

GENERAL SYNOD

DRAFT CHURCH OF ENGLAND (ECCLESIASTICAL PROPERTY) MEASURE

REPORT OF THE REVISION COMMITTEE

Chair: Mr Robert Key (Salisbury)

Ex-officio members The Venerable Clive Mansell (Rochester) (Chair)
(Steering Committee): Mrs Julie Dziegiel (Oxford)
 The Reverend Canon Perran Gay (Truro)
 The Reverend Christopher Hobbs (London)
 Mrs Debrah McIsaac (Salisbury)

Appointed members: Ms Alison Fisher (Leeds)
 The Venerable Ian Jagger (Durham)
 Mr David Kemp (Canterbury)
 The Reverend Neil Patterson (Hereford)
 Mrs Ruth Whitworth (Chelmsford)

Staff: Mr Christopher Packer (Legislative Counsel to the General Synod)
 Ms Saira Salimi (Deputy Official Solicitor to the Church Commissioners)
 Mr Sion Hughes Carew (Secretary)
 Mr David White (Director of Financial Policy and Planning)

Consultant: Mr Lee Coley (Lee Bolton Monier Williams)

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

References to clause numbers reflect the original clause and paragraph numbers in GS 1921 unless otherwise indicated.

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

1. The draft Church of England (Ecclesiastical Property) Measure received First Consideration at the November 2013 group of sessions of the General Synod. The period for submission of proposals for amendment under Standing Order 53(a) expired on 23rd December 2013.
2. Prior to the closing date mentioned in paragraph 1, two members of the General Synod submitted proposals for amendment of the draft Measure. Proposals for amendment to the draft Measure were also made by the Steering Committee.
3. The Committee met on two occasions and the proposals which it accepted form the basis of the draft Measure (GS 1921A) now before the Synod. Amendments made by the Committee are shown in bold type.
4. One member of the Synod – Mr Clive Scowen – exercised his right under Standing Order 53(b) to attend while his proposals were considered and to speak to his proposals.

5. 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 Parochial Church Councils (Powers) Measure 1956

6. Mr Clive Scowen made a submission proposing a number of amendments to clause 1. He subsequently refined the proposals set out in that submission and, with the consent of the Committee, attended and spoke to the revised proposals.
7. He proposed that the requirement for vesting in the diocesan authority should be abolished, and that in its place a new requirement for the consent of the diocesan authority should be imposed on a disposal by a PCC of land or of property held on permanent trusts. The diocesan authority would be required to give its consent in any case where the archdeacon had been consulted by the PCC and certified that he or she did not object to the disposal.
8. The Committee had a number of concerns in relation to the proposal. They considered that it placed excessive burdens on archdeacons, who may not necessarily have expertise in relation to the disposal of property. They also considered that it removed an important safeguard: if property is vested in the diocesan authority, someone checks the relevant documents before the disposal. Not all PCCs have the necessary expertise, or instruct solicitors with the necessary expertise, to produce documents relating to sale of church property.
9. Some members of the Committee, however, supported the proposal to abolish vesting in the diocesan authority, on the basis that it better reflected the spirit of Mr Hobbs' original Private Member's Motion.
10. The Committee voted against the proposal by 7 votes to 3.
11. Mr Scowen also proposed an additional amendment to the 1956 Measure, unrelated to the subject matter of this draft Measure, to correct the reference to the "Rules for the Representation of the Laity" to refer to the Church Representation Rules set out in Schedule 3 to the Synodical Government Measure 1969. The Committee accepted that the amendment was obviously correct, but were advised by staff that it was outside the scope of this Measure and should be made when an appropriate vehicle (possibly the next Miscellaneous Provisions Measure) became available. The Committee therefore did not accept the amendment.
12. The Steering Committee also made proposals for amendment to Clause 1, to improve the drafting and reduce the number of changes to the Parochial Church Councils (Powers) Measure 1956. The substantive changes made by the amendments were relatively small: they included a slight amendment of the order-making power to remove the reference to the consideration "paid" (to cover, for example, the case of a lease at a market rent, where not all the consideration will be paid at the time of the transaction). The provision setting out the detail and procedure for the Archbishops' Council's order-making power was also to be moved into the 1956 Measure rather than remaining as a free-standing provision, and the range of the Council's powers was extended to include power to make provision for different purposes, different cases or different areas.
13. The Committee agreed to the Steering Committee's proposed amendments.

CLAUSE 2

Amendment of Incumbents and Churchwardens (Trusts) Measure 1964

14. The Committee had received a proposal from Mr Peter Smith for amendment of clause 2.
15. Mr Smith identified a potential difficulty with the current wording of clause 2(4) of the Measure, namely that it does not cover the case where the consideration paid at the time of the transaction does not reflect the true value of the land, or where not all the consideration is by way of premium at the beginning of the process. He also proposed that a surveyor's report should be obtained and lodged with the DBF.
16. As noted during the debate on First Consideration, this concern is very substantially dealt with by the Charities Act 2011 (which applies to all but the very smallest charities, whether registered or not). Section 119 of the Charities Act 2011 requires a charity disposing of land to obtain a surveyor's report and to decide that they are satisfied that the terms on which the disposition of the land is made are the best that can reasonably be obtained for the charity.
17. Section 119 of the Charities Act would not apply to the transfer of personal property held on permanent trusts, but few of the concerns that Mr Smith mentions – such as wayleaves, rent reviews and easements – would have parallels in relation to property other than land. The chief risk, in relation to property other than land, is a sale at an undervalue, and the trustees of a trust to which the Incumbents and Churchwardens (Trusts) Measure 1964 applies would be subject to the general fiduciary duty of charity trustees to act in the best interests of the charity.
18. The Committee therefore rejected Mr Smith's proposal.
19. The Steering Committee also made proposals for amendment of Clause 2, for purposes of improving the drafting and bringing the order-making procedure into the principal Measure. The Committee agreed to those amendments.

CLAUSE 3

Orders of the Archbishops' Council

20. In consequence of the decision to amend the draft Measure so that the order-making procedure appeared in each of the principal Measures, the Committee agreed to omit this clause.

CLAUSE 4

Citation, commencement and extent

21. Mr Scowen proposed a change to the title of the Measure to remove the words "Church of England". The proposed change would not cause any difficulties but raised a point which was not confined to this Measure alone. Staff suggested that there might be a case for postponing the change until Final Drafting stage, to enable further consideration of the general point and so that the Measure does not change its title part-way through its Synodical processes (creating difficulties for anyone trying to trace its legislative history). The Committee therefore made no amendment to clause 4.

Robert Key
on behalf of the Committee

May 2014

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 his submission under Standing Order 53(b)

DRAFT CHURCH OF ENGLAND (MISCELLANEOUS PROVISIONS) MEASURE

Clause in original draft Measure (GS 1921)	Name	Summary of proposal	Committee's decision
1	Steering Committee #	Delete existing text and replace with more closely focused amendments to section 6 of the Parochial Church Councils (Powers) Measure 1956 ("the 1956 Measure"). Insert detail of order-making procedure in the 1956 Measure.	Accepted
1	Mr Clive Scowen *	Abolish the requirement for vesting in the diocesan authority, but retain the requirement for the diocesan authority's consent except in circumstances where the archdeacon has certified that he or she does not object to the proposed transaction. Make consequential amendments elsewhere in the Measure.	Not accepted
1	Mr Clive Scowen *	Correct section 1 of the 1956 Measure by replacing the reference to "Rules for the Representation of the Laity" with a reference to "Church Representation Rules set out in Schedule 3 to the Synodical Government Measure".	Not accepted
2	Steering Committee #	Make small alterations to improve the drafting and correct omissions. Insert detail of order-making procedure in the Incumbents and Churchwardens (Trusts) Measure 1964.	Accepted
2	Mr Peter Smith	Require the PCC to obtain a report and valuation from a chartered surveyor before disposal, and lodge a copy with the diocesan authority.	Not accepted
3	Steering Committee #	Omit clause (in consequence of amendments to clauses 1 and 2).	Accepted
4	Mr Clive Scowen *	Omit "Church of England" in the short title of the Measure.	Not accepted