

Church Property Measure

Drafting Notes

Introduction

1. These notes use the following abbreviations –

PM 1938 – the Parsonages Measure 1938

NPM 1943 – the New Parishes Measure 1943

CPMPM 1960 – the Church Property (Miscellaneous Provisions) Measure 1960

EGM 1976 – the Endowments and Glebe Measure 1976

IA 1978 – the Interpretation Act 1978

SOs – the Standing Orders of the General Synod

2. The consolidation includes a number of “corrections and minor improvements” within the meaning of SO 63(3), which provides as follows –

“(3) “Correction and minor improvement” means an amendment the sole effect of which is –

(a) to resolve an ambiguity;

(b) to remove a doubt;

(c) to bring an obsolete provision into conformity with modern practice;

(d) to remove an unnecessary provision or an anomaly not of substantial importance;

(e) to improve the form or manner in which the law is stated;

(f) to bring a provision into conformity with the existing law;

(g) to make transitional, transitory or saving provision which is necessary in consequence of an amendment within any of paragraphs (a) to (f).”

Clause 1 (sale, exchange or demolition of parsonage house)

3. *Subsection (2)* removes a doubt in section 1(1) PM 1938 by providing that a disposal of a parsonage house need not include adjoining land. It removes an inconsistency by ensuring that the sale of the site of a parsonage house after demolition can include adjoining land. It makes clear that, on a disposal of part, it does not matter if adjoining land adjoins a part not being disposed of. These changes are made under SO 63(3)(b) (removal of doubt) and (3)(d) (removal of anomaly not of substantial importance).
4. Also on *subsection (2)*, the reference to “land” in section 1(1) PM 1938 has, in the absence of a contrary intention, the meaning given in paragraph 5 of Schedule 2 IA 78. That definition is the main proposition in *clause 48(8)*. Given that some weight rests on the references to land in these provisions, the existing definition of “land” is retained in preference to what would otherwise be the default definition in Schedule 1 IA 78.
5. *Subsection (5)* removes an inconsistency in section 1 PM 1938 by permitting the disposal of land that has been acquired as or for the site of a parsonage house. Such a case can arise where, for example, a site for a parsonage house is acquired but planning permission to build the house is refused. Without provision to this effect, the land must, before being sold, be transferred to the diocesan board of finance to be held as part of the diocesan glebe land. This makes for a cumbersome procedure and restricts the allocation of the sale proceeds to the diocesan stipends fund rather than to the Parsonages Board. This provision is included in reliance on SO 63(3)(d) (removal of anomaly not of substantial importance).

6. *Subsection (10)(a)* clarifies the meaning of “land retained for the benefice affected” in section 1(2)(i) PM 1938. Rights of way are currently reserved over former parsonage land so as, for example, to provide continuing access to a church or churchyard (which would not generally be considered the property of the benefice). The new provision reflects that practice and is included in reliance on SO 63(3)(b) (removal of doubt).

Clause 3 (consent to dealing under clause 1 or 2)

7. *Subsections (1)(d), (2) and (3)* do not restate the reference in section 1(3)(iii) and (iiia) PM 1938 to property that is “proposed to be disposed of”, as it is not quite apt for a case where property is to be pulled down. But the intention of section 1(3AA) PM 1938 is that consent (other than that of the Church Commissioners) is required for demolition.

Clause 6 (leasing)

8. *Subsection (3)* entitles a diocesan board of finance to apply to the county court for an order to require the provision of the information concerned. This appears to be the intention of section 31 EGM 1976, as the county court would be the appropriate forum in which to seek a remedy. This provision is made in reliance on SO 63(3)(b) (removal of doubt) and (3)(e) (improvement of manner in which law stated).

Clause 16 (general functions of diocesan board of finance)

9. *Subsection (4)* restates section 16(1) EGM 1976 and includes wording at the beginning to set the provision in its historical context. Section 16 came into force on 22 November 1976 (the date when EGM 1976 received Royal Assent) to facilitate the transfer of glebe land from incumbents to diocesan boards of finance on 1 April 1978. Accordingly, section 16 has already done most of its work but could, it is thought, still have some practical effect in relation, say, to long-standing tenants.
10. *Subsection (5)* is included on the same basis as *clause 6(3)* (see paragraph 8 above).

Clause 17 (land management scheme)

11. *Subsection (2)* makes express what is implied by section 19(3) EGM 1976 by providing that the diocesan board of finance may itself establish a committee for the purposes of a land management scheme (as well as appointing the Parsonages Board or a committee established under the Repair of Benefice Buildings Measure 1972). It is assumed that no other body could serve as a committee for this purpose.

Clause 22 (notice of proposed dealing)

12. *Subsection (1)* recasts section 20(5) EGM 1976 by requiring notice to be sent according to the type of transaction involved rather than whether the consent of the Church Commissioners is needed. This approach is clearer than the current one and is adopted in reliance on SO 63(3)(e) (improvement of manner in which law stated).

Clause 23 (grants and appropriations)

13. *Subsection (1)* does not restate the reference in section 23(1) EGM 1976 to replacing an existing church, on the basis that it is unnecessary. The replacement of a church would, in effect, involve the construction of a new one (except in the case of rebuilding a demolished church on the same site, in which case there would be no site or building to acquire and the rebuilding would be done under a faculty). There would also need to be a separate pastoral church buildings scheme to close the existing church.

14. *Subsection (1)* does, however, refer to the possibility of replacing a building other than a church used as a place of public worship. This change and the one mentioned in the previous paragraph are made in reliance on SO 63(3)(d) (removal of anomaly not of substantial importance).
15. Also on *subsection (1)*, it is not clear whether “grant” in section 23(1) EGM 1976, which uses the word with the meaning it has in section 14(1) NPM 1943, includes the grant of a leasehold interest in land. *Clause 48(11)* provides that it does have that broader meaning and is included in reliance on SO 63(3)(b) (removal of doubt).
16. *Subsection (2)* clarifies the relationship between this clause and clause 20 and is included in reliance on SO 63(3)(b) (removal of doubt).

Clause 25 (proceeds of sale)

17. *Subsection (4)* does not restate the reference in section 25(3) EGM 1976 to the “related” transaction. It is thought to be a reference to the discharge of the mortgage or charge. This change is made in reliance on SO 63(3)(b) (removal of doubt).

Clause 28 (acquisition of land)

18. In light of the provision in this clause about buildings which are used as both a church and a church hall, *clause 48(9)* includes a definition of “church” for the purposes of the Measure as a whole, along the lines of that in section 106(1) of the Mission and Pastoral Measure 2011, so as to cover mixed-use cases of that kind.

Clause 33 (land no longer required for purpose for which acquired)

19. *Subsection (3)* includes some bracketed wording which is not in section 17(1B) NPM 1943, to pick up an implication that was missed when the provision was added by the Church of England (Miscellaneous Provisions) Measure 2014. The bracketed words avoid giving the diocesan board of finance power to appropriate land which it holds on behalf of a parochial church council (rather than just land it holds in its own right). This provision is included in reliance on SO 63(3)(b) (removal of doubt).
20. *Subsection (6)(b)* makes provision not in section 17(1) NPM 1943 in order to pick up a missed consequential amendment. On a transaction of the kind referred to here, the land vests in the incumbent as part of the parsonage and so should be disposed of in the same manner as the parsonage house etc. This provision is included in reliance on SO 63(3)(b) (removal of doubt).
21. *Subsection (9)* acknowledges the decision in *Re St. Mary Magdalene, Paddington* [1980] 1 All ER 279 by providing that, in so far as there is a common law power to sell land of the kind in question, the statutory procedure derived from section 17 NPM 1943 does not prohibit it. This provision is included in reliance on SO 63(3)(e) (improvement of manner in which law stated).

Clause 39 (memorandum and articles of association)

22. *Subsection (1)* restates a provision of EGM 1976 but provides for it to have effect generally in the consolidation, so that it applies to functions of a diocesan board of finance under the PM 1938 and NPM 1943 as well as those under the EGM 1976. This is not a significant policy change and merely provides consistency. It is made in reliance on SO 63(3)(d) (removal of anomaly not of substantial importance).

Clause 40 (Church Commissioners: information and advice)

23. *Subsection (1)* of this clause also applies a provision of EGM 1976 generally, for the same reason as *clause 39(1)* (see paragraph 22 above).

Clause 41 (covenants)

24. *Subsection (1)(b)* does not restate the obsolete reference in section 8(2) CPMPM 1960 to the guardian of the spiritualities.

Clause 46 (signification of consent)

25. This clause generalises a number of provisions so as to provide a consistent approach on signification of consent. For that purpose, *subsection (1)* also makes provision for a diocesan board of finance, and *subsection (3)* also makes provision for the registered patron of a benefice, a parochial church council and the managing trustees of land vested in a diocesan board of finance. This provision is made in reliance on SO 63(3)(d) (removal of anomaly not of substantial importance).
26. *Subsection (5)* imposes an express requirement for certain documents to specify whether the Church Commissioners' consent has been obtained and, if it has not, to specify the exception relied on. This provision makes express what is currently implied by section 9(2B) and (2C) PM 1938 and is included in reliance on SO 63(3)(e) (improvement of manner in which law stated).
27. *Subsection (6)* does not restate the reference in section 9(2B) PM 1938 to a case where the consent of the Parsonages Board is not required, as there are no such cases in the provisions being consolidated.

Clause 47 (execution of documents)

28. *Subsections (1) and (2)* apply to *clause 33*, although the existing provision in section 17 NPM 1943 does not make equivalent provision. They remove an inconsistency and do so in reliance on SO 63(3)(d) (removal of anomaly not of substantial importance).
29. *Subsection (3)* generalises provision which currently applies more narrowly, on the basis of the reasoning underlying *clause 46*.

Clause 48 (references to land)

30. The clause does not restate the definition of "glebe land" in section 45(1) EGM 1976. It is covered to the extent necessary in the definition of "diocesan glebe land" in *subsection (6)(a)* and in *clauses 16 and 27*.
31. *Subsection (8)* brings together the various definitions of "land" in the provisions being consolidated. In PM 1938, there is no express definition, with the result that paragraph 5 of Schedule 2 IA 78 applies; its effect is restated in the opening words of *subsection (8)*. In NPM 1943, section 29(1) defines "land" to include "hereditaments corporeal or incorporeal of any tenure". But that Measure also places express references to buildings alongside references to land, perhaps to clarify the effect of the provisions about land being used for new buildings. It is thought sufficient for the purposes of the consolidation to rely just on the definition in Schedule 2 IA 78. The definition in section 45(1) EGM 1976 adds a reference to mines and minerals to the general definition and then excludes from it advowsons as incorporeal hereditaments.

Clause 49 (other interpretation etc.)

32. *Subsection (9)* defines “benefice” generally, using the definition in section 45(1) EGM 1976. The definition accordingly applies to the references to “benefice” in the provisions of Part 3 which restate NPM 1943. That Measure does not define “benefice” for its own purposes and therefore relies on the definition in the Interpretation Measure 1925. It is not thought necessary to follow that approach here, as the definition in EGM 1976 produces the right result for the consolidation as a whole.
33. *Subsection (12)* makes express provision to enable notices or notifications to be given by electronic means. Although nothing in the provisions being consolidated expressly prohibits that, there is nonetheless a lack of clarity as to the position and this provision would remove any doubt by making express what is thought to be implied. It is included in reliance on SO 63(3)(b) (removal of doubt) and (3)(e) (improvement of manner in which law stated)