

**GENERAL SYNOD**

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

**DRAFT AMENDING CANON NO. 31**

**REPORT OF THE REVISION COMMITTEE**

- Chair:** Mrs Caroline Spencer (Canterbury)
- Ex-officio members** The Reverend Paul Benfield (Blackburn) (Chair)  
**(Steering Committee):** Mrs Julie Dziegiel (Oxford)  
The Reverend Canon Geoffrey Harbord (Sheffield)  
The Venerable Jan McFarlane (Norwich)  
Mrs Sheri Sturgess (Truro)
- Appointed members:** Dr Graham Campbell (Chester)  
Ms Susan Cooper (London)  
The Reverend Canon Perran Gay (Truro)  
Mr Malcolm Halliday (Bradford)  
The Reverend Canon Andrew Salmon (Manchester)
- Staff:** Sir Anthony Hammond KCB QC (Standing Counsel to the General Synod)  
Ms Saira Salimi (Deputy Official Solicitor to the Church Commissioners)  
The Reverend Alexander McGregor (Deputy Legal Adviser to the  
Archbishops' Council and the General Synod)  
Miss Sarah Clemenson (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 1866 and GS 1877 unless otherwise indicated.*

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

1. The draft Church of England (Miscellaneous Provisions) Measure and draft Amending Canon No. 31 received First Consideration at the July 2012 group of sessions of the General Synod. The period for submission of proposals for amendment under Standing Order 53(a) expired on 10<sup>th</sup> August 2012. Copies of the submissions are available at <http://www.churchofengland.org/about-us/structure/churchlawlegis/legislation/inprogress/submissions-made-to-revision-committees>.
2. Prior to the closing date mentioned in paragraph 1, ten members of the General Synod, and the Council for Christian Unity, submitted proposals for amendment of the draft Measure. Two members of the General Synod submitted proposals for amendment of the draft Canon. Proposals for amendment to the draft Measure and draft Amending Canon were also made by the Steering Committee. The Committee itself also identified an issue which led it to make amendments to the draft Measure and Canon.

3. The Committee met on four occasions and the proposals which it accepted form the basis of the draft Measure (GS 1866A) and the draft Amending Canon (GS 1877A) now before the Synod. Amendments made by the Committee are shown in bold type.
4. Four members of the Synod – Mr Adrian Vincent, the Reverend Hugh Lee, the Reverend Simon Cawdell and Mr James Cheeseman – exercised their right under Standing Order 53(b) to attend while their proposals were considered and to speak to their proposals.
5. The Committee decided to sit in public.
6. 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**

#### *Amendment of Ecclesiastical Commissioners Act 1840*

7. No proposals were received in relation to clause 1 and the Committee made no amendments.

### **CLAUSE 2**

#### *Amendment of Burial Act 1857 – Offence of removal of body from burial ground*

8. The Right Worshipful Timothy Briden (Vicar General of the Province of Canterbury) sent a submission pointing out that as currently drafted, subsections (1) and (2) of the proposed new section 25 of the Burial Act 1857 might be construed as giving an applicant in relation to exhumation a free choice between seeking authorisation under ecclesiastical law or seeking a licence for exhumation by the Secretary of State.
9. That was not the intention of the provision but staff accepted that as currently drafted it was open to that interpretation. The Steering Committee proposed amendments to put that right. The Revision Committee agreed to amend the Measure in accordance with the Steering Committee’s proposals.
10. On a separate question asked by the Vicar General, the Committee was informed that it was the intention that guidance on the ecclesiastical law concerning exhumation should be provided to the Cathedrals Fabric Commission and fabric advisory committees to ensure consistency of practice.

### **CLAUSE 3**

#### *Amendment of Episcopal Endowments and Stipends Measure 1943*

11. No proposals were received in relation to clause 3 and the Committee made no amendments.

### **CLAUSE 4 (now clause 6)**

#### *Amendment of Ecclesiastical Jurisdiction Measure 1963*

12. No proposals were received in relation to clause 4 and the Committee made no amendments.

### **CLAUSE 5 (now clause 7)**

*Amendment of Faculty Jurisdiction Measure 1964*

13. No proposals were received in relation to clause 5 and the Committee made no amendments.

**CLAUSE 6** (*now clause 8*)

*Amendment of Overseas and Other Clergy (Ministry and Ordination) Measure 1967*

14. The Bishop of Willesden (the Right Reverend Peter Broadbent) raised a number of issues about the Overseas and Other Clergy (Ministry and Ordination) Measure 1967 that were concerned with the way in which the Measure is operated in practice rather than with the provisions of the Measure itself. The Committee was advised that further legislative provision was not required to address those points.
15. The Bishop also suggested that the 1967 Measure was in need of a “radical overhaul” but appeared to accept that a miscellaneous provisions Measure was not the right legislative vehicle for achieving that.
16. The Committee noted the Bishop of Willesden’s submission but did not make any amendments to clause 6 as a result of the points raised by him.
17. In his submission, the Reverend Hugh Lee pointed out that the policy of the Archbishops of Canterbury and York was not to grant permission to officiate in their respective provinces under the 1967 Measure to overseas clergy who had been ordained by women bishops. He proposed that the Committee should amend the draft Measure “to make such discrimination unlawful”.
18. The Committee was advised that as a matter of law, it was not open to the Archbishops to grant to female overseas bishops permission to carry out ordinations and other episcopal functions in England. The exercise of episcopal functions in England was governed wholly by English ecclesiastical law and under that law it was not currently possible for women to be bishops.
19. The legal position was different with regard to priests and deacons who had been ordained overseas by female bishops. That was because the legal status of those ordinations fell to be determined by reference to the canons of the province where those ordinations took place. As a matter of law, it would be possible for the Archbishops to grant a person who had been ordained deacon or priest by a woman bishop in a province where that was in accordance with the local canons. However, the fact that that was legally possible did not determine the question of whether or not they should do so. It was open to the Archbishops to operate policies as to how they would apply the Measure provided that any such policies were within the terms of the Measure and not otherwise unlawful.
20. Because the proposal raised a substantial question of policy, after a preliminary discussion, the Committee deferred consideration of the proposal to enable consultation with the archbishops to take place. The Secretary General subsequently wrote to the Chair of the Revision Committee as follows—

I understand that the Revision Committee for the draft Miscellaneous Provisions Measure has received a submission from the Reverend Hugh Lee relating to the Overseas and Other Clergy (Ministry and Ordination) Measure 1967 which concerns the long-standing policy of the Archbishops of Canterbury and York relating to clergy ordained overseas by female bishops.

In answer to a question from the Reverend Dr Miranda Threlfall-Holmes at the July 2011 group of sessions of the General Synod, I said—

“Overseas clergy may officiate in the provinces of Canterbury or York only with the written permission of the relevant archbishop, given under the Overseas and Other Clergy (Ministry and Ordination) Measure 1967. That requirement applies whether they are from elsewhere in the Anglican Communion, from a Porvoo Church or from

another Church with whom we are in communion or whose orders are recognized and accepted by the Church of England. As a matter of policy, the Archbishops do not give such permission to clergy whose orders were conferred by a female bishop, given that the Church of England has yet to admit women to episcopal ministry.”

As matters currently stand, that remains the position.

As you know, paving motions were passed in 2005 and 2006, setting in train the legislative process that would make it possible to ordain women to the episcopate. Following the rejection in November of the draft measure, the House of Bishops committed itself to bringing fresh legislative proposals to the Synod this July. A working group, consisting of members of all three Houses, is meeting intensively at the moment to support the House of Bishops in this task.

The paving motions – while expressing the opinion of the Synod on the question – did not in themselves have the effect of changing the Church of England’s doctrinal position concerning the admission of women to the episcopate. To achieve that, it is necessary for legislation – in the form of a Measure and a Canon – to be passed in accordance with the special procedural requirements of Articles 7 and 8 of the Constitution (which are specifically concerned with certain matters of a doctrinal nature). Until that happens, there would be an inconsistency with the present doctrinal position if the archbishops were to give permission to officiate as priests and deacons to those ordained by women bishops overseas.

This is because the granting of permission would involve accepting actions by those bishops which are not yet accepted within the doctrinal framework of the Church of England. To change the policy operated under the 1967 Measure before the Church of England has changed its formal doctrinal position on women in the episcopate would, therefore, raise very significant issues, which the Archbishops would need to consider very carefully before they could consent to it.

It is also the case that the Church of England has for a number of years been seeking to find a way of protecting the consciences of those who cannot accept the development of women in the episcopate. That this should be done also formed part of the proposals set out in the paving motions mentioned above. To introduce, at this point, clergy who had been ordained overseas by women bishops would run the risk of pre-empting this issue.

There are two more pragmatic considerations which need to be weighed:

- The Synod is bound to be spending a significant amount of time in July considering the proposals that the House of Bishops will be bringing in relation to a new legislative process so that women can become bishops in the Church of England at the earliest possible date. There is at the very least a question whether that consideration will be assisted by a separate but related set of arguments about the episcopal ministry of overseas bishops;
- The longstanding convention is that, Miscellaneous Provisions Measures are not suitable legislative vehicles for achieving substantial or controversial policy changes. Legislating to render unlawful the present policy adopted by the Archbishops in the light of the doctrine of the Church of England would be self evidently substantial and controversial. Moreover, I am advised that such an amendment would mean that the legislation would have to be designated as Article 7 business (on the basis that it would then amount to provision “touching ... the services or ceremonies of the Church of England or the administration of the Sacraments or the sacred rites thereof”).

21. When it considered the matter further a number of members of the Committee expressed sympathy with the underlying intention of Mr Lee’s proposal. However, the Committee–
  - a. considered that the proposal raised a substantial question of policy that was not suitable for a miscellaneous provisions Measure; and
  - b. was advised that including an amendment as proposed by Mr Lee would make the draft Measure Article 7 business.
22. The Committee accordingly rejected Mr Lee’s proposed amendment.
23. The Steering Committee proposed an amendment to replace the new subsection (5A)(b) so that it additionally referred to censures (ecclesiastical penalties) under section 49(1)(a) of the Ecclesiastical Jurisdiction Measure 1963.

24. It was explained that the purpose of the new subsection (5A) was to provide the archbishop of the province with an express power to revoke a permission granted to an “overseas clergyman”. It included provision to prevent the requirements of the legislation relating to clergy discipline being circumvented in the case of an “overseas clergyman” by the archbishop revoking his or her permission. Paragraph (b) as originally drafted provided that the archbishop could not revoke an overseas clergyman’s permission to officiate for a matter that amounted to misconduct unless proceedings were brought under the Clergy Discipline Measure 2003 and a penalty of sufficient seriousness was imposed. The provision as originally drafted omitted to include the possibility of misconduct relating to a matter involving a question of doctrine, ritual or ceremonial which would still fall to be determined under the Ecclesiastical Jurisdiction Measure 1963 rather than the Clergy Discipline Measure 2003. The policy against circumventing due legal process should apply equally to misconduct concerning doctrine etc. The amendment proposed by the Steering Committee would put that right.
25. The Committee accepted the amendment proposed by the Steering Committee.

**CLAUSE 7** (*now clause 12*)

*Amendment of Patronage (Benefices) Measure 1986*

26. In his submission Mr Malcolm Halliday pointed out that unlike section 11(2) of the Patronage (Benefices) Measure 1986 – which contains provision relating to the special meeting of the PCC that has to be held in connection with filling a vacancy in a benefice – the provision contained in clause 7(2) did not exclude the priest-in-charge or his or her spouse or civil partner from a meeting at which the PCC was considering the exercise of its functions under the special procedure for the appointment of the priest in charge as incumbent.
27. The Steering Committee proposed an amendment to deal with the point. The Committee accepted that proposal. (See new clause 12(4) in GS 1866A.)
28. The Reverend Hugh Lee suggested that there was “no precedent for a PCC to be directly a party to the appointment of their incumbent” and he was therefore concerned that the requirement in the new shortened procedure for the appointment of a priest in charge as incumbent that the PCC pass a resolution in favour of that course represented an unwelcome novelty. Mr Lee proposed that the PCC should appoint two lay representatives to approve such an appointment.
29. The Steering Committee did not support Mr Lee’s proposal. In practice, the PCC would be involved in discussions as to whether the priest in charge should be appointed as incumbent. The Committee rejected Mr Lee’s proposal by 7 votes to 3.
30. Mr James Cheeseman was in favour of the proposal that there should be a special, shortened procedure for a priest in charge to be appointed incumbent. He was concerned that there should be “clear procedures for the parish expressing their desire for the priest in charge to become the incumbent.”
31. Mr Cheeseman was content with the provision made in the new section 16A(3) for the PCC to pass a resolution stating that it approved the proposal that the priest in charge should become the incumbent.
32. Mr John Mason’s submission raised a number of points about clause 7.
33. First he submitted that the requirement for the patron to make a declaration as to being an actual communicant or a clerk in holy orders that applied to the ordinary process for appointing an

incumbent should also apply to the special procedure for appointing the priest in charge as incumbent.

34. The Committee was advised that Clause 7 already provided for that. The new section 16A(9) provided that where the special procedure was invoked, sections 8 and 9 of the Patronage (Benefices) Measure – which provide for the making of declarations as to being an actual communicant and conveying that and other relevant information to the designated officer – were to apply where the bishop gave notice of a proposal that the priest in charge should become the incumbent.
35. Secondly, Mr Mason made a similar point to that made by Malcolm Halliday about the priest in charge being present at a meeting of the PCC where a resolution under the special procedure was being considered. (See above for the Committee’s treatment of that proposal.)
36. Thirdly, he asked whether the provisions of section 10 of the 1986 Measure – which prevent a patron who is a clerk in holy orders from presenting himself to a benefice – applied to a presentation under the special procedure. The Committee was advised that it did because section 10 was a provision of general application in relation to presentation to benefices.
37. Mr Mason also raised some issues about the Patronage (Benefices) Measure 1986 that are unconnected with the proposed new special procedure for the appointment of a priest in charge as incumbent.
38. The first of those proposals related to section 10 of the 1986 Measure which is as follows–

“Where the registered patron of a benefice, or the representative of that patron, is a clerk in holy orders or is the wife of such a clerk, that clerk shall be disqualified for presentation to the benefice.”
- Mr Mason proposed that a clerk should equally be disqualified for presentation where the patron (or patron’s representative) was the husband or civil partner of that clerk.
39. The Committee was advised that section 11(2)(a) of the 1986 Measure had been amended so that the spouse (rather than just wife) or civil partner of the outgoing incumbent was not entitled to attend the special meeting of the PCC that is convened to make decisions relating to the appointment of a new incumbent. The Committee considered that it would be logical to amend section 10 in a similar way so that a clerk could not be presented to a benefice by a patron who was the spouse or civil partner of that clerk. The Committee agreed to amend the Measure accordingly. (See Schedule 2, paragraph 9(2).)
40. Mr Mason’s second point related to the absence, in relation to a multi-parish benefice, of a provision equivalent to that contained in section 11(1)(f) of the 1986 Measure which requires a PCC to decide whether to pass a resolution under section 3(1) or 3(2) of the Priests (Ordination of Women) Measure 1993. In other words, where a section 11 meeting was held for a multi-parish benefice there was no requirement for the meeting to decide whether to pass or rescind (as the case may be) resolution A and B, while there was such a requirement in the case of a single-parish benefice. Mr Mason asked whether that was intentional.
41. The Committee was advised that the difference was intentional. Where a section 11 meeting was to be held in relation to filling a vacancy in a multi-parish benefice, that meeting was not a meeting of a PCC but is a joint meeting of all the PCCs in the benefice. Resolutions A and B under the 1993 Measure could only be passed by an individual PCC as those resolutions could be passed only in

respect of a particular parish (not a benefice). The Committee agreed that no amendment was required.

42. The Steering Committee proposed a number of drafting amendments to clause 7 which the Committee agreed to make.

#### **CLAUSE 8** (*now clause 13*)

##### *Amendment of Care of Churches and Ecclesiastical Jurisdiction Measure 1991*

43. The Dean of the Arches and Auditor proposed that there should be a substantial revision of section 17 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (which imposes various restrictions on the granting of faculties that involve the demolition, or partial demolition, of churches). He urged the replacement of section 17 with a new, simpler provision.
44. The Committee was advised that there was much to be said for a substantial simplification of section 17. It contained a number of cumbersome procedural provisions, some of which were outdated (such as a requirement for notices to appear in the London Gazette) and others which could be improved. Most of the procedural requirements could be removed altogether from primary legislation (on the basis that the more convenient place for procedural requirements of that nature was in the Faculty Jurisdiction Rules).
45. The Committee was informed that staff in the Legal Office had worked with the Dean and that, having consulted staff in the Cathedral and Church Buildings Division, they had produced a revised version of section 17 of the 1991 Measure. The result was an amendment proposed by the Steering Committee that would replace the existing section 17 with a new, simpler version. The Dean of the Arches had seen that amendment and had indicated that he supported it.
46. The proposed new section 17 retained a concept of partial demolition but defined it in a way that would limit the concept so that it was clear that it did not include the removal of merely ancillary structures (such as boiler houses, lavatories, chimney stacks etc.). The requirement that the bishop's consent had to be obtained before commencing faculty proceedings to authorise demolition or partial demolition was retained. But the other procedural provisions that were currently contained in section 17 were omitted.
47. The Committee agreed to make the amendment proposed by the Steering Committee.
48. The Committee was content with the original content of clause 8 (now clause 13(3) in GS 1866A) which amended section 18 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991.

#### **CLAUSE 9** (*now clause 15*)

##### *Tenure of office of vicars general and surrogates*

49. No proposals were received in relation to clause 9 and the Committee made no amendments.

#### **CLAUSE 10** (*now clause 16*)

##### *Amendment of Dioceses, Pastoral and Mission Measure 2007*

50. No proposals were received in relation to clause 10. The only amendment made by the Committee was to remove paragraph 16(2) of the Schedule into this clause.

## **CLAUSE 11** (*now clause 20*)

### *Minor and consequential amendments*

51. No proposals were received in relation to clause 11 and the Committee made no amendments.

## **CLAUSE 12** (*now clause 21*)

### *Citation, commencement and extent*

52. No proposals were received in relation to clause 12 but the Committee made a number of amendments. One was to take account of a point identified by the registrar of the Diocese of Sodor and Man relating to the application of the Measure to the Isle of Man. Other amendments were consequential on new clauses and amendments to other clauses and to the Schedule that were made by the Committee.

## **THE SCHEDULE** (*now Schedule 2*)

### *The Schedule generally*

53. The Dean of the Arches and Auditor (the Right Worshipful Charles George QC) proposed that a number of paragraphs that were contained in the Schedule should be removed to the body of the draft Measure.

54. In the light of advice from Standing Counsel, the Committee agreed that the following paragraphs should be removed to the body of the draft Measure: 4, 6, 7(2), 16(2).

## **PARAGRAPH 1**

### *Ecclesiastical Commissioners Act 1850*

55. No proposals were received in relation to paragraph 1 and the Committee made no amendments.

## **PARAGRAPH 2**

### *New Parishes Measure 1943*

56. No proposals were received in relation to paragraph 2 and the Committee made no amendments.

## **PARAGRAPH 3**

### *Church Commissioners Measure 1947*

57. The Steering Committee proposed two amendments to paragraph 3.

58. The first amendment (*new sub-paragraph (3)*) substitutes section 5(2) of the Church Commissioners Measure 1947 (“the 1947 Measure”), providing for the Archbishop of Canterbury to appoint a member of the Board to act as its chair in his absence for a period of up to 5 years. This replaces the present provision for the Board to elect its own acting chair to act for a maximum of 12 months. Provision is retained for the Board to elect its own chair at any meeting where neither the Archbishop nor his deputy is present.

59. The second amendment (*new sub-paragraph (7)*) removes the requirement in paragraph 6 of Schedule 1 to the 1947 Measure for new lay Commissioners to declare their membership of the



Church of England “before an officer of the Commissioners”, enabling them to make their declaration in writing at a convenient time and return it to an officer by post or other means.

60. The Committee agreed to make the amendments and was otherwise content with the paragraph.

**PARAGRAPH 4** (*now clause 5*)

*Parochial Church Council (Powers) Measure 1956*

61. The Bishop of Chester (the Right Reverend Peter Forster) had sent a submission supporting paragraph 4 of the Schedule. He referred to the desirability of youth workers etc. (who might be employed by PCCs) being licensed by the Bishop as lay workers. Licensed lay workers were *ex officio* members of the PCC under rule 14(1)(b) of the Church Representation Rules. The provision contained in paragraph 4 of the Schedule would remove the legal difficulty that currently existed in relation to the employment of those who were members of the PCC, subject to certain safeguards.
62. The Reverend Hugh Lee made a number of proposals in relation to paragraph 4 of the Schedule.
63. He proposed that provision be made stating that “nothing in this Measure overrides the requirements of the Charities Commission for charities or gives greater powers than are allowed by the Charities Commission on this matter.” He explained this on the ground that “we do not want us to give the government or the Charities Commission grounds for suggesting that PCCs might no longer be regarded as charities”.
64. The Committee was advised that the intended purpose of paragraph 4 of the Schedule was to confer on PCCs wider powers than were automatically enjoyed by charities. (Any charity could have the powers that would be conferred on PCCs by this section if their governing document (e.g. trust deed, will, company articles) contained such provision.) This new provision would put a PCC in the same provision as a charity that was established by deed or as a company whose deed or company articles said that it could have trustees who were its employees.
65. In so far as the provision related to contracts other than contracts of employment, it effectively replicated provisions that were contained in the Charities Act 2011. (The conditions set out in subsection (2) matched the equivalent safeguards in the Charities Act.) However, it was considered that it would be more helpful to include them here alongside the provisions that were concerned with contracts of employment so that the provisions relevant to PCCs could all be found in one place (i.e. the PCC (Powers) Measure 1956).
66. The Committee was advised that the Charity Commission had been consulted on this provision and were entirely content with it.
67. As far as the suggestion that this provision might result in PCCs no longer being regarded as charities was concerned, the Committee was advised that there was no possibility of such a result. An institution was a charity for the purposes of the Charities Act 2011 if it was (i) established for purposes that were exclusively charitable and (ii) subject to the High Court’s jurisdiction in respect of charities. The provision contained in paragraph 4 of the Schedule had no bearing on either of those two things.
68. Mr Lee made various other proposals for amendment. In particular, he proposed: an amendment to distinguish between those on short-term contracts and those on on-going contracts of employment; an amendment to require a PCC member to leave the room when his or her contract was being discussed or voted upon; an amendment to clarify the meaning of “services provided by a person in that person’s capacity as a member of the council”; and an amendment to new sub-clause 3A(2)(b)

so that the total number of persons employed by the PCC must constitute no more than a third of its members.

69. The Steering Committee was not in favour of distinguishing between those on different sorts of employment contracts, since in practice it would be difficult to draw that distinction. It was not persuaded that an amendment was needed to require a PCC member to be out of the room when his or her contract was being discussed or voted upon, since that situation would be covered by general principles of charity law. It considered that the meaning of “services provided by a person in that person’s capacity as a member of the council” was clear and followed the equivalent provision in the Charities Act 2011. It also did not believe that sub-clause 3A(2)(b) should be amended in the way suggested by Mr Lee, since that could cause practical problems in some smaller parishes.
70. The Committee agreed with the points made by the Steering Committee and did not make any amendments to paragraph 4 beyond a minor drafting amendment to the new section 3A(4) and agreeing that the whole paragraph should be removed to the body of the draft Measure.

**PARAGRAPH 5** (*now paragraph 4*)

*Clergy Pensions Measure 1961*

71. No proposals were received in relation to paragraph 5 and the Committee made no amendments.

**PARAGRAPH 6** (*now clause 9*)

*Synodical Government Measure 1969*

72. Philip Giddings and Tim Hind submitted a letter responding to a suggestion that had been made during the First Consideration debate on the Measure that the Chair of the Dioceses Commission should be elected rather than appointed by the Archbishops. They advanced arguments as to why the approach taken in the draft Measure (i.e. appointment by the Archbishops) was to be preferred.
73. Mr Cheeseman, by contrast, submitted that making the Chair of the Dioceses Commission an ex officio member of the House of Laity was “not an uncontroversial matter and should therefore not be included in the [draft] Measure”. He cited, as evidence for this, the recent refusal of the House of Laity to co-opt a person who it was intended to appoint as Chair of the Dioceses Commission. Mr Cheeseman asked that the General Synod should consider the issue of ex officio membership of the House of Laity generally.
74. The Committee voted against Mr Cheeseman’s proposal to remove paragraph 6 by 9 votes to 2. However, the Committee agreed that the issue of ex officio membership of the General Synod should be identified in this report as being in need of review.
75. The Committee did not make any amendments to paragraph 6 but agreed that it should be removed to the body of the Measure.

**PARAGRAPH 7** (*now paragraph 6*)

*Endowments and Glebe Measure 1976*

76. The Committee did not make any amendments to sub-paragraph (2) but agreed that it should be removed to the body of the Measure (*now clause 10*).
77. The Steering Committee proposed an amendment to shorten and simplify the drafting of sub-paragraphs (3) and (4) (*now sub-paragraphs (2) and (3)*).

78. The Committee agreed to the amendment.

**PARAGRAPH 8** (*now paragraph 7*)

*Incumbents (Vacation of Benefices) Measure 1977*

79. The Steering Committee proposed an amendment to paragraph 8 concerned with the position where a person was in receipt of compensation under Schedule 2 to the Incumbents (Vacation of Benefices) Measure 1977 in the form of periodical payments. Under the provision inserted by paragraph 8(d) of the Schedule to the draft Measure such a person was deemed to be in pensionable service for the purposes of the rules of the Church of England Funded Pension Scheme such that he or she would continue to accrue benefits under the Scheme for so long as he or she continued to receive periodical payments. The amendment would make it clear that such a person was nevertheless not in “service” for the purposes of the Funded Scheme rules generally. So, for example, should such a person die while receiving periodical payments, that would not constitute death in service. The amendment would make the existing position clearer in the legislation.

80. The Committee accepted the amendment.

**PARAGRAPH 9** (*now paragraph 8*)

*Ecclesiastical Fees Measure 1986*

81. No proposals were received in relation to paragraph 9 and the Committee made no amendments.

**PARAGRAPH 10** (*now paragraph 9*)

*Patronage (Benefices) Measure 1986*

82. The Steering Committee proposed a minor correction to the drafting of paragraph 10 which was accepted by the Committee. The Committee also agreed to insert here the amendment it had agreed to make to section 10 of the 1986 Measure. (See paragraph 39 above.)

**PARAGRAPH 11**

*Planning (Listed Buildings and Conservation Areas) Act 1990*

83. The Steering Committee proposed a minor amendment so that the provision also covered any chapel forming part of an episcopal house of residence that was subject to the faculty jurisdiction at common law.

84. The Committee agreed to make that amendment and was otherwise content with the paragraph.

**PARAGRAPH 12** (*now omitted*)

*Care of Churches and Ecclesiastical Jurisdiction Measure 1991*

85. The Committee agreed that paragraph 12 should be left out as a result of the decision it had made to replace section 17 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 in its entirety. (See above in relation to clause 8.)

**PARAGRAPH 13** (*now paragraph 12*)

*Pensions Measure 1997*

86. No proposals were received in relation to paragraph 13 and the Committee made no amendments.

**PARAGRAPH 14** (*now paragraph 13*)

*National Institutions Measure 1998*

87. The Steering Committee proposed an amendment to paragraph 14 (*new sub-paragraph (2)*) to insert a provision to put beyond doubt that the power of the Archbishops' Council to apply or distribute sums made available by the Church Commissioners includes power to distribute those sums to dioceses for them to apply as they think most appropriate. The Committee was advised that this has not been raised as an issue by anyone outside the National Church Institutions, but that it was possible to read section 2(3) in more than one way. The amendment also makes clear that this has always been the effect of section 2(3).

88. The Committee agreed to the amendment and was otherwise content with paragraph 14.

**PARAGRAPH 15** (*now paragraph 14*)

*Cathedrals Measure 1999*

89. A member of the Committee, the Reverend Canon Perran Gay, suggested that where the guardianship of the spiritualities belonged to a cathedral it should formally belong to the corporate body of the cathedral, rather than belonging to the Chapter, but that it should be exercisable by the Chapter on behalf of the corporate body.

90. Having considered the matter further, staff advised that Canon Gay was correct and that the draft Measure and the draft Amending Canon should be amended accordingly. Draft amendments were prepared and the Committee agreed to make them.

**PARAGRAPH 16** (*now paragraph 15*)

*Dioceses, Pastoral and Mission Measure 2007*

91. Sub-paragraph (2) amends the Dioceses, Pastoral and Mission Measure 2007 so that the Chair of the Dioceses Commission need not be selected from among existing members of the General Synod as the 2007 Measure currently requires. Some members of the Committee supported sub-paragraph (2) on the basis that the existing requirement unduly restricted the pool of candidates eligible for appointment. Others considered that the pool ought to be restricted to existing members of the General Synod so as to avoid increasing the number of ex officio members.

92. The Committee voted by 8 to 2 to retain sub-paragraph (2). The Committee decided that it should be removed to the body of the draft Measure as it was concerned with a matter of substance. (See now clause 16(4) in GS 1866A.)

93. The Committee was content with the rest of paragraph 16.

**PARAGRAPH 17** (*now paragraph 16*)

*Ecclesiastical Offices (Terms of Service) Measure 2009*

94. The Steering Committee proposed an amendment of paragraph 17 to omit paragraph (d) to avoid duplication of the repeal.

95. The Committee agreed to the amendment and was content with the rest of paragraph 17.

**PARAGRAPH 18** (*now paragraph 17*)

*Church of England (Miscellaneous Provisions) Measure 2010*

96. No proposals were received in relation to paragraph 18 and the Committee made no amendments.

**PARAGRAPH 19** (*now paragraph 18*)

*Mission and Pastoral Measure 2011*

97. The Steering Committee proposed a number of amendments to paragraph 19, making small technical changes to the procedures under the Mission and Pastoral Measure 2011.

98. Those amendments (*now sub-paragraphs (2) to (5)*):

- a. amend sections 6 and 21, respectively, to provide that all clergy, and not only those who are stipendiary, should be consulted about proposals for schemes under the Measure;
- b. make minor drafting changes to section 7; and
- c. amend section 39 to provide that the coming into force of a pastoral scheme is delayed only if it abolishes the office of a person holding office under Common Tenure who is in receipt of a stipend or other emoluments (including housing), but not if it abolishes the office of someone who is entirely self-supporting. This contrasts with the present position where the abolition of any office may delay the coming into force of a scheme.

99. The Steering Committee proposed an amendment to sub-paragraph (3) (*now sub-paragraph (7)*) to enable the Churches Conservation Trust to dispose of fixtures, fittings and other contents of a church building vested in it, where the Church Commissioners consent to such a disposal. At present the only way for them to dispose of church contents is for the Church Commissioners to authorise the disposal by a scheme, which is a time-consuming process.

100. The Steering Committee proposed amendments to sub-paragraph (5) (*now sub-paragraph (9)*) to correct a minor drafting error in the opening words, and to add applying for listed buildings consent to the purposes for which the moneys in the closed church buildings support account may be used.

101. The Steering Committee proposed an amendment to section 101 of the Mission and Pastoral Measure 2011 (*now sub-paragraph (11)*) enabling, but not requiring, any person who serves documents under that Measure to do so by electronic means.

102. The Steering Committee proposed an amendment to sub-paragraph (7) (*now sub-paragraph (12)*) that was concerned with the position where a person was in receipt of compensation, in the form of periodical payments, for loss of office resulting from a pastoral scheme. The provision substituted by sub-paragraph (7) would provide that such a person was deemed to be in pensionable service for the purposes of the rules of the Church of England Funded Pension Scheme such that he or she would continue to accrue benefits under the Scheme for so long as he or she continued to receive periodical payments. The amendment would make it clear that such a person was nevertheless not in “service” for the purposes of the Funded Scheme rules generally. So, for example, should such a person die while receiving periodical payments, that would not constitute death in service. The amendment would make the existing position clearer in the legislation.

103. A further amendment proposed by the Steering Committee to sub-paragraph (7) was concerned with the position where the mission and pastoral committee of the diocese may, in certain circumstances, suspend periodical payments being made in respect of loss of office. The circumstances in question are that the member of the clergy concerned has either been appointed to an ecclesiastical office, or has refused an ecclesiastical office, or has become engaged in remunerated employment. The new sub-paragraph inserted by the amendment would provide that where a person's periodical payments had been suspended in such circumstances, that person would not be deemed to be in pensionable service – and would not therefore accrue benefits under the Church of England Funded Pension Scheme – for the period of suspension.

104. The Committee agreed to make the amendments.

#### **PARAGRAPH 20** (*now paragraph 19*)

##### *Church of England Pensions Regulations 1988*

105. No proposals were received in relation to paragraph 20 and the Committee made no amendments.

### **PROPOSALS FOR NEW PROVISIONS**

#### **PROPOSED NEW CLAUSE**

##### *Collection of parochial fees*

106. The Reverend Simon Cawdell proposed that in the case of a multi-parish benefice, the incumbent should have a statutory power to collect all parochial fees and distribute them to those who are entitled to receive them. As a reason for this he cited the case where one of the PCCs in his benefice had collected fees that belonged to the DBF but had failed to account to the DBF for those fees.

107. What Mr Cawdell had in mind was a system whereby the incumbent (or other person authorised by the archdeacon) would be entitled to establish a bank account controlled by the incumbent into which all parochial fees relating to a benefice would be paid and that the incumbent would then be responsible for disbursing those fees to the rightful recipient (i.e. the DBF or the PCC).

108. The Committee was advised that what Mr Cawdell proposed could already be achieved in practice without legislation if the persons paying the fees were content to rely on the incumbent to receive money from them on the basis that he or she would, on their behalf, pay it to the body entitled to receive the relevant fees. In those circumstances the incumbent would be acting as the agent of the persons who were liable to pay the relevant fees and the bodies who were entitled to receive the fees would have no legal basis for objecting to that.

109. The Committee was further advised that any legislation designed to achieve what Mr Cawdell had in mind would be complex since it would need to make provision entitling the incumbent to act as agent for the DBF and PCC without their consent and safeguards would need to be built in.

110. The Committee voted against Mr Cawdell's proposal by 7 votes to 1. The Committee agreed that the legal advice it had received (see above) should be set out in this report in order to make it clear that the difficulty identified by Mr Cawdell could be adequately addressed without the need for legislative provision.

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

### *Powers of Church Commissioners and Pensions Board to enter into derivative contracts*

111. The Steering Committee proposed a new clause to put beyond doubt the power of the Church Commissioners and the Church of England Pensions Board to enter into derivative contracts in relation to the Commissioners' corporate property and the Pensions Board's charitable funds.
112. The background to the proposal is that it has always been considered that both bodies have the capacity to acquire derivatives. However, last year certain banks questioned whether either the Commissioners or the Pensions Board had the capacity to do so. Their view was that a charitable body needs very clear authority to be able to enter into a derivative contract, and that ideally the authority should expressly mention derivatives. This requires legislative amendment as the investment powers of both bodies are governed by statute.
113. The Committee was advised that the new clause defines "derivative contracts" and related terms by reference to the Corporation Tax Act 2009, rather than creating a separate definition for the Measure. This has the advantage that it will attract any case law about the meaning of "derivative contracts" arising out of litigation about the Corporation Tax Act, which will help to keep it in step with the wider use of the expression.
114. In order to avoid the same issue arising in relation to a different kind of financial instrument in future, the new clause also makes provision for each body to make regulations adding other kinds of instrument to the power conferred by the legislation. Such regulations will be subject to the scrutiny of the General Synod, which will have power to amend them, but will be subject to a shorter procedure than a Measure, so that the change could be made with reasonable speed if necessary.
115. The Committee was advised that the new powers would be subject to the overriding fiduciary duties of members of the Pensions Board and the Commissioners' Assets Committee, as charity trustees, to act in the best interests of the charity. The powers would also be subject to policies made from time to time by the Church Commissioners and the Pensions Board about the proper exercise of their powers of investment. In an investment context charity trustees are required to act prudently and to have regard to the need to maintain a diverse range of investments. The Committee was advised that the Charity Commission expressly acknowledges that for a charity with a large portfolio of assets, it may be appropriate to make use of derivative contracts.
116. The Committee was also advised that the Commissioners intended to use derivatives only to hedge other investments, or to protect themselves against price changes in advance of buying shares, and that the Pensions Board intended to use them only to hedge interest rate risks inherent in the loan arrangement for financing the Clergy Retirement Housing Scheme (CHARM).
117. The Committee agreed to insert the new clause.

### **PROPOSED NEW CLAUSE** *(now clause 11)*

#### *Right of appeal under Incumbents (Vacation of Benefices) Measure 1977*

118. The Steering Committee proposed a new clause to confer a right of appeal against the findings of an enquiry under Part 1 (which deals with pastoral breakdown) or Part 2 (which deals with incapacity of an incumbent) of the Incumbents (Vacation of Benefices) Measure 1977 ("the 1977 Measure").
119. There is presently no procedure under the Measure for an appeal. The Committee was advised that it is good practice to have an appeal process in any judicial or quasi-judicial process for the purpose

of the Human Rights Act 1998, to ensure that if the procedure in a particular case is flawed, the person whose rights are affected by that decision has an opportunity to challenge it.

120. The Committee noted that the 1977 Measure applies only to freehold incumbents and has no application to any office holder on Common Tenure, so the Measure will eventually cease to have any application. However, it will continue in effect for as long as there continue to be freehold incumbents, so it is highly desirable to provide this right of appeal.

121. The Committee agreed to insert the new clause. (See clause 11 in GS 1866A.)

**PROPOSED NEW CLAUSE** (*now clause 14*)

*Cathedrals – investment of endowment funds on total return basis*

122. The Steering Committee proposed a new clause, amending the Cathedrals Measure 1999 (“the 1999 Measure”) to enable the Chapter of a cathedral to pass a resolution to invest its permanent endowment on a total return basis. This clause, and the associated new Schedule A1 to the 1999 Measure, reflect the provision for other charities made by the Trusts (Capital and Income) Act 2013 and the Charity Commission regulations to be made under it.

123. The Committee was advised that cathedrals are not able to benefit from the power conferred by the new secular legislation because they are not “charities” within the meaning given by the Charities Act 2011, which excludes “ecclesiastical corporations” from the definition. Sections 16 and 17 of the 1999 Measure restrict, by implication, the Chapter of a cathedral from spending capital or capital gains and limit them to spending income generated by the cathedral’s permanent endowment. There is a risk that restrictions of this kind could lead cathedrals to distort their investment decisions in favour of income-producing assets, which could lead to erosion of the real value of the permanent endowment over time.

124. The effect of a power to invest on a total return basis would be that it would not matter in practical terms whether returns were received as income or capital gains, as both types of return would be available for use for the cathedral’s activities or for reinvestment as part of the permanent endowment. Such a power would not alter the Chapter’s fiduciary obligation to strike a proper balance between support for the cathedral now and preservation of funds for the future support of the cathedral. However, it would enable greater flexibility in achieving that balance.

125. The Committee was advised that, in general, the provision for cathedrals reflected the substance of the provision for other charities made by draft regulations published by the Charity Commission while the Bill for the Trusts (Capital and Income) Act was being considered by Parliament. However, the Charity Commission regulations also made provision for charities to “borrow” up to 10% of their permanent endowment, in addition to the unapplied total return, for expenditure for the charity’s purposes, and to repay the funds on a timescale to be agreed by the charity’s trustees. This power had been omitted from the provision for cathedrals on the strong advice of the Church Commissioners, who considered it contentious.

126. The new clause provided for cathedrals to adopt a total return approach to their permanent endowment if the Chapter was satisfied that it was in the best interests of the cathedral to do so and passed a resolution accordingly. It also provided for amendment or revocation of such a resolution.

127. The Committee agreed to insert the new clause. (See clause 14 in GS 1866A.)

**PROPOSED NEW CLAUSE** (*now clause 17*)



*Power for chancellor to determine fees*

128. The Steering Committee proposed a new clause to put beyond doubt that the chancellor of a diocese had the power to prescribe the fees that were payable where a faculty was granted for the introduction of a monument in a church (or for an additional inscription on such a monument), or for the reservation of a grave space, or for the construction of a vault. Chancellors had customarily prescribed the fees payable in those situations but a question had arisen as to the basis of their power to do so. The Ecclesiastical Fees Measure 1986 (as amended by the Ecclesiastical Fees (Amendment) Measure 2011) already made provision for the chancellor to prescribe the fees payable in other comparable situations. This new clause should ensure that there was no lacuna in the chancellor's powers.
129. The Committee agreed to insert the new clause. (See clause 17 in GS 1866A.)

**PROPOSED NEW CLAUSE** (*now clause 18*)

*Kensal Green Cemetery*

130. The statute 2&3 Will. IV c. cx is a private Act of Parliament "*for establishing a General Cemetery for the Interment of the Dead in the Neighbourhood of the Metropolis*". The Committee was informed that the General Cemetery Company, which was established under section 1 of the Act and which owns and operates Kensal Green Cemetery, had been involved in discussions with the Bishop of London concerning plans it had to lease the consecrated cemetery chapel to a charity who would then restore and maintain it. Section 5 of the Act presented a difficulty, however, in that it made it unlawful for the Company to "*sell or dispose of any Land which shall have been consecrated and set apart for the burial of the dead*". As the chapel was consecrated and contained vaults for burial, the prohibition on sales and disposals imposed by section 5 applied to it.
131. At the request of the Bishop of London the Steering Committee proposed the insertion of a new clause that would permit the Company to sell or dispose of (e.g. lease) any such land if the disposal was authorised by a faculty granted by the London Consistory Court. Any such sale or disposal would be on such terms and subject to such conditions as the court determined. The Committee was advised that there was a partial precedent for this approach in the provisions contained in section 68 of the Mission and Pastoral Measure 2011 which empowered consistory courts to grant faculties authorising the leasing of parts of churches.
132. The Committee agreed to insert the new clause. (See clause 18 in GS 1866A.)

**PROPOSED NEW CLAUSE** (*now clause 19*)

*Provisions relating to Christ Church, Oxford*

133. At the request of Christ Church, Oxford the Steering Committee proposed the insertion of a new clause amending section 2 of the Church of England (Miscellaneous Provisions) Measure 1995.
134. Section 5 of the Ecclesiastical Commissioners Act 1840 annexed a (residentiary) canonry at Christ Church, Oxford to the Lady Margaret's Professorship of Divinity in the University of Oxford. The Dean and Canons of Christ Church, following consultation with the Theology Faculty Board of the University, wished it to be possible for the Lady Margaret's Professorship to be held either by a residentiary canon or by a lay canon.

135. Section 2(3) of the Church of England (Miscellaneous Provisions) Measure 1995 already provided for the Regius Professorship of Ecclesiastical History – to which another canonry of Christ Church had been annexed by section 6 of the 1840 Act – to be held by a residentiary canon or a lay canon.
136. The effect of the amendment proposed by the Steering Committee would be to replace the existing section 2(3) of the 1995 Measure with a new subsection that referred to both the Regius Professorship of Ecclesiastical History and the Lady Margaret’s Professorship and provide for each of them to be held either by a residentiary canon or a lay canon.
137. The Committee was advised that under section 2 of the 1995 Measure, a lay canon had to be a communicant member of the Church of England, or a member of a church to which the Church of England (Ecumenical Relations) Measure 1988 applied and who was entitled lawfully to take part in public worship in accordance with the forms of service and practice of the Church of England.
138. The Committee agreed to insert the new clause. (See clause 19 in GS 1866A.)

**PROPOSED NEW SCHEDULE PARAGRAPH** (*now paragraph 5 of Schedule 2*)

*Sharing of Church Buildings Act 1969*

139. The Steering Committee proposed the insertion of a new paragraph amending the Sharing of Church Buildings Act 1969 (“the 1969 Act”).
140. Section 11 of the 1969 Act provides for any church “represented on the General Council of the British Council of Churches or on the governing body of the Evangelical Alliance or the British Evangelical Council” to become a church to which the Act applies (i.e. a church in respect of which a sharing agreement under the Act may be made). The General Secretary of the appropriate body then has to insert a notice in the London Gazette specifying that the Act applies to the church in question, and the appropriate authority for sharing agreements.
141. The Committee was advised that that provision is seriously out-of-date, as the British Council of Churches has changed its name more than once and is now Churches Together in Britain and Ireland. It has become an incorporated charity and no longer has a General Council. The Evangelical Alliance no longer has a representative governing body.
142. It is likely that some of the gazettings of churches in recent years have been made unlawfully, as it would have been impossible to comply with the requirements of the 1969 Act as it stands. The amendment therefore makes provision for future gazettings to be made in accordance with the new structures, and also makes retrospective provision (in new subsection (4)) to ensure that past gazettings are treated as always having been lawful.
143. It was noted that the British Evangelical Council has now changed its name to Affinity, and that information about their current arrangements for gazetting of churches had not been received from them in time for inclusion in the draft. The Committee was advised that additional amendments might be needed at a later date to make provision for gazettings of churches by Affinity.
144. The Committee agreed to the insertion of the new paragraph. (See paragraph 5 of Schedule 2 in GS 1866A.)

**PROPOSED NEW SCHEDULE PARAGRAPH** (*now paragraph 10 of Schedule 2*)

145. In the light of a submission received from the Council for Christian Unity, the Steering Committee proposed the insertion of a new paragraph amending the Church of England (Ecumenical Relations) Measure 1988 (“the 1988 Measure”).

146. The archbishops have the power, under the 1988 Measure, to designate churches to which the Measure – and as a consequence, the ecumenical canons – are to apply. Section 5 of the 1988 Measure prescribes the criteria that a Church must satisfy in order to be eligible for designation by the archbishop as follows–
- “(2) No Church shall be designated under subsection (1) above unless–
- (a) the Church subscribes to the doctrine of the Holy Trinity and administers the Sacraments of baptism and Holy Communion; and
  - (b) the Sharing of Church Buildings Act 1969 applies to the Church at the time of designation or, in the case of a Church outside the United Kingdom, it is nominated by the General Synod for the purposes of this section by resolution.”
147. The proposed new paragraph to be inserted into the Schedule of the draft Measure would amend paragraph (b) above so as to replace the requirement relating to the Sharing of Church Buildings Act 1969 (“the 1969 Act”) with a different requirement. It would leave the existing paragraph (a) in place.
148. The Committee was advised that the difficulty with the existing reference in paragraph (b) to the 1969 Act was that certain provisions in that Act had become ineffective owing to the way in which at least one of the ecumenical bodies which is responsible for ‘gazetting’ Churches under the Act (the statutory means by which the Act is applied to Churches) had reorganised itself under a new constitution. This was through inadvertence rather than design but the result was that it was not currently possible for the 1969 Act to be applied to some Churches who would formerly have qualified. A further consequence of that was that it was not possible for some Churches with whom the Church of England might wish to enter into formal ecumenical relationships to be designated by the archbishops under the 1988 Measure.
149. The Council for Christian Unity had therefore asked the Steering Committee to bring forward a proposal which would uncouple the criteria for designation of Churches by the archbishops from the machinery of the 1969 Act. It nevertheless asked that the underlying policy should remain the same – namely that the Church in question should be a member of one of the ‘ecumenical instruments’, thereby demonstrating that it was committed to ecumenical goals and that it had the necessary organisational identity to enter into formal ecumenical relationships. It therefore proposed that the requirement that a Church be one to which the 1969 Act applied should be replaced with the requirement that the Church in question belong to one of the following ecumenical bodies (or ‘ecumenical instruments’)–
- a. Churches Together in Britain and Ireland;
  - b. Churches Together in England;
  - c. The Evangelical Alliance; or
  - d. Affinity
150. In order to deal with the possibility of future reorganisation of the ecumenical instruments, CCU further proposed that membership of a body which was determined by the archbishops to be the successor of any of the above bodies should satisfy the requirement.
151. It was not proposed to amend the other criteria for designation contained in section 5 of the 1988 Measure (including the requirement that in order to be designated a Church must be one which subscribes to the doctrine of the Holy Trinity and administers the Sacraments of baptism and Holy Communion).
152. CCU’s proposal had received the support of the Archbishop of York and of the former Archbishop of Canterbury.

153. The Committee agreed to insert the new paragraph as proposed by the Steering Committee. (See paragraph 10 of Schedule 2 in GS 1866A.)

**PROPOSED NEW SCHEDULE** (*now Schedule 1*)

154. The Steering Committee proposed the insertion of a new Schedule inserting a new Schedule A1 to the Cathedrals Measure 1999 (“the 1999 Measure”). New Schedule A1 is inserted by new section 17A of the 1999 Measure (see section 14 in GS 1866A). It makes provision relating to the records, annual report and accounts of a cathedral which has passed a total return resolution.
155. The Committee agreed to insert the new Schedule as proposed by the Steering Committee. (See Schedule 1 to GS 1866A.)

**PROPOSED NEW SCHEDULE** (*now Schedule 3*)

156. The Steering Committee proposed the insertion of a new Schedule amending Schedule 2 to the Sharing of Church Buildings Act 1969. The new Schedule lists all churches that have been gazetted since the Act came into force, and the appropriate authority for each church entering into a sharing agreement. It is introduced by a new paragraph of the Schedule (*now paragraph 5 of Schedule 2*).
157. The Committee agreed to insert the new Schedule as proposed by the Steering Committee. (See Schedule 3 to GS 1866A.)

## The Draft Amending Canon

### PARAGRAPHS 1 -4

158. No proposals were received in relation to paragraphs 1 – 4 and the Committee made no amendments.

### PARAGRAPH 5 (*now paragraph 8*)

159. In his submission Mr Vincent made a number of points about the way in which the new Canon C 19 (Of guardians of spiritualities) was expressed. He raised a concern over the lack of a definition of the “guardianship of the spiritualities” and of “the spiritualities”, about the meaning of “the Chapter” and of “spiritual jurisdiction” and about the use of the expression “presentation to benefices sede vacante”. Mr Tim Hind had also sent a submission related to the last point, asking that “sede vacante” be replaced with an English expression.
160. The Committee was advised that the terms “guardianship of the spiritualities” and of “the spiritualities” had a long-established legal meaning. The Canons did not include definitions of terms that had established meanings in ecclesiastical law and it would be strange and unhelpful to single-out this particular canon for such treatment.
161. The Committee was advised that the reference to “the Chapter of the cathedral church” in GS1877 was a reference to the statutory body of that name established by the constitution of each cathedral under section 4 of the Cathedrals Measure 1999.
162. The Committee was advised that “spiritual jurisdiction” was a legal jurisdiction. It did not amount to the exercise of the functions of a bishop as “the chief pastor of all that are within his diocese, as well laity as clergy, and their Father in God”. It was concerned with jurisdiction rather than pastoral and sacramental ministry. Given that the ordinary meaning of “jurisdiction” was legal authority and that “spiritual jurisdiction” precisely described the function that was exercised by the guardian of the spiritualities it would be unhelpful to attempt to define that term further.
163. The Committee was advised that “sede vacante” was included in the Shorter Oxford English Dictionary as an English word rather than as a foreign word.
164. The Committee was advised that if a description of sede vacante patronage was required to replace the shorthand term employed in the draft Canon something along the lines of the description employed in section 2 of the Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure 2010 would be required. This was “where Her Majesty has the right of presentation to an ecclesiastical office which is vacant during a vacancy in the see of a diocesan bishop and to which the right of presentation would, but for that vacancy, be exercisable by that bishop”.
165. The Steering Committee was not in favour of replacing “sede vacante” with a different expression. It was a short and simple term and its meaning would not be any clearer if it was expressed differently. The Steering Committee was also concerned that the Canons should not contain commentary on their content.
166. The Committee voted by 10 votes to 1 in favour of retaining the expression “sede vacante”. It voted against inserting explanations of other technical terms employed in the Canon.
167. Some members of the Committee nevertheless had sympathy with the points raised by Mr Vincent and requested that the Legal Office should produce a guidance note on the new Canon when it was promulgated.

168. The Committee agreed to make amendments to the new Canon C 19 to take account of the amendment it had made to paragraph 15 of the Schedule to the Measure in the light of Canon Gay's proposal relating to the guardianship of spiritualities. (See above.)

**PARAGRAPH 6** (*now paragraph 9*)

169. In order to achieve consistency with s3(4) of the Ecclesiastical Offices (Terms of Service) Measure 2009, the Steering Committee proposed an amendment to Canon D 3 to provide that the licence of a deaconess who is subject to Common Tenure may be revoked in accordance with the capability procedures as well as on grounds of the person's misconduct.

170. The Committee agreed to make the amendment.

**PARAGRAPH 7** (*now paragraph 10*)

171. In order to achieve consistency with s3(4) of the Ecclesiastical Offices (Terms of Service) Measure 2009, the Steering Committee proposed an amendment to Canon E 6 to provide that the licence of a reader who is subject to Common Tenure may be revoked in accordance with the capability procedures as well as on grounds of the person's misconduct.

172. The Committee agreed to make the amendment.

**PARAGRAPH 8** (*now paragraph 11*)

173. In order to achieve consistency with s3(4) of the Ecclesiastical Offices (Terms of Service) Measure 2009, the Steering Committee proposed an amendment to Canon E 8 to provide that the licence of a lay worker who is subject to Common Tenure may be revoked in accordance with the capability procedures as well as on grounds of the person's misconduct.

174. The Committee agreed to make the amendment.

**PARAGRAPHS 9 – 13**

175. No proposals were received in relation to paragraphs 9 – 13 and the Committee made no amendments.

**PROPOSED NEW PARAGRAPHS**

176. The Steering Committee proposed the insertion of three new paragraphs to amend Canon C 15 (Of the Declaration of Assent). These amendments had originally been included, as miscellaneous provisions, in Amending Canon No. 30. That Amending Canon was primarily concerned with women in the episcopate and did not receive final approval. However the provisions amending Canon C 15 had nothing to do with women in the episcopate and had been included in Amending Canon No. 30 only as a matter of convenience.

177. The proposed amendments to Canon C 15 were as follows.

178. The word "provost" should be omitted where it occurred in paragraph 2 of the Canon as all cathedrals now had deans.

179. The reference to the "occasion of his investiture" of a suffragan bishop should be replaced with a reference to "the occasion of the commencement of his public ministry in the diocese". This was on the basis that there was no formal proceeding known as "investiture" in relation to suffragan

bishops and therefore an amendment was required to describe the occasion on which a new suffragan would be required to make the Declaration of Assent.

180. As Canon C 15 currently stood, when a new suffragan made the Declaration of Assent, the Preface to the Declaration was required to be read by the Archbishop of the Province. However, it was normally the case that the Archbishop would not be present on such an occasion. The amendment would have the effect that the Bishop of the Diocese would read the Preface.
181. The Committee agreed to insert the amendments to Canon C 15. (See paragraphs 5 – 7 in GS 1877A.)

Caroline Spencer  
on behalf of the Committee

May 2013

Church House, Westminster

**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 53(b)

**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	Standing Counsel	Update to include references to various additional Measures and new clauses inserted by the Revision Committee.	Accepted.
2	Rt Worshipful Timothy Briden	Clarify new section 25(2) to make clear that an applicant in relation to exhumation does not have a free choice between seeking authorisation under ecclesiastical law or seeking a licence from the Secretary of State.	Accepted.
6	Steering Committee #	Amend new section 5A(b) to include a reference to censures under the Ecclesiastical Jurisdiction Measure 1963.	Accepted.
6	Revd Hugh Lee *	Insert new provision making it unlawful for the Archbishops to deny permission to officiate under the Overseas and Other Clergy (Ministry and Ordination) Measure 1967 to deacons and priests on the ground that they were ordained by women bishops.	Not accepted.
7	Steering Committee #	Amend new section 16A as follows: - in sub-section (3), after “subsection 2” insert “(a)” and leave out “if in either case, he has not already done so” since the words are unnecessary; - in sub-section (3), leave out “, unless the bishop is the registered patron”; - in sub-section (3)(a) and (b) leave out “instituted or collated” and insert “admitted” to improve the drafting; -replace sub-section (4) since the existing sub-section is unnecessary – the new sub-section ensures consistency with the ‘section 11 meeting’ requirements for the filling of a vacancy;	Accepted.



		-insert a new sub-section (3).	
7	Mr Malcolm Halliday # <i>and</i> Mr John Mason	Amend new section 16A so as to exclude the priest-in-charge or his or her spouse or civil partner from a meeting of the PCC when it is considering whether to approve the appointment of the priest-in-charge as incumbent.	Accepted.
7	Revd Hugh Lee *	Amend new section 16A so that the PCC must appoint two lay representatives to approve the appointment of the priest-in-charge as incumbent instead of approval by the PCC itself.	Not accepted.
12	Standing Counsel #	Amend clause 12 to make general provision about the extent and commencement of the new provisions inserted into the Measure, including provision for the Isle of Man.	Accepted.
Schedule, generally	Rt Worshipful Charles George QC	Move paragraphs 3, 4, 5, 6, 7, 8, 10, 16 and 19 to the main body of the Measure.	Accepted in relation to paragraphs 4, 6, 7(2) and 16(2).
Schedule, paragraph 3	Steering Committee #	Insert a new sub-paragraph after 3(2) to permit the Archbishop of Canterbury to nominate a member of the Board to act as chair in his absence for a period of five years.	Accepted.
Schedule, paragraph 3	Steering Committee #	Insert a new sub-paragraph after 3(5) to provide that a declaration of membership of the Church of England, which must be signed by newly appointed lay Church Commissioners before an officer of the Commissioners, may be signed remotely and returned to an officer of the Board subsequently.	Accepted.
Schedule, paragraph 4	Standing Counsel #	Replace the word “and” in new section 3A(4)(a) with “or”.	Accepted.
Schedule, paragraph 4	Revd Hugh Lee *	Insert provision stating, “nothing in this Measure overrides the requirement of the Charities Commission for charities or gives greater powers than are allowed by the Charities Commission on this matter”.	Not accepted.
		Amend new section 3A to distinguish between those on short-term contracts and those on ongoing contracts of employment.	Not accepted.
		Amend new section 3A to require a PCC member to be out of the room when his or her contract is being discussed or voted upon.	Not accepted.
		Amend new section 3A(2)(b) so that the total number of persons employed by the	Not accepted.

		<p>PCC must not constitute more than a third of its members.</p> <p>Clarify the meaning of “services provided by a person in that person’s capacity as a member of the council” in the new section 3A(3).</p>	Not accepted.
Schedule, new paragraph after paragraph 5	Steering Committee #	Insert a new paragraph to update the provision for adding churches to the list of bodies with which a sharing agreement may be made in relation to a church building.	Accepted.
Schedule, paragraph 6	Mr Jim Cheeseman *	Omit, since it is not uncontroversial to make the Chair of the Dioceses Commission an ex officio member of General Synod.	Not accepted.
Schedule, paragraph 7(3)–(5)	Steering Committee #	Leave out sub-paragraphs (3) to (5) and replace with new sub-paragraphs (3) and (4) to improve the drafting.	Accepted.
Schedule, paragraph 8	Steering Committee #	Insert “but shall not constitute “service” for any other purpose of those rules” after “rules” in sub-paragraph 8(d) to make clear that a person in receipt of compensation under Schedule 2 of the Incumbents (Vacation of Benefices) Measure 1977 is not “in service” for the purposes of the Funded Scheme rules generally.	Accepted.
Schedule, paragraph 8	Standing Counsel #	Correct the cross reference to “paragraph 12” in sub-paragraph 8(e) to “paragraph 2”.	Accepted.
Schedule, paragraph 10	Mr John Mason	Insert provision to amend section 10 of the Patronage (Benefices) Measure 1986 so that a clerk cannot be presented to the benefice by a patron who is the spouse or civil partner of that clerk.	Accepted.
Schedule, paragraph 10	Steering Committee #	In sub-paragraph (4), in the new subsection (7A)(a), leave out the words from “second reference” to the end and insert “the second and third references to Her Majesty were references to the relevant bishop”.	Accepted.
Schedule, new paragraph after paragraph 10	The Council for Christian Unity	Amend the Church of England (Ecumenical Relations) Measure 1988 to deal with a problem that has arisen in respect of the practical operation of the Measure, as it relates to the Sharing of Church Buildings Act 1969. Act.	Accepted.
Schedule, paragraph 11	Steering Committee #	At the end of the paragraph insert the words “or is otherwise subject to the faculty jurisdiction” to take account of the possibility that there may be chapels in	Accepted.

		episcopal houses of residence that are already subject to the faculty jurisdiction at common law.	
Schedule, paragraph 12	Steering Committee #	Omit, in light of the insertion in clause 8 of a new section replacing section 17 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 in its entirety.	Accepted.
Schedule, paragraph 14	Steering Committee #	Insert a new sub-paragraph after 14(1) to make explicit the Archbishops' Council's power to distribute monies under section 67 of the Ecclesiastical Commissioners Act 1840 to dioceses.	Accepted.
Schedule, paragraph 15	Canon Perran Gay #	Amend new section 36(1B) so that the guardianship of the spiritualities belongs to the corporate body of the cathedral but is exercised by the Chapter on its behalf..	Accepted.
Schedule, paragraph 16	Canon Perran Gay #	Omit sub-paragraph 16(2) so that the pool of candidates available to be appointed as Chair of the Dioceses Commission should be restricted to members of the General Synod.	Not accepted.
Schedule, paragraph 17	Steering Committee #	Leave out sub-paragraph 17(d), since the provisions it purports to repeal have already been repealed by previous legislation.	Accepted.
Schedule, paragraph 19	Steering Committee #	<p>Insert new sub-paragraphs (2)-(5) to make various changes to the Mission and Pastoral Measure 2011, including so that all clergy should be consulted about any scheme that would affect their ministry.</p> <p>Insert a new section 57(5B) in paragraph 19(3) to enable the Churches Conservation Trust to dispose of fixtures, fittings and other contents of a church building vested in it, where the Church Commissioners consent to such a disposal.</p> <p>In sub-paragraph (5) leave out "shall be" and insert "is" and in sub-paragraph (5)(c) in new sub-section (3A) after "planning permission" insert "or listed building consent".</p> <p>After sub-paragraph (6) insert a new sub-paragraph (7) to permit the service of documents by electronic means.</p> <p>Amend sub-paragraph (7)(a) to make clear that a person in receipt of compensation under Schedule 4 of the Mission and Pastoral Measure 2011 is not "in service" for the purposes of the Funded Scheme rules generally.</p> <p>After sub-paragraph (7)(d) insert a new</p>	Accepted.

		provision to make clear that where a person's periodical payments under Schedule 4 of the MPM 2011 have been suspended, the person will not be deemed to be in pensionable service for the period of suspension.	
New clause	Steering Committee #	Insert a new clause to give the Church Commissioners and the Pensions Board express power to make investments by entering into derivative contracts, derivative financial instruments and equity instruments, and to confer power on the Church Commissioners and Pensions Board to make regulations permitting investment in other kinds of financial instrument.	Accepted.
New clause	Steering Committee #	Insert a new clause to give the chancellor an express statutory power to determine the amount of fees payable to the PCC or DBF when a faculty is granted for certain purposes.	Accepted.
New clause	Steering Committee #	Insert a new clause to give the London Consistory Court the power to grant a faculty for the sale or disposal of land forming part of Kensal Green Cemetery.	Accepted.
New clause	Rt Worshipful Charles George  Steering Committee #	Substantially revise section 17 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991.  Replace section 17 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 in its entirety.	Accepted in modified form in the Steering Committee's proposed amendment below.  Accepted.
New clause	Steering Committee #	Insert a new clause 12A in the Incumbents (Vacation of Benefices) Measure 1977 providing for an appeal procedure from the findings of an enquiry under Part 1 or 2 of the Measure.	Accepted.
New clause	Steering Committee #	Insert a new clause 17A in the Cathedrals Measure 1999 enabling cathedrals to invest and spend on a total return basis.	Accepted.
New clause	Steering Committee #	Insert a new clause into the Church of England (Miscellaneous Provisions) Measure 1995 to enable the Lady Margaret's Professorship of Divinity at Christ Church, Oxford, to be held by either a residentiary canon in the chapter or by a lay canon.	Accepted.
New clause	Revd Simon Cawdell	Insert a new provision to give the incumbent power, in the case of a multi-parish benefice, to collect all parochial	Not accepted.

		fees and to distribute them to those who are entitled to receive them.	
New Schedule	Steering Committee #	Insert a new Schedule A1 into the Cathedrals Measure 1999 requiring the Chapter of a cathedral to make certain provisions in its annual report and accounts if it has passed a total return resolution.	Accepted.
New Schedule	Steering Committee #	Insert a new schedule listing the churches and appropriate authorities to be added to Schedule 2 to the Sharing of Church Buildings Act.	Accepted.

**DRAFT AMENDING CANON No. 31**

<b>Paragraph in original draft Canon (GS 1877)</b>	<b>Name</b>	<b>Summary of proposal</b>	<b>Committee's decision</b>
Heading	Steering Committee #	Amend the heading to include a reference to Canon C 15, "Of the Declaration of Assent".	Accepted.
New paragraph after paragraph 4	Steering Committee #	Insert a new paragraph after paragraph 4 to amend paragraphs 2 and 3 of Canon C 15 (Of the Declaration of Assent).	Accepted.
5	Mr Adrian Vincent *	Define the terms "guardianship of the spiritualities" and "the spiritualities".	Not accepted.
5	Mr Adrian Vincent * Mr Tim Hind	Replace the use of "sede vacante" with English phrase.	Not accepted.
5	Canon Perran Gay #	Redraft paragraphs 1 and 2 of the new Canon C 19 to reflect that fact that the spiritualities are to belong to the corporate body of the cathedral rather than to the Chapter, but are exercisable by the Chapter.	Accepted.
6	Steering Committee #	Replace sub-paragraph (2) with a new sub-paragraph (2) to address an inconsistency between clause 17(c) of the draft Measure and the Amending Canon, in relation to the revocation of a deaconess' licence.	Accepted.
7	Steering Committee #	Replace sub-paragraph (2) with a new sub-paragraph (2) to address an inconsistency between clause 17(c) of the draft Measure and the Amending Canon, in relation to the revocation of a reader's licence.	Accepted.
8	Steering Committee #	Replace sub-paragraph (2) with a new sub-paragraph (2) to address an inconsistency between clause 17(c) of the draft Measure and the Amending Canon, in relation to the revocation of a lay worker's licence.	Accepted.