

GENERAL SYNOD

CONSULTATION ON POSSIBLE STATUTE LAW (REPEALS) MEASURE

1. In GS Misc 1125 on the proposed Enabling Measure I noted that the Archbishops' Council was proposing that the Measure should be part of a wider programme of legislative reform, which would include the consolidation of useful legislation and the repeal of obsolete legislation. Paragraph 7 of the Annex to GS Misc 1125 identified four initial elements for a programme of consolidation. The purpose of this note is to seek the views of interested parties on some emerging proposals for repealing obsolete legislation by means of a Statute Law (Repeals) Measure.
2. The Legal Office has sought to follow the practice of the Law Commission in preparing Statute Law (Repeals) Bills. That involves identifying for repeal enactments that are spent, obsolete, unnecessary or otherwise not now of practical utility. It has identified the enactments – details of which appear in the Annex – as meeting one or more of those criteria.
3. “Enactment” in this context can include a whole Act¹ or Measure or any provision of an Act or Measure. Whether the proposed repeal relates to the whole Act or Measure or to one or more of its provisions is indicated in each case in the list set out in the Annex.
4. Enactments within the following categories have deliberately not been included in this exercise:
 - those which are concerned with the Church Commissioners' powers (except those which are clearly obsolete or spent)
 - those which are likely to be subject to consolidation exercises (including enactments relating to pensions and to ecclesiastical jurisdiction and the care of churches)
 - most legislation concerned with tithes (given the complex interaction of those enactments with private rights).
5. Views are sought on the proposed repeals listed in the Annex, and in particular whether they meet the criteria for repeal on the basis described above. Suggestions for additional enactments which meet one or more of the criteria for repeal (i.e. enactments that are spent, obsolete, unnecessary or otherwise not now of practical utility) are also welcome.
6. Anyone wishing to make representations on these proposals should do so by sending them to Sion Hughes-Carew, The Legal Office, Church House, London SW1P 3AZ, or to sion.hughes-carew@churchofengland.org, by no later than 29 January 2016.

William Fittall
Secretary General
4 November 2015

¹ It is only since the creation of the Church Assembly in 1920 that there has been a power to legislate by Measure. Before that all primary legislation concerning the Church of England consisted of Acts of Parliament.

PROVISIONAL LIST OF ENACTMENTS PROPOSED FOR REPEAL

Suffragan Bishops Act 1534: section 5

This section of the 1534 Act requires the diocesan bishop who has nominated a candidate for appointment as a suffragan bishop, or the candidate him- or herself, to provide the two bishops who are to act as co-consecrators with the Archbishop and to bear their reasonable expenses. In fact, arrangements for the presence of co-consecrators are made by the Archbishop and their reasonable expenses are borne by the Church Commissioners. This provision would therefore appear to be unnecessary.

Tithe Act 1536: the whole Act (so far as still in force)

This Act was concerned with the rights of a succeeding incumbent to the profits of a benefice that accrued during a vacancy. Sections 1-3 have already been repealed so far as they apply to archdeaconries and parochial benefices by the Endowments and Glebe Measure 1976, s 47(4), Sch 8. They have not been repealed in relation to deaneries, prebends and some other ecclesiastical offices. However, so far as we are aware, the remaining ecclesiastical offices to which the Act continues to apply no longer carry with them the right to “tithes fruytes oblations obventions emoluments commodities advauntages rentes” etc. Such property rights other than those which belonged to archdeaconries and parochial benefices are now vested in the Church Commissioners or in the corporate bodies of cathedrals. Section 4 concerns the right of an incumbent to dispose by will of the profits of corn or grain grown on glebe which the incumbent has manured and sown. Sections 5 and 6 were entirely repealed in the nineteenth century. Section 7 provides for a successor to have possession of the parsonage and any unsown glebe on the giving of a month’s notice after his induction. Section 8 was repealed by the Endowments and Glebe Measure 1976. So far as the provisions of the Act remain in force, they would appear to be obsolete.

Simony Act 1588: the provisions imposing penalties by reference to the value of livings

In addition to making corrupt presentations to ecclesiastical livings and certain fellowships in colleges void, the Act also imposes financial penalties by way of reference to the value of the living to which the corrupt presentation is made. The glebe and other endowments of livings were transferred to the diocesan board of finance by the Endowments and Glebe Measure 1976 and as a result, livings no longer have a monetary value. That being so, the provisions of the Act concerned with penalties are obsolete and are not now of practical utility. It is not proposed to repeal the provisions which result in livings to which corrupt presentations are made automatically becoming vacant.

Parochial Libraries Act 1708: sections 4 and 5

The Act is concerned with the preservation of libraries established in parishes by way of charitable donation to assist with “the better prosecution of their studies” by the clergy. A

number of the libraries which are subject to the Act are of special historic significance and the Act as a whole continues to serve a useful purpose in protecting such libraries from loss. However, some of its provisions would seem to be unnecessary. Section 4 requires every new incumbent of a parish which has a library that is subject to the Act to make and sign a new catalogue of the books in the library and to deposit the catalogue with the consistory court. Section 5 is concerned with the situation where a new library that is subject to the Act is created and requires the incumbent at that time to make, sign and deposit a catalogue of the books. Section 4 would appear to be an unnecessary provision and the circumstances envisaged by section 5 seem unlikely to arise.

Queen Anne's Bounty Act 1714: the whole Act (so far as still in force)

Most of the provisions of the Act have already been repealed. The remaining provisions are all concerned with the creation and endowment of 'perpetual curacies'. Perpetual curacies already existed in some places before the 1714 Act where the rectory had been appropriated by a monastery, or impropriated by a lay rector, but no vicarage had been endowed. The priest who served such a parish was known as a 'perpetual curate' and had many of the rights of an incumbent. The 1714 Act provided that any church, chapel or curacy which had had its income augmented by Queen Anne's Bounty was to be a perpetual curacy. However, all perpetual curacies were converted to vicarages by section 87 of the Pastoral Measure 1968 and their incumbents are all now vicars. The remaining provisions of the 1714 Act are therefore obsolete.

Clergy Ordination Act 1804: the whole Act (so far as still in force)

Only section 1 of the Act remains in force. It provides that no person may be ordained deacon before the age of 23 or priest before the age of 24, subject in the latter case to obtaining a faculty from the Archbishop of Canterbury permitting a person to be ordained priest at 23. Provision to this effect is now made by canon (see Canon C 3, paragraphs 5 and 6) and it is unnecessary to retain statutory provision to the same effect.

Church Building Act 1822: the whole Act (so far as still in force)

The two sections that remain in force – sections 13 and 28 – are concerned with lay rectors surrendering their rights in respect of tithe and rectorial glebe so that a vicarage is converted into a rectory and with exempting any instrument of surrender from stamp duty. It does not appear that these provisions continue to serve any useful purpose.

Ecclesiastical Corporations Act 1832: the whole Act (so far as still in force)

The purpose of the Act was to enable land which belonged to bishops, deans and chapters and other ecclesiastical corporations to be identified and that where there was uncertainty as to the ownership of particular land, or the boundaries of particular land, for a referee to be appointed to determine the matters in issue. The determination of the referee would then be definitive. So far as cathedrals are concerned, the Act was repealed by the Cathedrals

Measure 1963, s 3, Sched 1. As land is no longer generally vested in the ecclesiastical corporations to which the Act still applies, that the title to land is now subject to registration at HM Land Registry, and that there is general statutory provision for dealing with disputed titles etc. the provision made by the Act is obsolete.

Ecclesiastical Leases Act 1836: the whole Act (so far as still in force)

Ecclesiastical Leases (Amendment) Act 1836: the whole Act (so far as still in force)

The main Act has already been repealed as to any body corporate in any cathedral church by the Cathedrals Measure 1963, s 53, Sch 1 and in relation to any college in any university by the Universities and Colleges Estates Act 1964, s 1. The Amendment Act has also been repealed in relation to the corporate bodies of cathedrals by the 1963 Measure and in relation to incumbents by the Endowments and Glebe Measure 1976. Property in the form of land is no longer vested in Bishops or in individual members of cathedral chapters etc. In theory the main Act (but not the Amendment Act) still applies to parsonage houses as they are invested in incumbents in right of their benefices. However, as the Acts are concerned with regulating the grant or renewal of leases for life or lives and that such leases have long since ceased to be granted, it would appear that the Acts are unnecessary and no longer of any practical utility.

Ecclesiastical Commissioners Act 1836: the whole Act (so far as still in force)

The only sections which remain in force are sections 18 and 19. Section 18 prevents the Crown from granting any further ‘commendams’ to enable bishops to hold their sees together with other preferment. Section 19 provides that all archdeacons are to have equal jurisdiction within their archdeaconries notwithstanding any contrary usages. Both of these provisions appear to be obsolete.

Pluralities Act 1838: the whole Act (so far as still in force)

The provisions of the Pluralities Act which still remain in force are concerned with the duty of incumbents who are not subject to Common Tenure to reside on their benefices and with the steps which can be taken, including the imposition of financial penalties, if they fail to do so. An incumbent who left his or her benefice for a significant length of time and who neglected to carry out the duties that go with having the cure of souls would not now be dealt with under the (bureaucratic and ponderous) provisions of the Pluralities Act which provide for the Bishop to serve notice requiring the incumbent to return, to sequester the profits of the benefice and, eventually declare the benefice vacant, if he or she fails to do so. Instead, such an incumbent should be the subject of proceedings under the Clergy Discipline Measure 2003 for “neglect or inefficiency in the performance of the duties of his office”. The penalties available would be those for which the 2003 Measure provides, rather than the now ineffective financial penalties provided for by the Pluralities Act which involve the sequestration of the profits of the benefice and, eventually, the vacation of the benefice. It is intended that the repeals Measure – although it would repeal the whole Act – would preserve the effect of section 36 of the Act (which provides for the surviving spouse or civil partner of

an incumbent who dies in office to occupy the parsonage house for two months following the incumbent's death). The remaining provisions of the Act are no longer of practical utility.

Ecclesiastical Commissioners Act 1840: sections 27, 35, 54, 55, 84, 86 and 88

Section 27 imposes a requirement that in order to be appointed a dean, archdeacon or canon the person concerned must have been in holy orders for at least six years. Provision to that effect is now made by canon (see Canon C 21, paragraph 1). Section 35 makes permissive provision for the endowment of archdeaconries in the dioceses of London and Lincoln by annexing canonries to the archdeaconries and is now obsolete. Section 54 vested the endowments of suppressed sinecure rectories in the Ecclesiastical Commissioners and is spent. Section 55 provided an exception for the case where a sinecure rectory was held together with the related vicarage, in which case the two were annexed. Sections 84, 86 and 88, which provided for the making and registering of Orders in Council to give effect to schemes of the Ecclesiastical Commissioners made under the Act, are spent given that the power to make schemes under the Act has itself been repealed.

Ecclesiastical Commissioners Act 1841: sections 12 and 24

Section 12 is now obsolete. It made the Archbishop of York the visitor of the collegiate church of Southwell and provided for the dissolution of its chapter and the vesting of their endowments in the Ecclesiastical Commissioners. The church in question is now the cathedral church of the Diocese of Southwell and Nottingham and its visitor is the Bishop of the diocese by virtue of section 6 of the Cathedrals Measure 1999. Section 24 applies to the Ecclesiastical Commissioners Act 1840 and to the Ecclesiastical Commissioners Act 1841 provisions of the Pluralities Act 1838 relating to the obtaining of the consents of patrons. However, there are no provisions in those Acts that remain in force which require the consent of patrons. The provision is therefore obsolete.

Ecclesiastical Houses of Residence Act 1842: the whole Act (so far as still in force)

The Act provides a power for the Ecclesiastical Commissioners to demolish, sell, rebuild or make alterations to episcopal houses of residence. As episcopal houses of residence are now all vested in the Church Commissioners and not in bishops in right of their see, the provisions of the Act would appear to be obsolete. The Church Commissioners duties in relation to the housing of bishops (including changing a house of residence) are now provided for in the Ecclesiastical Offices (Term of Service) Measure 2009.

Ecclesiastical Leasing Act 1842: the whole Act (so far as still in force)

Ecclesiastical Leasing Act 1858: the whole Act (so far as still in force)

Ecclesiastical Leases Act 1865: the whole Act (so far as still in force)

The 1842 Act made provision enabling ecclesiastical corporations to grant long leases. Further provision in that regard was made by the 1858 Act which was subsequently modified

by the 1865 Act. The 1842 Act and the 1858 Acts have already been repealed so far as they applied to cathedrals and to incumbents. It is not clear that these three Acts continue to be of any practical utility in relation to other ecclesiastical corporations and they would seem to be obsolete.

Lecturers and Parish Clerks Act 1844: sections 1 and 4

Section 1 of the Act provides for the bishop to licence a person who has been appointed to a lectureship to be, additionally, an assistant curate. Such provision is unnecessary as the bishop can do so in any event, and provision for the holding of an office in conjunction with an associated office is made in regulation 29 of the Ecclesiastical Offices (Terms of Service) Regulations 2009. Section 4 provides that the appointment of such an assistant curate does not relieve the incumbent of any duty to provide a curate in accordance with the provisions of statute or canon law. Given the proposed repeal of the Pluralities Act 1838 and the absence of other provision which requires the appointment of curates, the section would appear to be obsolete.

Colonial Bishops Act 1853: the whole Act (so far as still in force)

The Act makes provision in relation to the “rights, privileges and advantages” of clergy ordained in or for a diocese “of her Majesty's foreign or colonial possessions”. The Act would appear to be obsolete given that there is no reason why English law should continue to make provision for in relation to such ordinations.

Ecclesiastical Commissioners Act 1860: section 13

Section 13 made provision for the situation where “any ecclesiastical corporation sole is in the receipt of an income fixed by Act of Parliament, and the estates of such corporation yield an annual income greater than the income so fixed”. Where that was the case it was to be “incumbent on the Ecclesiastical Commissioners to make, out of any tithes, lands, or hereditaments whatsoever from which such annual income arises, or out of the rents and profits thereof, such provision as may seem to them needful for the cure of souls in the parish or place in which such tithes, lands, or hereditaments are situate or arise”. The Legal Office is not aware of any ecclesiastical corporation sole who is in receipt of an income fixed by Act of Parliament and the provision appears to be obsolete.

Ecclesiastical Commissioners Act 1866: section 17 (so far as still in force)

Part of the section has already been repealed. The remaining provision provides that all the seats in certain churches in Westminster are to be free (i.e. not subject to pew rents). The section is now obsolete.

Residence of Incumbents Act 1869: the whole Act (so far as still in force)

The remaining provisions of the Act provide that the only proceedings which may be taken against an incumbent for non-residence are those provided by the Pluralities Act 1838. For the reasons explained above those provisions are no longer of practical utility and, accordingly, the same applies to the provisions of this Act.

Sequestration Act 1871: the whole Act (so far as still in force)

The 1871 Act makes provision in relation to the sequestration of benefices that are full. It is no longer possible for benefices to be sequestered except where they are vacant. The Act is therefore obsolete.

Baptismal Fees Abolition Act 1872: the whole Act (so far as still in force)

The Act makes it unlawful for a minister to demand any fee for the celebration of the sacrament of baptism or for the registration of a baptism. Parochial Fees are now provided for by the Ecclesiastical Fees Measure 1986 (which does not permit fees to be prescribed or demanded for baptism). As the matter is now covered by the 1986 Measure, the 1872 Act is no longer of practical utility.

Pluralities Acts Amendment Act 1885: the whole Act (so far as still in force)

The Act makes provision further to the Pluralities Act 1838. Its provisions are therefore no longer of practical utility.

Church Dignitaries (Retirement) Measure 1949: the whole Measure (so far as still in force)

The provisions of the Measure that are still in force provide for the removal from office of cathedral clergy and archdeacons on grounds of incapacity. By virtue of section 3(7) of the Ecclesiastical Offices (Terms of Service) Measure 2009 it now applies only to office holders who are not subject to Common Tenure. It is therefore proposed that it should be repealed subject to savings in relation to such office holders.

Inspection of Churches Measure 1955: section 4

Section 4 makes provision for the churchwardens to act in place of the parochial church council where a parish does not have a parochial church council. A parochial church council is constituted for every parish by the Church Representation Rules. Section 3 of the Parochial Church Councils (Powers) Measure 1956 provides that every parochial church council is a body corporate with perpetual succession. It is therefore impossible for a parish not to have a parochial church council. Were a parish to neglect to elect representatives of

the laity to the parochial church council, the council would nevertheless still exist and its members would be the minister and churchwardens and any other persons having ex officio membership. The provision made by the section is therefore unnecessary.

Ecclesiastical Jurisdiction Measure 1963: proviso to section 46(1)

Section 46(1) provides that proceedings in a consistory court are to be heard and determined by the chancellor. However, the subsection contains a proviso as follows—

Provided that proceedings in a cause of faculty may be heard and disposed of by the bishop of the diocese alone or with the chancellor if, and in so far as, provision in that behalf is made in the letters patent by which the chancellor of the diocese is appointed.

Letters patent appointing chancellors no longer make provision for the bishop to sit in the consistory court him- or herself. The last time a bishop heard and determined faculty proceedings in person was 35 years ago: see *Re St Mary's, Barnes* [1982] 1 All ER 456. The result was unhappy because the faculty granted by the Bishop of Southwark for an extensive rebuilding scheme made no provision for the disturbance of human remains or the removal of monuments which were necessary in order for the scheme to be carried out and the defect was not discovered until after the building works had begun. It is most unlikely that a chancellor would now accept appointment if the letters patent made provision for the bishop to sit in person. The proviso to section 46(1) would appear to be obsolete.

Church Commissioners Measure 1970: the whole Measure

The Measure amended section 6 of the Church Commissioners Measure 1947 but that amendment has now been entirely superseded by a subsequent amendment.

Admission to Holy Communion Measure 1972: the whole Measure

The Measure authorised the making of provision by Canon for the admission to Holy Communion of baptized persons who were neither confirmed nor “ready and desirous to be confirmed”. The Measure is no longer necessary as the Church of England (Worship and Doctrine) Measure 1974 now contains general provision for the making of Canons in relation to matters that were formerly governed by the rubrics in the Book of Common Prayer.

Cathedrals Measure 1976: the whole Measure (so far as still in force)

The remaining provisions of the Measure have either been superseded by the Cathedrals Measure 1999 or are spent.

Ecclesiastical Judges and Legal Officers Measure 1976: sections 1(3) and 6

Section 1(3) – which provides that the compulsory retirement age for chancellors introduced by section 1 does not apply to chancellors appointed before 25 April 1976 – is spent. Section

6 makes transitional provisions in relation to registrars appointed before that date and is also spent.

Church of England (Miscellaneous Provisions) Measure 1976: section 1(1) from “and in particular” to the end, section 1(6) and the Schedule

Section 1(1) enables the General Synod to make provision by canon for dispensing with or modifying any formal procedure for or document required on the occasion of ordination or admission to any office in the Church of England,

and in particular for dispensing with the making of the declarations heretofore prescribed by sections 2 and 3 of the Clerical Subscription Act 1865 (declarations known as “the declaration against simony” and “the stipendiary curate's declaration”), the reading of the form called Si Quis and the certification thereof, the exhibiting of Letters Testimonial, and the issue of deeds of institution and Letters Mandatory and mandates for induction.

Section 1(6) provided that if a canon is made dispensing with the declarations mentioned in subsection (1), the enactments specified in the Schedule to the Measure were to be repealed to the extent specified in the Schedule.

Amending Canon No. 5, promulgated on 5 July 1977, dispensed with each of the matters mentioned in subsection 1(1) quoted above. Those words, section 1(6) and the Schedule are therefore spent.

Dioceses Measure 1978: the whole Measure (so far as still in force)

Schedule 7 to the Dioceses, Pastoral and Mission Measure 2007 repeals, among other enactments, the Dioceses Measure 1978. Schedule 7, so far as it provided for the repeal of section 18 of the 1978 Measure, was brought into force for different purposes by Appointed Day Orders made in 2008 and 2010. The intention of the second of those Orders appears to have been that any remaining provisions of section 18 should be repealed with effect from 1 January 2011. But owing to a drafting oversight, there are some words in section 18 which remain unrepealed. Those provisions are unnecessary and should be repealed.

Ecclesiastical Fees Measure 1986: s.11(1) and (3), Sched 2 paras 2-5

Section 11(1) and (3) respectively repealed the Ecclesiastical Fees Measure 1962 and introduced the transitional provisions of Schedule 2. Schedule 2, paragraphs 2 to 5 make transitional provision which is now spent.

Diocesan Boards of Education Measure 1991: section 12

Section 12 makes transitional provisions which are now spent.

Church of England (Miscellaneous Provisions) Measure 1992: section 4(2)

Section 4(2) – which makes provision in respect of the first inspection of register books in parochial custody after 1 January 1993 – is spent.

Church of England (Legal Aid) Measure 1994: section 5

Section 5 makes transitional provision in relation to proceedings which were pending on 11 September 1994. The section is spent.

Cathedrals Measure 1999: section 38(1)-(3) and Sched 1

Section 38(1)-(3) and Schedule 1 make transitional provision to cover the period between the application of the Measure to a particular cathedral and the approval of its new constitution and statutes by the Archbishops. These provisions are spent.

Church of England (Miscellaneous Provisions) Measure 2000: section 1

Section 1 of the 2000 Measure transferred the duty of the Church Commissioners to keep diocesan stipends accounts and pastoral accounts to the diocesan board of finance of each diocese and required the Commissioners, on 1 January 2001, to pay to each diocesan board of finance the amounts standing to the credit of those accounts for the diocese concerned. As the transfers have now taken place, the provisions of section 1 are spent.

Churchwardens Measure 2001: section 14 and Sched 1

These transitional provisions are spent.