

## GENERAL SYNOD

## DRAFT MISCELLANEOUS PROVISIONS MEASURE

## REPORT OF THE REVISION COMMITTEE

<b>Chair:</b>	The Ven. Martin Gorick, Archdeacon of Oxford (Oxford)
<b>Ex officio members (Steering Committee):</b>	Ms Josile Munro (London) (Chair) The Revd Canon Paul Cartwright (Leeds) Mr John Freeman (Chester) Mr James Lee (Guildford) The Revd Canon Rebecca Swyer (Chichester)
<b>Appointed members:</b>	The Rt Worshipful Peter Collier QC ( <i>ex officio</i> ) The Revd Shaun Morris (Lichfield) The Revd Ruth Newton (Leeds) Professor Muriel Robinson (Lincoln) Dr Michael Todd (Truro)
<b>Consultant:</b>	Ms Sue de Candole (Diocesan Registrar for the Dioceses of Salisbury and Winchester)

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

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

1. The draft Miscellaneous Provisions Measure (GS 2064) received first consideration at the July 2017 group of sessions. The draft Measure is the twelfth in a series of Miscellaneous Provisions Measures dealing with uncontroversial matters that do not merit separate, free-standing legislation.
2. Full explanations of each provision of the Measure were contained in the explanatory memorandum (GS 2064X).
3. The Revision Committee (“the Committee”) met on one occasion and completed its remaining business by correspondence under Standing Order 56(4). Mr James Lee and the Revd Shaun Morris were unable to attend the meeting, but have approved this report.
4. The Committee received submissions from three members, none of whom had exercised their right under Standing Order 55 to attend the meeting of the Committee and speak to their proposals. An additional submission had been received from the Church Commissioners’ Pastoral and Closed Churches Division.
5. The Appendix contains a summary of the amendments considered by the Committee as well as the Committee’s decision on each.

*Clause 1*

6. The first clause of the draft Measure confers a power on the Church Commissioners to make grants to the Archbishops' Council.
7. The Committee was advised that the Church Commissioners were not currently empowered to employ their funds in furthering the mission and work of the Church of England generally, the purposes for which their funds could be applied being defined in statute. A provision was therefore needed which enabled the Church Commissioners to support the work and mission of the Church of England more generally by making grants to the Archbishops' Council for any purpose that came within the Council's objects (that is, "to co-ordinate, promote, aid and further the work and mission of the Church of England").
8. What was proposed was not an untrammelled power for the Church Commissioners to spend anything they liked. There were limitations on the grants the Commissioners would be able to make: only the income from their general fund could be used for such grants, for example, and there were various other costs which had to be met from that fund before the residue could be spent in such a way.
9. **Mr Keith Cawdron (Liverpool)** submitted that a sunset provision, under which the power would lapse after seven years, be included in the clause; and also proposed that there be a statutory obligation for the Commissioners to report annually to the General Synod on the exercise of the power.
10. The Committee was advised that the proposed sunset provision would mean that any continuation of the power beyond the seven-year period would require a further Measure. A sunset provision would therefore have significant practical implications for the effective use of the power. It would mean that the power would only be temporary, and would prevent the Church Commissioners from committing to the provision of any grant to the Archbishops' Council beyond the end of the seven-year period, having a consequent effect on the provision of financial support by the Archbishops' Council of its various mission initiatives. An inability for the Council to commit to funding beyond a limited period – which would become increasingly shorter as the sunset date became closer – would very significantly reduce the effectiveness of the new power to further the work and mission of the Church. While some initiatives may be of relatively short duration others will need to continue in existence over a long period, in some cases indefinitely. The ability to engage in initiatives for mission and their success would be prejudiced if funding support could not be committed over a substantial period of time.
11. The Committee accordingly voted to reject the proposed amendment.
12. The Committee was also advised that it was not necessary for a separate reporting provision to be included, as both the Church Commissioners and the Archbishops' Council already make (indeed are required by statute to make) annual reports in which their financial transactions are identified: any grants made under the provisions of clause 1 of the Measure will therefore be included for all to see. The Commissioners' report must additionally already be laid before both Houses of Parliament as well as General Synod. It was therefore difficult to envisage circumstances in which the Commissioners would not include information about the exercise of the new power in that report.
13. The Committee accordingly voted to reject the proposed amendment.

#### *Clause 2*

14. There were no submissions on clause 2.

15. **The Legal Office** proposed amending the clause, following discussions with the Land Registry about how best to achieve the desired policy outcome within existing Land Registry procedure. The Committee was advised that, as discussions with the Land Registry were ongoing, there may be a need for further drafting amendments to the clause.
16. The Committee voted to accept the proposed amendment.

*Clause 3*

17. There were no submissions on clause 3 and no amendments were made.

*Clause 4*

18. The fourth clause of the Measure widens the scope for the provision of funeral ministry by clergy who are beneficed, licensed or have permission to officiate.
19. **Mr Keith Cawdron** submitted that subsection (1)(b) of the clause be omitted, thereby removing the requirement for a clerk in Holy Orders to seek “the goodwill of the relevant [i.e., the deceased’s] minister” before officiating at a funeral service, considering the requirement to be nebulous and likely to deter people from seeking to have a member of the clergy officiate at a funeral service.
20. The Committee considered that removing the requirement could result in parish clergy being bypassed, and prevent the possibility of providing pastoral care and evangelising by way of the occasional offices at the parish church. They noted that the provision was drafted in a similar way to that relating to Baptism in Canon B 22, which required a minister to seek the goodwill of the minister of the parents’ home parish before baptising an infant from outside the parish. Additionally, they considered that being required to ‘seek’ the cleric’s goodwill was not the same as being required to obtain such.
21. The Committee voted to reject the proposed amendment.
22. **The Revd Canon Paul Cartwright** proposed that the drafting of subsection (1)(b) be amended to require the clerk to seek the goodwill of the relevant minister, and in any case inform them of the fact that the funeral service was taking place. The Committee agreed that this was a helpful suggestion.
23. The Committee voted to accept the proposed amendment.
24. The Committee identified a lacuna in subsection (2) regarding cases where it was not known whether the deceased’s name was on an electoral roll, and proposed an amendment to remedy this.
25. The Committee voted to accept the proposed amendment.

*Clause 5*

26. There were no submissions on clause 5 and no amendments were made.

*Clause 6*

27. Subsection (2) amends section 11 of the Church of England (Miscellaneous Provisions) Measure 1992 to bring the method of resignation by freehold incumbents into line with that for incumbents on common tenure – i.e., by giving three months’ written notice to the bishop, the

notice period capable of being waived if both the incumbent and the bishop were to agree, rather than having to execute a deed or tender resignation in a statutory form.

28. **The Revd Paul Benfield** raised various questions about the drafting of subsection (2) and the new section 11 of the 1992 Measure it substituted, asking whether the provision could be more succinct.
29. The Committee was advised that as there are two current regimes for resignation, contained in different statutes, bringing the provisions of one into the other would be unsatisfactory. It was suggested that the best way forward was to maintain the current drafting, and then address the issue by way of a consolidation exercise in the future.
30. The Committee voted to reject the proposed amendment.

#### *Clause 7*

31. There were no submissions on clause 7.
32. **The Legal Office**, following discussion with the Dean of the Arches & Auditor, proposed two drafting amendments to clarify the effect of the new section 14A of the Ecclesiastical Jurisdiction and Care of Churches Measure 2017, which provided that a decision of the Court of Arches or the Chancery Court of York was to be binding not only in the province for which that court was constituted as the appeal court, but also in the other province. The view had been taken that the original provision, as drafted, had been unnecessarily complicated and was capable of giving rise to misunderstanding as to its effect. The proposed amendments would, it was hoped, simplify the new section 14A of the 2017 Measure and avoid any possible misunderstandings.
33. The Committee asked for clarification as to what would happen should there be a conflict in decisions between the two Courts. Members were advised that the general rule was that the more recent decision would be binding.
34. The Committee voted to accept the proposed amendments.

#### *Clause 8*

35. There were no submissions on clause 8 and no amendments were made.

#### *Clause 9*

36. The ninth clause of the Measure amends the Constitution of the General Synod (set out in Schedule 2 to the Synodical Government Measure 1969), by putting on a secure statutory basis the right of the Archbishops – as Presidents of the Synod – to alter the weeks determined, or the days, times and places appointed, for a session or group of sessions, and to cancel a session or group of sessions. This power is already included in the Synod's Standing Orders (SO 2), and has been since 1970, but is not expressly authorised by the Synod's Constitution.
37. **Mrs Debrah McIsaac (Salisbury)** submitted that she assumed the power would only apply when the General Synod had formally approved dates, and not when the dates for a group of sessions were still provisional.
38. The Committee was advised that this was not in fact the case, and did not believe that to limit the exercise of the power in such a way was desirable.

39. Mrs McIsaac had also queried the retrospective nature of the power to cancel a group of sessions.
40. The Committee was advised that the provisions did not permit the Presidents to cancel a group of sessions retrospectively; rather they would put the lawfulness of any past exercise of the power to cancel a meeting beyond doubt.
41. Finally, Mrs McIsaac questioned whether the Presidents should be able to exercise the power with the effect that the Synod would not meet on two occasions in any year, as required by its Constitution.
42. The Committee was advised that the Constitution required the Synod to meet on two occasions per year, and that the proposed amendment would have the effect that the Synod would be deemed to have complied with that requirement even if it only met once (or not at all), as a result of a cancellation of a group (or both groups) of sessions by the Presidents.
43. **Mr John Freeman (Chester)** proposed that the Synod's principal officers – i.e. the two Archbishops, the two Prolocutors, and the Chair and Vice Chair of the House of Laity – ought to be the body who would exercise any such power. This group is already recognised as having authority to take certain decisions on behalf of the Synod as a whole (see, for example, in relation to Acts of Synod (SO 41(5)), special amendments to Article 8 Measures or Canons (SO 61(9)) and the return of Measures or Canons defeated at Final Approval stage (SO 64(6)).
44. The Committee voted to accept the proposed amendment.
45. The Committee expressed unease with a provision expressed in terms of the Synod being deemed to have met despite a meeting having been cancelled, on the basis that this was a 'legal fiction'.
46. **The Committee** accordingly made an amendment to the clause to make cancellation of a group of sessions an exception to the requirement that the Synod meet at least twice a year.

#### *Clause 10*

47. There were no submissions on clause 10 and no amendments were made.

#### *Clause 11*

48. There were no submissions on clause 11 and no amendments were made.

#### *Clause 12*

49. The Committee was advised that the recent amendments to the Faculty Jurisdiction regime had resulted in fewer – but more complex – cases being considered by diocesan advisory committees ('DACs'). Such committees are currently required to convene a full meeting to consider matters, including those that had not been finally agreed at a first meeting. There is currently no provision for DACs to leave the approval of details or other matters not requiring the consideration of the committee itself to officers. The provision in clause 12 permits the delegation to an officer of the DAC to make a decision on behalf of the full DAC.
50. The Committee queried what safeguards would be in place to prevent the misuse of the power, and was advised by the Cathedral and Church Buildings Division that associated guidance will cover matters such as regularly reporting on the use of the delegated power, as well as how to

stop the delegation. It will be for each DAC to decide how/whether they use the power, and no DAC will be obliged to do so.

51. **The Revd Paul Benfield** asked whether subsection 12(3) achieved its desired policy objective. It was intended to amend paragraph 10 of Schedule 1 to the Dioceses, Pastoral and Mission Measure 2007 so that a person might be appointed to fill a casual vacancy in the office of chair of the Dioceses Commission in the same manner as the chair being replaced (i.e. by the Archbishops with the approval of the Synod). However, as the current chair of the Dioceses Commission has been appointed from among the members of the House of Laity or Clergy, so his replacement would – under the provision as drafted – have to be a member of the House of Laity or Clergy. This was the anomaly which the provision intended to remove, allowing the person to be appointed chair to be appointed from outwith the Synod’s membership.
52. The Legal Office agreed with Fr Benfield’s point, and proposed a drafting amendment to rectify the situation.
53. The Committee voted to accept the proposed amendment.

*Clause 13*

54. There were no submissions on clause 13.

*Clause 14*

55. There were no submissions on clause 14.

*Clause 15*

56. **The Revd Paul Benfield** asked whether the words ‘Church of England’ were needed in the short title of the Measure.
57. The Committee was advised that while in general the words ‘Church of England’ were omitted from the beginning of the short titles of new Measures, and had been for some years, Miscellaneous Provisions Measures were the one form of Measure for which maintaining the words was arguably the better course of action. It was not clear from the title ‘Miscellaneous Provisions Measure’ that the legislation was necessarily connected with the Church of England. The reference to the Church of England in the short title helps to identify the subject-matter of the Measure and reflects the reference to “matter concerning the Church of England” in section 3(6) of the Church of England Assembly (Powers) Act 1919.
58. The Committee voted to reject the proposed amendment.

*Proposed new clause*

59. **The Church Commissioners’ Pastoral and Closed Churches Division** proposed a new clause to make amendments to the provisions of the Mission and Pastoral Measure 2011, relating to publicising pastoral schemes and orders. Section 3 of the Mission and Pastoral (Amendment) Measure, as finally approved by the General Synod in February 2017, amends sections 9(3) and 24(3) of the Mission and Pastoral Measure 2011 by adding the following requirement in respect of draft pastoral schemes and orders published by the Church Commissioners or diocesan mission and pastoral committee:

*b) to ensure, in the case of each of those churches or buildings at which a service is held on a Sunday in the period in which representations may be made in*

*accordance with the notice, that at every service held on each of those Sundays, the person conducting the service informs the congregation of the contents of the notice; and*

*c) to ensure, in the case of each of those churches or buildings at which the only service held in that period is on a day other than a Sunday, that at that service the person conducting the service informs the congregation of the contents of the notice.*

60. These requirements – which are imposed on the secretary to the PCC – are to be in addition to the existing requirement to display at every church or licensed place of worship in the affected parishes notices saying where a copy of the draft scheme may be inspected and specifying the date by which representations about the draft scheme must be made to the Commissioners.
61. The Commissioners’ Pastoral and Closed Churches Division have subsequently expressed concern that the new requirement is too prescriptive and is likely to result in practical difficulties which will unduly complicate or elongate the process. To reduce the likelihood of announcements not being made, for example, particularly at services early in the notice period it would probably be necessary to send out the notices and instructions two to three weeks in advance of the notice period itself commencing. This would lengthen the process which seems at odds with the aim of simplification.
62. The new clause therefore replaces the requirement that the PCC secretary *ensure* that the person conducting the service informs the congregation of the contents of the notice of the draft scheme/order with a requirement “to make such arrangements as are practicable” for announcements to be made with a view to ensuring that as many of those who habitually attend public worship as possible are aware of the contents of the notice.
63. The Committee queried whether the new provision relating to notice of pastoral schemes/orders might be open to abuse, ‘practicability’ being a different manner of test than ‘ensuring that the person informs’. Members were advised that while the test was of a different magnitude, there was no more chance of abuse than previously given the oversight of the Church Commissioners’ Pastoral and Closed Churches Division each time a scheme/order was published.
64. A further amendment was also proposed by the Pastoral and Closed Churches Division, which amended sections 11(8) and 26(7) of the 2011 Measure to improve the definition of ‘deanery plan’ so that it was clear that to qualify as such, a plan must – in addition to being approved by the deanery synod – also be approved by the mission and pastoral committee of the diocese.
65. The Committee voted to accept the proposed amendments.

*Proposed new clause*

66. **The Church Commissioners’ Pastoral and Closed Churches Division** also proposed two amendments to the provisions relating to bishop’s mission orders (‘BMOs’) contained in the Mission and Pastoral Measure 2011. The first relates to the procedure for renewing BMOs. At present, when a time-limited BMO is due to expire, the bishop may only make a further BMO if he or she considers that the mission initiative should continue, and that no other suitable means by which the mission initiative or its objectives can be achieved. This provision was clearly relevant when BMOs had to be time-limited and were only seen as a provisional means of providing for a mission initiative. However, as Synod has already decided (by virtue of provision contained in the Mission and Pastoral (Amendment) Measure) that it should be

possible to create BMOs without limit of time, the Pastoral and Closed Churches Division queried whether it should still be necessary for a bishop to apply the ‘no other suitable means’ test when considering the extension of a mission initiative that was currently provided for in a time-limited BMO, and proposed that it be abolished

67. The Committee was reassured that the diocesan mission and pastoral committee would remain a consultee in any proposal to renew a BMO.
68. The Committee accordingly voted to accept the proposed amendment.
69. The second proposal from the Pastoral and Closed Churches Division related to the existing provision enabling the leader of a mission initiative to make representation to the diocesan mission and pastoral committee where the bishop was proposing to vary or revoke the existing BMO for the mission initiative. The Division considered that this was a strange provision, given that the body to whom the representations were to be made – the mission and pastoral committee – did not itself have any powers in relation to the variation or revocation of a BMO; it was only a consultee, and it was therefore anomalous for one consultee to have a right to make representations to another consultee. The Commissioners’ Pastoral and Closed Churches Division therefore proposed that the right of the leader of a mission initiative to make representations to the mission and pastoral committee be abolished.
70. The Committee voted to accept the proposed amendment.

**The Ven. Martin Gorick, Archdeacon of Oxford**  
Chairman of the Revision Committee

[...] November 2017



### Summary of proposed amendments and the Committee's decisions

# – proposed in Committee by a member of the Committee

#### DRAFT MISCELLANEOUS PROVISIONS MEASURE

Clause in original draft Measure (GS 2064)	Name	Summary of proposal	Committee's decision
1	Mr Keith Cawdron (Liverpool)	Include a sunset provision, so that the power of the Church Commissioners to make grants to the Archbishops' Council be limited to seven years.	Rejected.
1	Mr Keith Cawdron (Liverpool)	Include a requirement for the Church Commissioners to report annually to the General Synod on the exercise of the power.	Rejected.
2	The Legal Office	Amend to deal with a relevant aspect of Land Registry procedure.	Accepted.
4(1)(b)	Mr Keith Cawdron (Liverpool)	Omit subsection (1)(b), thereby removing the requirement for a clerk in Holy Orders to seek "the goodwill of the relevant minister [i.e. the deceased's minister]" before officiating at a funeral service.	Rejected.
4(1)(b)	The Revd Canon Paul Cartwright (Leeds) #	Amend to require the clerk to seek the goodwill of, and in any case inform, the relevant minister of the fact that the funeral service was taking place.	Accepted.
4(2)	The Revision Committee	Amend to make provision for instances where it was not known whether the deceased's name was on an electoral roll.	Accepted.
6(2)	The Revd Paul Benfield (Blackburn)	Amend so that all provisions relating to resignation of incumbents are included in one place.	Rejected.
7	The Legal Office	Amend to simplify the provision.	Accepted.
9	Mrs Debrah McIsaac (Salisbury)	Query whether the power to cancel a group of sessions only applies where the Synod has formally approved dates, not in cases where the dates are still provisional.	Rejected.
9	Mrs Debrah McIsaac (Salisbury)	Query retrospective nature of the power to cancel a group of sessions.	Rejected.
9	Mrs Debrah McIsaac (Salisbury)	Query whether the Presidents ought to be able to exercise the power with the effect that the Synod would not meet at least twice a year.	Partially accepted.

9	Mr John Freeman (Chester) #	Amend so that any decision to cancel a group of sessions is to be taken by the two Archbishops, the two Prolocutors and the Chair and Vice Chair of the House of Laity jointly.	Accepted.
9	The Legal Office	Make cancellation of a group of sessions an exception to the requirement that the Synod meet at least twice a year.	Accepted.
12(3)	The Revd Paul Benfield (Blackburn)	Amend to achieve desired policy objective.	Accepted.
15	The Revd Paul Benfield (Blackburn)	Remove the words “Church of England” from the Measure’s short title.	Rejected.
New clause	Church Commissioners’ Pastoral and Closed Churches Division	Amend provisions of Mission and Pastoral Measure 2011 relating to publicising pastoral schemes and orders, and to improve the definition of ‘deanery plan’.	Accepted.
New clause	Church Commissioners’ Pastoral and Closed Churches Division	Amend provisions of Mission and Pastoral Measure 2011 relating to bishop’s mission orders.	Accepted.