

GENERAL SYNOD

Parochial Church Councils (Powers) Measure 1956: a response to the Private Member's Motion agreed by General Synod in July 2012

Background

1. The Parochial Church Councils (Powers) Measure 1956 ('the 1956 Measure') at present provides that:
 - a PCC may not acquire an interest in land other than a short lease, or other property to be held on permanent trusts, without the consent of the diocesan authority and that, if a PCC does acquire such an interest, it must be vested in the diocesan authority; and
 - where property is vested in the diocesan authority in this way the PCC may not sell, lease, exchange, charge or take any legal proceedings in relation to it without the diocesan authority's consent.
2. At the July 2012 group of sessions, the General Synod passed the Private Member's Motion laid by the Revd. Christopher Hobbs, which read as follows:

"That this Synod call on the Archbishops' Council to bring forward legislation to amend the Parochial Church Councils (Powers) Measure 1956 so as to permit a PCC which is a registered charity to acquire and hold any interest in land and any interest in personal property to be held on permanent trusts, without any requirement for the interest to be vested in the diocesan authority."

3. The Archbishops' Council has now considered how to respond to that motion, and is proposing to bring forward legislation to make some changes to the 1956 Measure.

Issues underlying the Synod's resolution

4. It is not uncommon for charity property to be vested in the name of a body other than the trustees. For example, the Official Custodian for Charities is a statutory corporation which exists for the purpose of holding legal title on behalf of charities, and many small charities use the service to hold the legal title to their land.
5. However, it is unusual to find such an arrangement in a case where the charity which owns the land is itself a body corporate, as PCCs are. Usually the reason for vesting land in the Official Custodian or some other body corporate is that the trustees are a changing body of individuals and it is administratively simpler to have the title to the land vested in a corporate body, rather than making an application to the Land Registry to change the title every time a trustee is appointed or retires. This is obviously not a relevant consideration in the case of a PCC.
6. It is not entirely clear why the requirements set out in paragraph 1 above were included in the 1956 Measure. They date from the original Parochial Church Councils (Powers) Measure 1921, and may have reflected uncertainty at the time about the capacity of

what were then newly established bodies to manage property transactions adequately (particularly in small rural parishes).

7. The régime under the 1956 Measure now creates an element of double regulation, since nothing in the Measure disappplies the normal consent regime under the Charities Act 2011 for disposals of land by a charity (which now, of course, applies to PCCs).
8. The controls under the 1956 Measure are also unusually restrictive. They affect not only sales and purchases of property vested in the diocesan authority, but also the bringing of legal proceedings in relation to it: a PCC cannot, for example, take steps to evict squatters from property they own and manage without the consent of the diocese. This is arguably an excessive degree of control over PCCs' powers to manage their own property.

The Council's response to the Synod's resolution

9. The resolution passed last July proposed a distinction between PCCs which are registered charities and other PCCs. This is a distinction without a real difference behind it: **all** PCCs, whether or not registered, are regulated by the Charity Commission and subject to the same governance requirements. Only those with an annual income of over £100,000 are required to be registered, but voluntary registration is possible for those with smaller incomes.
10. It would be very odd to make registration the relevant threshold for this purpose when PCCs may move either way across the compulsory registration bracket as their income varies from year to year (and, as noted above, some PCCs which are not in that bracket may choose to register voluntarily).
11. That said, it is right to say that PCCs have widely differing capacity to deal with legal and financial matters: particularly in very small parishes, there may not be the capacity to be able to handle property transactions without diocesan support. In general larger parishes would be better placed to manage these matters competently.
12. The Council therefore proposes to amend the legislation to reduce the number of transactions for which diocesan consent is required, so that PCCs have flexibility in smaller matters but diocesan consent continues to be required for significant transactions.
13. In contrast, the Council proposes that the requirement for consent to legal proceedings should simply be repealed: it seems reasonable and proportionate to allow PCCs to make their own judgment about whether legal proceedings should be taken in relation to their property.
14. The definition of a "short lease" would also be amended to enable PCCs to grant longer-term tenancies without reference to the diocese. The 1956 Measure presently provides that a lease for a year or less is a "short lease" and not required to be vested in the diocesan authority. This could be extended to seven years, to align with the Charity Commission controls on disposals of land (which do not apply to leases for less than seven years).

15. The remaining provisions would be subject to a *de minimis* limit (which would be prescribed in regulations under the 1956 Measure as amended, to enable updating for inflation) providing that the diocesan authority's consent was required for a transaction in excess of the limit but not for a transaction below it. The precise limit remains to be decided.
16. There is a precedent for this type of approach in the Cathedrals Measure 1999, which provides that the Church Commissioners' consent is required for a disposal or acquisition of land by a cathedral unless the Commissioners have excepted the transaction by order. The present excepting order provides that no consent is necessary for any transaction under a specified value.
17. The overall effect of the Council's proposals is that all land owned by PCCs, and personal property held on permanent trusts, would continue to be vested in the diocesan authority but its consent would not be required for transactions below the limit. The consequence would be that, in the absence of a need for consent, PCCs would be free to deal with their property as they thought fit - consistently with their fiduciary duties - and diocesan authorities would only be able to decline to give effect to a disposal if they had reason to suspect a breach of trust.
18. These changes will require a new measure. The Council hopes to be able to introduce the necessary amending legislation in November 2013. For consistency, it is likely that the legislation will also amend the Incumbents and Churchwardens (Trusts) Measure 1964, which makes provision similar to that in the 1956 Measure for land, and property held on permanent trusts, owned by the incumbent or churchwardens of a parish.
19. The Council has accepted that if PCCs are to be given more flexibility in this way, additional guidance will need to be issued by dioceses and / or the national institutions about dealing in property by fiduciaries, to ensure that PCCs with no members with suitable training or experience have at least basic information available to them about matters to be taken into account.

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