

GENERAL SYNOD

DRAFT CARE OF CATHEDRALS (AMENDMENT) MEASURE

**Report of the Steering Committee of
Members in Charge**

Members: Mrs Janet Atkinson (Durham) (Chairman)
Canon David Isaac (Portsmouth)
Dr Edmund Marshall (Wakefield)
Mr Tony Redman (St E & I)
The Dean of Southwark (the Very Revd Colin Slee)
The Archdeacon of Sudbury (the Ven John Cox) (St E & I)

1. The draft Care of Cathedrals (Amendment) Measure ("the Measure") was introduced into the General Synod to give effect to the recommendations of the Review Group on the Care of Cathedrals Measure 1990 ("the 1990 Measure"). It received its First Consideration at the November 2001 Group of Sessions and was committed to a Revision Committee, which returned it to the Synod, with amendments, at the November 2002 Group of Sessions. No further amendments were made at the Revision Stage; at the conclusion of that Stage the Measure stood committed to the Steering Committee under S.O. 59(a) for consideration in respect of its final drafting, and the Archdeacon of Sudbury, the Chairman of the Revision Committee, became a member of the Steering Committee by virtue of S.O. 49(a).
2. The print of the Measure circulated for the February 2003 Group of Sessions (GS 1429B) incorporates the drafting amendments made by the Steering Committee. Except where otherwise stated, the clause and Schedule numbering in this report refers to that print.
3. The Steering Committee ("the Committee") has met once between the November 2002 and February 2003 Groups of Sessions, and has dealt with the remainder of its work on the final drafting of the Measure by correspondence. It has given careful consideration to points raised in the debates at the November 2002 Group of Sessions, and it is also grateful for a number of comments, queries and suggestions received from Synod members and others, many of them of a drafting nature. Some of them

have resulted in drafting amendments, which are set out in paragraph 12 below, while others have led to special amendments or are mentioned for other reasons in paragraphs 13-46, but again all of them have been carefully considered.

4. The Committee wishes to record its thanks to its two consultants. One of these is Ms Paula Griffiths, who has succeeded Dr Richard Gem as Secretary to the Cathedrals Fabric Commission for England ("the Cathedrals Fabric Commission") and is Head of the Cathedrals and Church Buildings Division of the Archbishops' Council; the other is Mr Colin Pordham, the Chapter Clerk of Norwich Cathedral, who was a consultant to the Steering and Revision Committees, nominated by the Ecclesiastical Law Association, during the Revision Committee Stage, and continued as a consultant to the Steering Committee for its work on final drafting.
5. In addition, the Committee wishes to thank staff of the Department for Culture, Media and Sport (as well as Dr Roger Bland of the British Museum) and staff of English Heritage for their assistance in responding to consultation on the Measure throughout its progress through the Synod. Although the results of consultation with them on the final stage of the Committee's work are not available at the time when it has been necessary to finalise this report for circulation to members of the General Synod, the Committee will ensure that a brief supplementary report is made available at the February 2003 Group of Sessions to inform members of the position.

General considerations

6. At the outset of its work the Committee considered its general approach to the task of final drafting under S.O. 59. It took the view that where the existing text was legally correct, but where it was clear that purely drafting adjustments for the purpose of clarification would help those (including non-lawyers) who had to implement the amended 1990 Measure to do so correctly, it was legitimate to take the opportunity of making such amendments at the Final Drafting Stage.
7. However, the Committee decided against embarking on any major re-organisation of the structure of the 1990 Measure and its interrelationship with other legislation, particularly the Cathedrals Measure 1999 ("the 1999 Measure"). The Committee recognised that the interface between the amended 1990 Measure and the 1999 Measure on some points, particularly in relation to architects and surveyors of the fabric, was not

particularly simple and obvious. However, the Committee was firmly of the view that it was not appropriate to make major amendments of this kind at the Final Drafting Stage, even if they did not alter the legal effect of the draft Measure, and that these should await the consolidating legislation which the Revision Committee had already recommended (see paragraphs 71-73 of GS 1429Y). That would in any case provide an opportunity to carry out the task more satisfactorily.

8. Similarly, the Committee decided not to attempt to bring up to date all the references to secular legislation which had been replaced by other legislation since the 1990 Measure had been passed. An example of this is the reference in section 15 of the 1990 Measure to the Town and Country Planning Act 1971, which has now been replaced by the Town and Country Planning Act 1990. The Committee was advised that it was neither legally necessary nor usual to amend such references, as the Interpretation Act 1979 ensured that they would automatically be interpreted as referring to the new legislation which had replaced the original Act or Acts. The Committee therefore agreed that this task should also await the consolidating legislation.
9. At the same time, the Committee wishes to place on record that it agrees with the Revision Committee's recommendation in favour of consolidation and recommends to the Business Committee that a draft Measure for that purpose be brought forward under S.O. 47 as soon as possible. Having said this, it recognises that a certain amount of delay may be inevitable, and that, in particular, it may be necessary to wait until a decision has been taken on the recommendation in the report by the Review Group on the Royal Peculiars that Westminster Abbey and St George' Chapel, Windsor should be brought within the controls under the 1990 Measure.

DRAFTING AMENDMENTS

10. The Committee has made the drafting amendments to the Measures set out in paragraph 12 below. As required by S.O. 59(g), they affect only the wording of the Measure and do not alter its substance; most of them are made for one or more of three reasons:-
 - (a) for clarification (as regards which please see paragraph 6 above);
 - (b) to ensure consistency with the terminology and drafting used elsewhere in the Measure; or

- (c) by way of minor corrections of the drafting.
11. In the drafting amendments and the notes to them, except where otherwise stated, references to sections are to sections in the 1990 Measure and references to a "new provision" are to a provision of the 1990 Measure that is to be added or substituted by the present Measure.
12. The Committee's drafting amendments are as follows:-

Clause 1

- (a) In paragraph (b) at the end insert “and after the word “works”, in the first place where it occurs, there shall be inserted the words “, including works of repair or maintenance,””.

Note: The reason for this amendment, which is for clarification, is explained more fully in paragraph 18 below.

Clause 2

- (b) In the new section 3(2A)(d) after “14B” insert “(a)”.

Note: For clarification, to specify the relevant provision in the new section 14B.

Clause 4

- (c) In the new section 5(1)(a), at the beginning insert “if requested to do so by the Chapter,” and for the second “a” substitute “the”.

Note: For clarification, to make clear that the Fabric Advisory Committee is to exercise the power under the new section 5(1)(a) only at the request of the Chapter.

Clause 5

- (d) In clause 5(1)(a) omit the brackets encircling “(including any works of repair or maintenance)” and insert commas instead, and omit “any”.

Note: The reason for this amendment, which is for clarification, is explained more fully in paragraph 18 below.

- (e) In the new section 6(2C)(c) for “any” substitute “all the”.

Note: For clarification, to make clear that the new section 6(2C) is not to apply unless planning permission, listed building consent or scheduled monument consent is required for all the works involved in the proposal.

- (f) At the end of clause 5 insert –

“(4) In section 6(4) of the 1990 Measure for the words “this Measure” there shall be substituted the words “section 26 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (1991 No.1).”.

Note: For clarification, to make clear that section 6(4) of the 1990 Measure, referring to the Rules governing applications under section 6, now refers to Rules made under the rule-making provisions in the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 which were substituted for those originally included in section 16 of the 1990 Measure.

Clause 6

- (g) In the new section 6A(2)(b) after “treasure” insert “in that inventory”.

Note: For clarification, to make clear that the requirement to designate as treasure an item which appears to fall within section 6A involves designating it as such in the inventory compiled under section 13, in which section 6A(2)(b) requires the object to be recorded.

Clause 8

- (h) In clause 8(1) at the end insert “and for the word “it” there shall be substituted the words “the administrator””.

Note: A drafting correction in the 1990 Measure.

Clause 9

- (i) In the new section 10B(1)(a) for “members of the public” and in 10B(1)(b) and (c) for “a member of the public” substitute “any person”.

Note: for clarification, to make clear that any person may apply for extracts from a register under the new section 10(B)(1)(a) and that the Cathedrals Fabric Commission or a Fabric Advisory Committee may supply further extracts or a copy of the whole register to any person under the new section 10B(1)(b).

Clause 12

- (j) In the headnote after “Appointment of” insert “cathedral architect or surveyor of the fabric and”.

Note: To make clear the scope of the amended clause.

- (k) At the end of clause 12 insert –

“(3) For the headnote to section 12 of the 1990 Measure there shall be substituted the following headnote -

“Provisions as to cathedral architects or surveyors of the fabric and cathedral archaeologists”.

Note: To make clear the scope of the amended section 12.

Clause 13

- (l) In the new subsection (5) add at the end “, having regard to subsection (4) above”.

Note: A drafting correction, which makes clear that any change to the extent of the "precinct" (as shown on the plan prepared under section 13(3)) which may be made under the new section 13(5) where the plan itself has been updated is, like changes to the "precinct" made under the new section 13(6) in other cases, to be made having regard to the principle governing the extent of the precinct set out in the amended section 13(4). (See also paragraphs 29-31 below.)

Clause 14

- (m) In the new section 14(1), at the beginning insert –

“Subject to subsection (3) below,”.

Note: For clarification, to make clear the interrelationship between the provisions in the new section 14(1) regarding quinquennial reports by the architect and surveyor of the fabric on the cathedral and any ancillary buildings, and section 14(3), making special provision for the first report made by a new architect or surveyor of the fabric after appointment.

- (n) In the new section 14(3), after “report” insert “referred to in subsection (1) above”.

Note: For clarification, for the same reason as amendment (m).

Schedule 1

- (o) After paragraph 1 insert –

“2. In paragraph 2 the words “and provosts” shall be omitted.”.

and renumber the paragraphs in Schedule 1.

Note: The reason for this amendment, like the amendment to the 1990 Measure in paragraph 3(a) of Schedule 1 to the draft Measure, is that, now that the Cathedrals Measure 1999 is fully in force, all cathedrals which previously had provosts now have deans.

- (p) In paragraph 2(c), in the new sub-paragraph (g)(i) omit “for Culture, Media and Sport”.

Note: This amendment relates to paragraph 2(c) as it appears in GS 1429B. If the special amendment set out in paragraph 25 below is carried, that provision will be renumbered as paragraph 2(d). The purpose of the amendment is to assist those who have to use the Measure, given that the name of the relevant Department may change from time to time.

- (q) In paragraph 10, in the new paragraph 16A of Schedule 1 after “9” insert “or 10C”.

Note: For clarification, to make clear that the new paragraph 16A applies to all appeals to the Cathedrals Fabric Commission.

Schedule 2

- (r) After paragraph 3 insert –

“4. In paragraph 4 after the words “cathedral architect” there shall be inserted the words “or surveyor of the fabric” and for the words “archaeological consultant to the cathedral church” there shall be substituted the words “cathedral archaeologist”.”.

Note: To ensure consistency with the terminology used elsewhere in the Measure.

- (s) After paragraph 4 insert –

“5. In paragraph 8 for the words “chapter of the cathedral church” there shall be substituted the words “Chapter of the cathedral”.

Note: to ensure consistency with the drafting elsewhere in the Measure.

Schedule 3

- (t) At the beginning insert –

“1. In section 10(3)(c) of the 1990 Measure omit the words “for Culture, Media and Sport”.

.2. In section 11(4) of the 1990 Measure after the word “architects” there shall be inserted the words “or surveyors of the fabric” and for the words “archaeological consultants” there shall be substituted the words “cathedral archaeologists”.

Re-number the paragraphs in Schedule 3.

Note: The reason for paragraph 1 is as for amendment (p) above; the reason for 2 is as for amendment (r) above.

- (u) In paragraph 3(e), in the new definition at the end insert “by whatever name called”.

Note: The amendment relates to paragraph 3 as renumbered under (t) above and as shown in GS 1429B. It ensures consistency with the phraseology of the original section 20(1) of the 1990 Measure and makes clear that the definition of "cathedral architect or surveyor of the fabric" also applies to an office-holder fulfilling that function for whom the individual cathedral has adopted some other title under a provision included in its statutes under section 11(a) of the 1999 Measure.

- (v) At the end of paragraph 3 insert –

“(j) in the definition of “precinct” the words “(3) and (4)” shall be omitted;

(k) the definition of “the Standing Committee” shall be omitted.”.

Note: The amendments relate to paragraph 3 as renumbered under (t) above and as shown in GS 1429B. (j) reflects the fact that, under the amended section 13, sub-sections (3) and (4) will no longer be the only sub-sections dealing with the precinct. (k) follows from the replacement of the Standing Committee of the General Synod by other bodies by and under the National Institutions Measure 1998. (See also paragraphs 41-42 below)

- (w) In paragraph 5(b) after “25(2)(b)(ii)” substitute for all the words –

“for the words “one person” there shall be substituted the words “three persons” and for the words “a person” there shall be substituted the word “persons”.

Note: A drafting correction. The amendment relates to paragraph 5(b) as renumbered under (t) above and as shown in GS 1429B.

- (x) In paragraph 7(a) after “cathedral” insert “, in the second place where it occurs”.

Note: A drafting correction. The amendment relates to paragraph 7(a) as renumbered under (t) above and as shown in GS 1429B.

- (y) In paragraph 8 after “consultant” insert “of the cathedral”.

Note: To ensure consistency with the terminology used elsewhere in the Measure. The amendment relates to paragraph 8 as renumbered under (t) above and as shown in GS 1429B.

SPECIAL AMENDMENTS AND OTHER POINTS CONSIDERED

13. The following paragraphs deal with a number of points considered by the Committee. A few of them relate purely to drafting issues raised with the Committee, but on which the Committee decided no action was needed. However, most of them relate to points which were or were seen by those who raised them to be to be ones of substance, and in those cases where the Committee decided, as a result, to propose special amendments to the Measure, these are set out below.
14. In general, the issues have been set out in the order in which they relate to the text of the Measure. Where they relate to more than one provision, they appear at the first point where they affect the text. However, the Committee thinks it would be helpful to the Synod to deal first with a group of issues affecting both clause 1 and clause 5 which were raised in the debate on the Revision Committee's report in November 2002. It proposes to do so in some detail, because it recognises that, at first sight, the issues appear somewhat complex and have subsequently been raised again by the Cathedral Architects Association, and because the Committee wishes to ensure that any concern that may be felt by cathedrals is fully allayed.

Clauses 1 and 5 - tests for (a) requirement of approval under the 1990 Measure and (b) body to which applications for approval must be made - "works of repair or maintenance"

15. It may assist the Synod to begin by explaining the structure of sections 2 and 6 of the 1990 Measure as they relate to proposals for the carrying out of works (other than work to objects, which is dealt with in specific provisions in sections 2 and 6).

Section 2 - Requirement for approval

Section 2(1)(a) of the 1990 Measure provides that the cathedral chapter may not implement (or, under the present draft Measure, consent to the implementation of) works on, above or below land owned by the corporate body of the cathedral which would materially affect:-

- (i) the architectural, archaeological, artistic or historic character of the cathedral church or any building within the precinct which is for the time being used for ecclesiastical purposes; or
 - (ii) the immediate setting of the cathedral church; or
 - (iii) any archaeological remains within the precinct;
- unless the proposal has been approved under the 1990 Measure.

Thus, leaving aside works which would materially affect the immediate setting of the cathedral or archaeological remains, approval is needed only if the works, of whatever type, would **materially affect the character of the cathedral church** or certain other buildings in one of the respects set out in (i). If the works would not do so, there is no need to apply for approval under the 1990 Measure.

Section 6 - Body to which application for approval is to be made

If a proposal requires approval under the test laid down in section 2, section 6 governs whether the application for approval should be made to the Cathedrals Fabric Commission or to the Fabric Advisory Committee of the individual cathedral. Some new provisions would be added to section 6 by the present draft Measure, but the basic rules are set out in section 6(1). Leaving aside the Cathedrals Fabric Commission's power to "call in" cases, and to cases involving the disturbance or destruction of archaeological remains, the test is that set out in section 6(1)(a), namely that the application must be submitted to the Cathedrals Fabric Commission rather than the individual Fabric Advisory Committee if:-

"the proposal would involve ... the carrying out of works which would permanently alter the fabric of the cathedral church or any building within the precinct ... which is for the time being used for ecclesiastical purposes".

Thus, if a proposal falls within section 2(1)(a) because it involves works which would materially affect the character of the cathedral church (or certain other buildings), the application for approval will need to be submitted to the Cathedral Fabric Commission if, **in addition**, the works would **permanently alter the fabric of the cathedral church** or the other building concerned. Otherwise, the application can and indeed must be dealt with by the Fabric Advisory Committee. (Conversely, as explained above, proposals which do **not** materially affect the character of the relevant building do not require approval under the Measure, whether from the Fabric Advisory Committee or the Cathedrals Fabric Commission, even if they involve some degree of permanent alteration of the fabric.)

16. The reason why it was originally proposed that the drafting of section 6(1) should be elaborated was that concern had been expressed to the Review Group for the 1990 Measure, particularly by the Society for the Protection of Ancient Buildings in relation, for example, to work to stonework, that there were some cases where applications which fell within section 6(1) were being dealt with by the Fabric Advisory Committee rather than by the Cathedral Fabric Commission because of a mistaken impression that it was not possible for works of repair to come within section 6(1)(a) (see GS 1417 paragraph 48). Because of that, the Follow-Up Group to the Review Group included in the present draft Measure an amendment to section 6(1) under which the subsection would refer to "**works (including any works of repair or maintenance) which would permanently alter the fabric**". The Committee, like the Follow-Up Group and the Revision Committee, was advised that these words did not in any way alter the legal effect of the Measure, but were merely to avoid any misunderstanding about the scope of section 6(1)(a) as originally drafted, by making clear that if and in so far as works of repair or maintenance which came within section 2(1) would permanently alter the fabric, they required approval from the Cathedrals Fabric Commission.
17. As the Committee understands it, the main concern about this amendment is that it could require cathedral chapters to submit a large number of proposals for fairly minor works to the Cathedrals Fabric Commission for approval, whereas in the past they could have been dealt with by the Fabric Advisory Committee or possibly would not have required approval at all. The Committee has been advised, and is satisfied, that this is not the case.

- (a) The concerns seem to have arisen partly from a misunderstanding of the words to be added to section 6(1)(a) by the draft Measure; as explained above, they do **not** mean that all works of repair or maintenance must be approved by the Cathedrals Fabric Commission but only that they must be approved by the Commission if they need approval under the 1990 Measure in the first place under the tests laid down in section 2(1), and if in addition they would permanently alter the fabric.
- (b) The other reason for the concern appears to be that the word "maintenance" is normally used by those involved with cathedral buildings and works to them as meaning, to quote the Dean of St Albans in the debate on the Revision Committee Report at the November 2002 Group of Sessions, "work to keep things as they are at present, not to change them". On that basis, of its nature, maintenance work would not permanently alter the fabric, and a reference to it in section 6(1)(a) would be illogical.

As regards this, the Committee accepted the significance of the way in which those involved with implementing the Measure used a particular term. However, it was satisfied that, in dealing with a piece of legislation, it must also have regard to the legal meaning of that term, and in particular in the way in which the judges had interpreted it in decided case-law. The advice the Committee received was that the judges had regarded as "maintenance" as an ordinary English word which must be given its ordinary meaning, but had accepted that it was not easy to define and had to be interpreted in the light of its context. Nevertheless, judges had taken the view that the broad concept it conveyed was that of keeping the object etc maintained in a state where it was able to fulfil its purpose.

The Committee was advised that the cases decided by the courts also accepted that "repair" and "maintenance" were not mutually exclusive, so that some works could come under both headings, while some works of maintenance were not repairs and vice versa. At the same time, the cases show that from a legal point of view "maintenance" was not confined to restoring something to precisely the same state as its original one and, for example, to using identical materials. For example, in one of the recent cases one of the judges had discussed the example of metal guttering which required attention, and had taken the view that the work could be

"maintenance" even if the metal guttering was replaced with plastic guttering.

18. In the light of this, the Committee decided that the concerns that had been expressed were not well-founded, and that the inclusion of a reference to "repair or maintenance" was, as the Follow-Up Group had thought, a desirable amendment to avoid misunderstanding about the effect of section 6(1), but that it did not alter the legal effect of the 1990 Measure.) However, it decided that the effect of the amendment could be clarified, and it hoped the concerns could be allayed, by making the drafting amendments set out in paragraphs 12(a) and (d) above. The object of these is :-
 - (a) to use the same terminology as regards repair or maintenance in both section 2 and section 6, and thus help to avoid any suggestion that section 6 was intended to extend the scope of the Measure by covering works which did not satisfy the test in section 2 for deciding whether approval was needed at all; and
 - (b) to avoid any possible suggestion that all works of repair or maintenance fell within section 6(1) by making it clear that the only works which fell within the subsection were those, including repair and maintenance if and in so far as relevant, which would permanently alter the fabric.
19. Having said all this, the Committee entirely agrees with the Dean of St Albans that what is needed is clear and practical guidance on these matters, and indeed on the effect of other aspects of the amended sections 2 and 6 of the 1990 Measure, for all those involved in implementing it. For example, it agrees with the Dean that guidance is needed on the meaning of the highly significant term "materially" in section 2(1)(a) and on what is to be regarded as purely *de minimis*. The Committee therefore recommends that the Cathedrals Fabric Commission should address that need, by deciding how far its existing guidance needs revision or amplification, in consultation with the Cathedral Architects Association and any other relevant bodies. It is pleased to note that the Secretary to the Commission has already raised this with the Cathedral Architects Association, and that they have made clear their willingness to collaborate with the Commission in this important task.

Clause 1

20. The Reverend Timothy Barker (Lincoln), a member of the Chapter of Lincoln Cathedral, asked the Committee to reconsider the provisions in clause 1(b) and (c) and elsewhere in the Measure which would substitute the term "corporate body" for references in the 1990 Measure to the chapter of the cathedral church.
21. However, the Committee was satisfied that these changes were correct. The reason was that in the original 1990 Measure the term "chapter" was used to refer to the body which held the title to cathedral's property, and was defined by section 20(1) as meaning the dean and chapter or, in the case of a parish church, the cathedral chapter. (These were of course the bodies which held the title to the cathedral's property under the Cathedrals Measure 1963. References in the original 1990 Measure to the body which was responsible for the administration of the cathedral used the term "administrative body".) Now that the Cathedrals Measure 1999 is fully in force, its provisions have replaced the relevant provisions in the 1963 Measure, and the title to the cathedral's property is now held by the body corporate established under section 9(1)(a) of the 1999 Measure. Thus the references in the 1990 Measure to the body holding the cathedral's property should now be to the corporate body, and not to the "new style Chapter" established by the 1999 Measure. However, the references to the "administrative body" in the original 1990 Measure should indeed refer to the new Chapter, and that change is made by paragraph 7 of Schedule 3 to the present draft Measure.
22. Mr Barker also asked the Committee, if it considered it must retain the references to the "corporate body", to consider changing them to "body corporate", which might be regarded as preferable from a stylistic point of view. On this, Standing Counsel to the General Synod (Sir Anthony Hammond) advised the Committee that the 1999 Measure used both terms. He considered that "corporate body" was slightly preferable in the amended 1990 Measure, as it had the flavour of a specific name applied to a specific cathedral body. On that basis, while the Committee is grateful to Mr Barker for his suggestions, it decided to retain the existing wording.
23. A completely separate point was raised on clause 1(c) which relates to the new section 6A. That section deals with items which would fall within the Treasure Act 1996 but for special provisions which are to be made for cathedrals and church property within the faculty jurisdiction. Clause 1(c) would amend section 2(1)(b) of the 1990 Measure, which requires

approval for proposals for the sale, loan or other disposal of objects of architectural, archaeological, artistic or historic interest, to add a reference to items within section 6A. As the Measure stands, this is done by adding the words "or any object to which section 6A below applies".

24. However, after consulting the staff of the DCMS, the Committee has come to the view that, because of the terms of the Treasure Act 1996 itself, all items which would fall within section 6A would in fact be of at least historic or archaeological interest. This means that a reference to them in section 2(1)(b) is not essential as a matter of law, as they would be covered by the existing words. The Committee, like the staff of the DCMS, nevertheless accepts that it is desirable to retain an express reference to them in section 2(1)(b), for the avoidance of doubt. However, the present wording needs to be changed slightly to reflect the position as the Committee now understands it to be. For that purpose, the Committee proposes to move the following special amendment at the final drafting Stage:-

Clause 1

In clause 1(c) after "interest", delete "or" and insert ", including".

Clause 8

25. The Committee understands that some cathedrals are concerned over the new section 8(2B), which would be added to the 1990 Measure by clause 3(3) and which provides that the Cathedrals Fabric Commission, before determining whether to give approval to any proposal for the sale, loan or other disposal of an "outstanding" object, may request the Chapter to consult the cathedral Council if it has not already done so, and inform the Commission of the Council's views on the proposal.
26. The Committee understands that this concern relates mainly to loans of "outstanding" objects. The Revision Committee noted that most of the applications to the Cathedrals Fabric Commission for approval of proposals regarding outstanding objects related to loans, for example to temporary exhibitions (see paragraph 56 of GS 1429Y), and it accepts that in the case of a short-term loan of that kind it should not normally be necessary to require the Chapter to consult the Council, nor indeed might there be time to do so. It was because of this that the new section 8(2B) merely gives the Cathedrals Fabric Commission a discretion to ask for consultation with the Council, rather than imposing a duty on it to call for this (or a duty on Chapters to consult) in all cases of disposals of

outstanding objects, and thus gives the Cathedrals Fabric Commission the flexibility to decide where it is appropriate to ask the Chapter to consult the Council.

27. As a result the Committee does not consider any amendment is needed to clause 8 on this point. However, it recommends that the Cathedrals Fabric Commission should consider issuing guidance on the new provision before it comes into force, so that Chapters will be aware of the position in advance and will know when it would simplify the process to ensure that the Council is consulted before the proposal is submitted for approval under the 1990 Measure.

Section 10 of the 1990 Measure

25. This section deals with the composition of a Commission of Review to hear an appeal from the Cathedrals Fabric Commission. (In practice, there have so far been no such appeals.) One of the three members of the Commission of Review, under section 10(3)(b) of the 1990 Measure, would be appointed by the Archbishops, and must be a "person who is or has been a dean, provost or residentiary canon of a cathedral church other than the cathedral church to which the appeal relates". Mrs Heather Morgan (Exeter) asked the Committee to consider whether this provision should now be expanded, in the light of the Cathedrals Measure 1999, to permit the appointment of a lay member of a Chapter. (The other two members of the Commission would be:-
 - (a) the Dean of the Arches and Auditor, or a person appointed by her who would be qualified to hold that office; and
 - (b) a person appointed by the Secretary of State with special knowledge of the architecture, archaeology, art (including history of art) or history of cathedral churches.)
26. The Committee accepted that at first sight this suggestion seemed logical. However, the Committee took the view that the reason why section 10(3)(b) was confined to present or former deans, provosts and residentiary canons was to ensure that there was at least one clerical member on each Commission of Review, and that he or she could make a particular contribution on issues of worship or liturgy. On that basis, the Committee agreed that section 10(3)(b) should remain as it stood in this respect, and that it should not be extended to other members of a Chapter, whether clerical or lay. The Committee also noted that in this case the

reference to provosts should be retained, as it should remain possible to appoint a former provost

Clause 9

27. Clause 9 would add two new sections to the 1990 Measure. One of them, section 10A, would normally impose a 10 year time limit on an approval under the 1990 Measure, subject to a power for the body which gave the approval to extend the period.
28. At present, the wording of section 10A as it appears in the draft Measure means it would apply only to approvals of proposals for "the carrying out of work". However, the Committee agreed that the time limit under the new section 10A(1) should apply to any application for approval under the Measure, including one relating to objects - for example, if approval was given for the sale of an object, that was likely to be in the context of the particular financial or other circumstances at the time, and they might well have changed after 10 years. To achieve that, the Committee intends to propose the following special amendment at the Final Drafting Stage:-

Clause 9

In the new section 10(A)(1) omit the words "the carrying out of any work".

Clause 13

29. Clause 13 contains a number of amendments to section 13 of the 1990 Measure, dealing with inventories and precinct plans. One of these, to be found in clause 13(3), would provide the Cathedrals Fabric Commission with guidance as to what land to designate at the precinct, by laying down that it "shall consist of so much of the land [surrounding the cathedral church and owned by the corporate body] as, in the opinion of the Commission, is necessary to preserve or protect the architectural, archaeological, artistic or historic character of the cathedral church and its setting."
30. Because the Committee was aware of the problems that had arisen over defining the precinct for some cathedrals in the early days of the 1990 Measure, which clause 13(3) was intended to avoid in the future, and of the fact that there was a risk of such issues arising again once the Cathedrals Fabric Commission had power to amend the precinct under the new section 13(5) and (6), the Committee looked again at clause

13(3) to ensure that it was satisfactory. Members decided it would be helpful to refer specifically to buildings other than the cathedral church which were of architectural, archaeological, artistic or historic interest, and to archaeological remains, and also, in appropriate drafting, to what is often described as the historic and archaeological context of the cathedral church.

31. The Committee therefore intends to propose the following special amendment to the Measure at the Final Drafting Stage:-

Clause 13

In the amendment to section 13(4) omit "and its setting" and add at the end "and of any buildings of architectural, archaeological, artistic or historic interest associated with it and of any archaeological remains associated with or situated in, under or near to the cathedral church or any such buildings and the setting of the cathedral church and any such buildings and remains; and in implementing the requirements of this subsection the Commission shall have regard to the context in which the cathedral church and any such buildings have developed over time.

Schedule 1

32. This Schedule contains a number of amendments to Schedule 1 to the 1990 Measure, dealing with the Cathedrals Fabric Commission. The Cathedrals Fabric Commission is to consist of a chairman, a vice-chairman and 22 other members, and of those paragraph 3(d) provides that two members, appointed by the Archbishops, are to be "persons holding office as architects to cathedral churches who shall be appointed after consultation with the President of the Royal Institution of British Architects".
33. The Committee decided that it ought to review this provision in the light of the decision by the Revision Committee, accepted by the Synod, to permit the appointment of chartered building surveyors to fulfil the same role as cathedral architects, and to allow the new alternative titles of "architect or surveyor of the fabric". In the Committee's view, the only reasonable course was to amend the sub-paragraph to ensure that the appointments under paragraph 3(d) should in future be open to all those holding office as architects or surveyors of the fabric to a cathedral, be they architects or surveyors. It also followed that the RICS (Royal

Institution of Chartered Surveyors) should be consulted as well as the RIBA.

34. In that connection, the Committee considered whether one place should be expressly reserved for an architect, especially as surveyors appointed to fulfil the same functions were likely to be very much in the minority in the foreseeable future. However, it decided that was not necessary, as the Archbishops, acting on advice, could be relied upon to act reasonably in making the appointments. Reserving one place for an architect might also give the impression that one place should be filled by a surveyor if there was one eligible for appointment. The Committee also considered whether, to reflect the realities of the situation, one place should be filled after consultation with the President of the RIBA and one after consultation with the President of the RICS. However, it was agreed that although the best course would be for the President of the RICS to be consulted about one of the places, the President of the RIBA should continue to be consulted about the filling of both – for example, the RIBA might wish to argue for two architects, even if some surveyors by then held office as surveyors of the fabric.
35. The Committee therefore intends to propose the following special amendment at the Final Drafting Stage:-

Schedule 1

After paragraph 2(b) insert –

"(c) in sub-paragraph (d) for the words after "office " to the end there shall be substituted the words "as cathedral architects or surveyors of the fabric one of whom shall be appointed after consultation with the President of the Royal Institute of British Architects and the other shall be appointed after consultation with that President and the President of the Royal Institution of Chartered Surveyors;".

Renumber the sub-paragraphs of paragraph 2.

36. The Cathedral Architects Association has been consulted about this amendment and has made no comment. The results of consultation with the RIBA and the RICS are not available at the time when this report has had to be finalised, but the Committee will ensure that the Supplementary Report mentioned in paragraph 5 above will inform the Synod of the outcome of the consultation.

Schedule 2

37. Schedule 2 contains a number of amendments to Schedule 2 to the 1990 Measure, dealing with Fabric Advisory Committees,.
38. As regards the membership of those Committees, Mr Pordham pointed out that the Review Group on the 1990 Measure had proposed an amendment to Schedule 2 to the 1990 Measure so that the same consultation must take place when filling a casual vacancy as would have had to take place for the original appointment under paragraph 1 (see GS 1417, paragraph124). The Committee therefore agreed that paragraph 9 of Schedule 2 to the 1990 Measure, dealing with casual vacancies, should be amended to give effect to this.
39. It was also pointed out to the Committee that, although the Measure would amend Schedule 1 to the 1990 Measure to state expressly that the business of the Cathedrals Fabric Commission is to be decided by a majority of members present and voting, with a second or casting vote for the chairman if the voting is equal, there was no corresponding provision for Fabric Advisory Committees in Schedule 2 to the 1990 Measure. The Committee agreed that the same principle should in both cases, and that the necessary amendment should therefore be made to Schedule 2.
40. In order to cover these two points, the Committee intends to propose the following two special amendments at the Final Drafting Stage:-

Schedule 2

After paragraph 5 insert –

- "6. In paragraph 9 after the word "may" there shall be inserted the words "after carrying out the like consultation as was required when the appointment was made".
7. After paragraph 10 there shall be inserted the following paragraph –

"11A. The business of the committee shall be decided by a majority of the members present and voting thereon and, in the event of an equal division of votes, the Chairman shall have a second or casting vote."."

Renumber the paragraphs of Schedule 2.

Schedule 3

41. The first part of Schedule 3 contains further amendments to the 1990 Measure. One point on the Measure which was drawn to the Committee's attention by Mrs Heather Morgan (Exeter) was that section 11(2)(b), dealing with requests for the Cathedrals Fabric Commission to give advice on proposed works to a cathedral church other than one of the Church of England or the Church in Wales, still referred to the Standing Committee of the General Synod, and required it to give its consent. The Standing Committee had of course ceased to exist as a result of the National Institutions Measure 1998, and steps had been taken to transfer its functions to other bodies by subordinate legislation under that Measure. In particular, the National Institutions of the Church of England (Transfer of Functions) Order 1998 had transferred the Standing Committee's functions under section 18 of the 1990 Measure and paragraph 2 of Schedule 1 to the Archbishops' Council. However, it appeared that by an oversight no corresponding provision had been made for the Standing Committee's function under section 11.
42. The Committee agreed that the obvious course was to transfer that function to the Archbishops' Council, given that the main object of requiring the Standing Committee's consent had been to protect the Cathedrals Fabric Commission's resources. It therefore intends to propose the following special amendment at the Final Drafting Stage:-

Schedule 3

After paragraph 1 insert

"2. In section 11(2) of the 1990 Measure for the words "the Standing Committee of the General Synod" there shall be substituted the words "the Archbishops' Council".

Renumber the paragraphs of Schedule 2.

43. Before the Revision Stage, Mr Martin Stancliffe, the Chairman of the Cathedral Architects Association, who had been a member of the original Review Group for the 1990 Measure, had drawn attention to a point on the drafting of the new provisions permitting the appointment of a chartered building surveyor to carry out the same functions as a cathedral architect. This was that the new definition of "architect or surveyor of the fabric" in the amended section 20(1) of the 1990 Measure. would merely use the term "surveyor", as opposed to "chartered building surveyor",

although it cross-referred to the 1999 Measure, where "surveyor" was defined in the same terms as the definition of "chartered building surveyor" in the 1990 Measure. Although this was not particularly convenient to the reader, it was one aspect of a more general problem referred to in paragraph 7 above. In this case, Standing Counsel advised that there was no need to amend section 20(1), and that the 1999 Measure did all that was necessary to ensure that only a qualified chartered building surveyor (or, of course, an architect) could be appointed. Indeed, he advised against making an amendment of that kind, because the definition of "surveyor" in the 1999 Measure meant that it was unwise to single out this particular reference for special treatment, and the Committee accepted that advice.

44. However, in view of the Dean of Carlisle's speech at the November 2002 Group of Sessions concerning the skills and knowledge which this role required, the Committee looked again at the new section 9(1A) to be inserted into the 1999 Measure by Schedule 3 to the draft Measure in order to permit such appointments. The subsection as it stands would require the person appointed to have "such qualifications and expertise in matters relating to the conservation of historic buildings as the Chapter, after consultation with the Cathedrals Fabric Commission and such other persons or bodies as it thinks fit, considers appropriate".
45. The Committee recognised that skills in conservation were not the only ones needed. However, it took the view that any reasonable Chapter would consider whether an applicant for the post of cathedral architect or surveyor of the fabric, whether he or she was an architect or a chartered building surveyor, had all the qualities and competence needed for that role. In addition, it would be undesirable to refer to further specific skills, given that it was not possible to draw up a comprehensive list which would apply equally to all cathedrals, and that in any case particular skills might be needed to different degrees in different cathedrals.
46. On the other hand, the Committee agreed that it would be desirable, and would help to allay anxieties, to expand section 9(1A) to include a general provision referring to skills and expertise in other matters such as to enable the post of architect or surveyor to the fabric to be discharged. This would of course be supported by the standards of good practice on the role and duties of cathedral architects and surveyors of the fabric which are to be laid down and promoted by the Cathedrals Fabric Commission under the new section 3(2A) of the 1990 Measure (to be added by clause 2(2) of the draft Measure). The Committee therefore

intends to propose the following special amendment at the Final Drafting Stage:-

Schedule 3

In paragraph 7(b) (as renumbered), in the new section 9(1A), after "buildings" insert "and other matters" and at the end add "to enable the role and duties of the post of architect and surveyor of the fabric to be discharged."

On behalf of the Committee

**Janet Atkinson
Chairman**

28th January 2003