benfield *	Separate the procedures for schemes and orders prepared by dioceses and those prepared by the Commissioners.	Not accepted.
2	Mr Clive Scowen *	Provide for dioceses to invite better-resourced dioceses to prepare schemes and orders on their behalf.	Not accepted.
3	Mr Clive Scowen *	Require notice to be given orally at services on three consecutive Sundays.	Not accepted.
3	The Ven Jane Steen	Require notice to be given orally at the most attended service during the notice period.	Not accepted.
3	Steering Committee #	Require notice to be given at every Sunday service, other than occasional offices, held during the notice period.	Accepted.
4	The Revd Paul Benfield * Mr Clive Scowen *	Omit clause 4.	Not accepted.
4	The Revd Paul Benfield * Mr Clive Scowen * Mr Robert Higham on behalf of Worcester senior staff	Omit subsection (1).	Accepted.
4	Steering Committee # The Revd Paul Benfield * The Revd Mike Booker	Amend subsections (10 to (14) to reinstate the involvement of the patron in the appointment of team vicars.	Accepted.

	The Revd John Dunnett Mr Clive Scowen * Mr Robert Higham on behalf of Worcester senior staff		
4	The Revd Paul Benfield *	Omit subsection (5).	Not accepted.
4	Mr Clive Scowen *	Omit subsection (5)(b) to (d).	Not accepted.
5	The Revd Paul Benfield * Mr Stephen Hogg The Revd Christopher Robinson # Dr Sam Robinson Mr Clive Scowen *	Omit clause 5.	Not accepted.
5	The Bishop's Council of Guildford	Increase the maximum compensation from 21 months to 24 months.	Not accepted.
5	Mr Stephen Hogg Mrs Rosemary Lyon Mr Clive Scowen *	Increase the minimum compensation from six months' to 12 months' stipend and housing.	Accepted.
5	Mr Stephen Hogg	Replace the fixed sum of compensation with a flexible provision for assessment of cases by a panel.	Not accepted.
5	Mr Robert Higham on behalf of Worcester senior staff	Replace the objective test of suitability with a subjective test of accommodation that appears to the DBF to be suitable	Not accepted.
5	The Revd Paul Benfield *	Require repayment of the compensation if the person obtains another suitable office within a specified period.	Not accepted.
5	A member of the Committee #	Enable a diocese to make payments from an account other than the diocesan stipends fund.	Accepted.
5	A member of the Committee #	Replace the provision for additional compensation to be payable depending on length of service with provision for discretionary additional payment by the bishop, with a right to ask for review of the decision by an independent reviewer in cases of exceptional hardship.	Accepted.
6	The Ven Jane Steen	Require the bishop to consult those who would have been "interested parties" if the change were made by pastoral scheme or pastoral order.	Not accepted.
6	The Revd Paul Benfield *	Omit paragraphs (i) to (m) of new section 54A(1).	Not accepted.
6	Mr Clive Scowen *	Omit paragraph (a), (b), (f), (g), (h), (i) and (k) of new section 54A(1).	Not accepted.
6	Society for the Maintenance of the Faith	Omit paragraphs (i) and (k) of new section 54A(1).	Not accepted.
6	Steering Committee #	Include a requirement to consult the diocesan mission and pastoral committee in every case.	Accepted.
6	Mr Robert Higham on behalf of Worcester senior staff	Include a requirement for the consent of the diocesan mission and pastoral committee.	Not accepted.
6	Mr Robert Higham on behalf of Worcester senior staff	Add the words "first vacancy occurring after" after "until" in new subsection (3A)(b).	Not accepted.
6	The Bishop's Council of Guildford	Include a right to make representations about a draft bishop's pastoral order.	Not accepted.
7	Mr Clive Scowen *	Include an order-making power to enable future changes to the CCT's constitution.	Not accepted.
8	Mr Matthew Saunders	Omit clause 8.	Accepted.

9	Mr Clive Scowen *	Omit subsection (4).	Accepted.
10	The Revd Paul Benfield * Mr Clive Scowen *	Omit clause 10.	Not accepted.
10	Steering Committee #	Impose an obligation to notify incumbents and PCCs of glebe transactions.	Accepted.
11	The Revd Paul Benfield * Mr Clive Scowen* Society for the Maintenance of the Faith	Omit clause 11.	Not accepted.
11	Mr Chris Gill	Patronage to continue to lapse to the archbishop where there is a professional patron.	Not accepted.
11	A member of the Committee #	The period before lapse to be extended from nine months to twelve, beginning with the service of notice under section 7 or the benefice becoming vacant, whichever is the later.	Accepted.
11	A member of the Committee #	The PCC to have the right to send a notice requiring the archbishop to exercise the patronage.	Accepted.
12	Steering Committee #	Power to include transitional or saving provision in a commencement order under the Measure.	Accepted.
Schedule	Steering Committee #	The Schedule to be replaced with more comprehensive amendments to the Incumbents (Vacation of Benefices) Measure 1977 and other consequential amendments.	Accepted.
New clause	Steering Committee #	Presumption in favour of proposals contained in a deanery plan when representations are heard by the Commissioners.	Accepted
New clause	Steering Committee #	Power to sever pastoral church buildings schemes made under s. 58 or 59 of the 2011 Measure, so that the closure can proceed if the use is not approved.	Accepted.
New clause	Steering Committee #	Clarificatory amendment of the Ecclesiastical Offices (Age Limits) Measure 1975.	Accepted.