GS 1524Y

GENERAL SYNOD

DRAFT PASTORAL (AMENDMENT) MEASURE

REVISION COMMITTEE REPORT

Chairman: Mr Timothy Allen (St Edmundsbury and Ipswich)

Steering Committee (Ex-officio):

The Archdeacon of Northumberland (the Venerable Peter Elliott) (Newcastle) (Chairman)
Mrs Caroline Chamberlain (Exeter)
The Reverend Canon Nicholas Feist (Manchester)
The Archdeacon of Leicester (the Venerable Richard Atkinson) (Leicester)
Miss Fay Wilson-Rudd (Bath and Wells)

Appointed Members:

Mr Aiden Hargreaves-Smith (London)
The Archdeacon of Lancaster (the Venerable Colin Williams) (Blackburn)
Mr Peter Smith (St Edmundsbury and Ipswich)
The Bishop of Sodor and Man (the Right Reverend Graeme Knowles)
The Reverend Stephen Trott (Peterborough)

Consultants:

Church Commissioners:	Mr Martin Elengorn (Pastoral and Redundant Churches Secretary) Miss Sue Jones (Official Solicitor)
Council for the Care of Churches:	Ms Paula Griffiths (Secretary)
Diocesan Secretaries:	Mr Nicholas Edgell (St Edmundsbury and Ipswich)
Diocesan Registrars:	Mr David Cheetham (St Albans)

1. The draft Pastoral (Amendment) Measure ("the draft Measure") received First Consideration from the General Synod ("the Synod") at the February 2004 Group of Sessions. The period for the submission of proposals for amendment expired on 15th March 2004.

2. In addition to proposals from the Steering Committee, submissions (including in some cases proposals for amendment) were received from four members of the Synod (Mr Aiden Hargreaves-Smith (London), Mr Lee Humby (London), the Archdeacon of Lewisham (the Venerable Christine Hardman) (Southwark) and Mr Peter Smith (St Edmundsbury and Ipswich)) before the closing date mentioned in paragraph 1, as required by Standing Order 53(a). Mr Hargreaves-Smith and Mr Smith spoke to their submissions while attending as members of the Revision Committee ("the Committee"). The Committee also received a submission from one non-Synod member, Mr Peter White (the diocesan registrar of the diocese of Winchester), which it also considered.

3. The Committee met on one occasion and the amendments which the Committee accepted are reflected in the draft Measure as it now returns to the Synod (GS 1524A), in which those amendments are shown in bold. Set out in the appendix to this Report the Synod will find a summary of all the proposals for amendment received and considered by the Committee as well as the Committee's decision on each, as required by Standing Order 54(b).

4. When referred to in this Report (except the appendix), the numbering and lettering of the draft Measure relates to that of the draft Measure (GS 1524A) as now returned to the Synod.[1]

5. All the decisions of the Committee were unanimous.

The general desirability of the draft Measure

6. The submissions from Mr Hargreaves-Smith and the Archdeacon of Lewisham both appeared to the Committee to question the desirability of the proposals embodied in the draft Measure generally. Both submissions raised points of principle against the draft Measure as well as practical concerns over its implementation.

7. Mr Hargreaves-Smith's principal concern was that before introducing amending legislation the Church should endeavour to

[1] The only change in the numbering and lettering of the draft Measure (GS 1524A) as now returned to the Synod as compared with the draft Measure (GS 1524) as given First Consideration relates to the insertion in clause 1(b) of a new subsection (2K) and the subsequent relettering of subsection 2(K) as subsection (2L) (paragraphs 58-59 below refer).

persuade those public funding bodies which require the granting of a legal interest in church premises as a condition of grant funding that the existing option of a licence under faculty provided adequate security for the expenditure of public funds. In support of his view, he pointed to examples of funding bodies having in his own experience supported projects which relied on a licence. He therefore favoured some delay in the progress of the draft Measure while this consultation took place - the result of which, he argued, might be that the draft Measure was not needed after all.

8. A number of the Committee's consultants cautioned it against the approach proposed by Mr Hargreaves-Smith. It was firstly pointed out that most public funding bodies did require a leasehold interest and that, even if these bodies were to be persuaded that a lease was not necessary (which seemed unlikely given that this requirement was thought to arise under the Treasury's accounting regulations), the process of change would be a lengthy one. In contrast, the proposals embodied in the draft Measure could proceed more quickly (enjoying widespread support as they did) and would enable churches currently awaiting its implementation to have some certainty of a future. It was also pointed out that considerations other than the requirements of grant-funders might lead the prospective occupiers themselves to seek a leasehold interest. (Examples might be where they wished to acquire an asset which could be used as security for borrowing, or because it was required by the Charity Commission - which would expect a village hall or community association charity seeking to use church property to have a leasehold interest for the protection of the charitable funds it intended to expend on the property). Commercial bodies (such as banks lending money to a prospective occupier) might well also require the occupier to have a leasehold interest.

9. Failure to proceed, all the consultants agreed, could jeopardise the prospects of the many parishes which were seeking a positive way forward at the current time. Reference was also made to the fact that the proposals embodied in the draft Measure were derived from the recommendations of the Review of the Dioceses, Pastoral and related Measures and enjoyed the strong support of the dioceses and the Ecclesiastical Judges Association.

10. The Steering Committee emphasised that the new provisions in the draft Measure, if implemented, would provide an alternative to the

current system of licence by faculty and would not replace it. That that was the case seemed to be supported by a letter sent to the Committee by the Dean of the Arches, in which she had said that she envisaged a lease only being authorised "in cases where a licence will not satisfy a grant-making body".

11. It appeared to the Steering Committee that the draft Measure addressed the clear requirements of at least some funding bodies for a lease before funds could be released (examples of such cases having been provided to the Committee). Furthermore, the Steering Committee was concerned at the prospect of staff being asked to undertake an exercise to persuade funding bodies to change their policy when this process would inevitably involve a substantial amount of work. The Steering Committee also understood that the directions under which most public funding bodies currently operated derived from the Treasury and were unlikely to be changed at the Church's behest, even if they were unreasonable in terms of the proper protection of public money - which the Steering Committee was not convinced was the case. (The Chief Legal Adviser explained that whilst a contractual licence could indeed confer a substantial degree of protection on an occupier, as Mr Hargreaves-Smith argued, he could understand that funding bodies and those advising them might be unhappy about relying on such a licence because of the possibility, however remote, that it might be held in substance to be a lease, and thus to be void as a result of the effect of section 56 of the 1983 Measure. This had of course been the risk referred to by Chancellor Coningsby in the debate at First Consideration stage.)

12. The Steering Committee had therefore concluded that, whilst the power to be conferred by the draft Measure may not be required in all cases, there was sufficient evidence to show that there was a need for it in <u>some</u> cases. It was therefore for the benefit of those parishes that needed to arrange for the lease of part of their church in order to secure funding (or for any other reason) that the draft Measure was needed.

13. Mr Hargreaves-Smith also cited a range of other concerns about the draft Measure. Those concerns, and the Steering Committee's views on them, were as follows -

    (a) *That consecrated land "is inalienable", with any exceptions arising solely under statutory authority and*

that the draft Measure can only "diminish the principle of the different quality/ character of consecrated land". The Steering Committee was advised that the common law does not prevent the alienation of consecrated land as such.[2] Thus, the Steering Committee noted, if authorised by faculty, consecrated land could already be disposed of, or used, for secular purposes; and Mr Hargreaves-Smith himself accepted the utility of the exception which takes the form of use under a licence authorised by faculty.

(b) *Tenants will not be aware that their rights under the Landlord and Tenant Act 1954 are excluded*. It seemed highly unlikely to the Steering Committee that in practice prospective tenants would be unaware of the position as regards security of tenure. Clarity about the implications of the granting of a lease, supported by the taking of appropriate professional advice, would be important for both parties (both in relation to this particular point and more generally) and it was therefore envisaged that, before authorising a lease, chancellors would wish to satisfy themselves that there was no misunderstanding of the position as regards security of tenure. Indeed, the Committee understood from the Dean of the Arches that consideration would be given to the possibility of chancellors routinely including an express reference to the exclusion of protection in any lease, thus removing any possibility of misunderstanding in that respect.

(c) *Parishes might be confused if some leases were not subject to the provisions of the 1954 Act.* It seemed equally unlikely to the Steering Committee that parishes would misunderstand the position, given that they would presumably be instructing solicitors in connection with any lease. And the mere possibility that some parishes might misunderstand the position would not seem to represent a reason for not pursuing

[2] See *Re Tonbridge School Chapel (No 2)* [1993] Fam 281 (The reason that, independently of section 56 of the Pastoral Measure, an incumbent can only grant a legal estate in consecrated land comprising a church or churchyard under statutory authority is because his or her interest is limited by virtue of his or her office).

the proposals if they were otherwise in the Church's best interests.

(d) *The draft Measure would remove the restriction currently contained in section 56 of the Pastoral Measure 1983 on the sale, lease or other disposal of any church, any church site or any consecrated land annexed to a church*. The Steering Committee was advised that the draft Measure would not 'remove' the restriction currently contained in section 56, but rather add an exception to it, to allow the consistory court, on application to it, to grant a faculty allowing a lease to be granted by the incumbent (or, where the benefice is vacant, by the bishop).

(e) *Application for a lease may involve greater costs for the tenant.* (This point was also raised by the Archdeacon of Lewisham in her submission). Whilst this might be the case, the Steering Committee agreed that it would not seem to follow either that the return to the lessor church would be reduced or that the tenant could or would object. If the tenant wished to have the advantage of a leasehold interest, it was likely that the tenant would also be willing to accept any consequential increase in costs. Similarly, if the tenant wished to have that advantage, could it not be expected to meet the lessor church's costs of registering the freehold? And it appeared to the Steering Committee that if the position on costs was unsatisfactory the parish concerned could, in the last resort, decide not to proceed: there was no question therefore of costs being imposed on a parish against its will.

(f) *The imposition of business rates on church property will be more likely if "leases and business tenancies become more prevalent"*[3]. The Steering Committee was advised that the use of church buildings for secular purposes was plainly capable of prejudicing the availability of the exemption from business rates in

[3] Places of public religious worship belonging to the Church of England and certain other types of church premises are exempt from non-domestic rating under the Local Government Finance Act 1988.

some circumstances. But it seemed to the Steering Committee that this would be the case even where the secular use takes place under licence rather than under a lease. If so, the draft Measure would not accordingly seem to have any prejudicial impact in this area.

(g) *A different and more "robust" stance will be taken by lawyers representing the 'other party' in negotiating a lease rather than a licence.* The Steering Committee accepted that Mr Hargreaves-Smith's point might well be true; but even if this proved to be the case, the Steering Committee did not see this as sufficient reason for not proceeding with the draft Measure, if it was otherwise considered to be in the Church's best interest.

(h) *The Church should not be changing its position to conform with 'arbitrary' Government policy*. The Steering Committee agreed that the Church must endeavour to protect its legitimate interests against stances taken by Government or indeed any public or private sector bodies which could harm the Church's interests. But in this context the Steering Committee noted that it was not suggested that the stance being taken by the public sector bodies in question was in any way improper. In any event, the Steering Committee was clear that the new arrangements in the draft Measure would not be prejudicial to the Church's interests - in fact, quite the contrary.

14. The Archdeacon of Lewisham in her submission made three points, also relating to the general desirability and workability of the draft Measure. Her first point was that making it possible to grant leases of church premises would make it more likely that leases would be granted (rather than licences) and that that would inevitably lead to an increase in costs to the church. It might also lead to a church being registered with something less than an absolute title.

15. The Steering Committee felt that the Archdeacon had overlooked the fact that it will be a matter for the consistory court to decide whether or not to authorise a lease (as opposed to a licence) and, as noted in paragraph 10 above, chancellors would be authorising the granting of a lease only where there was a good reason for doing

so. On the question of the registration of title, the Steering Committee noted that if a church had title problems then all the process of granting a lease would do would be to expose them: it would not add to the problem.

16. The Archdeacon's second point concerned possible Parliamentary opposition to the exclusion of security of tenure under the 1954 Act (paragraphs 13(b) and (c) above refer). The Archdeacon's concern was that if the Ecclesiastical Committee objected, the draft Measure might be amended so that the exclusion of the 1954 Act were removed, and that the Church would therefore be forced to accept the Measure in an amended, undesirable form. However, the Steering Committee believed the Archdeacon's concern to be misplaced, given that neither the Ecclesiastical Committee nor either House of Parliament could amend Measures put to them by the Church.

17. The Archdeacon's final point was that where a lease had been granted in the past (following a partial redundancy scheme) the congregation could sometimes find it "difficult to maintain its presence and identity". The Steering Committee recognised that the Archdeacon had highlighted a valid concern. However, the Steering Committee felt that this problem, if it arose, was just as likely to do so where the occupation of the community body was under a licence. Furthermore, the Steering Committee noted that (as the Dean of the Arches had pointed out) the draft Measure would require the chancellor, before granting a faculty for a lease, to ensure that the premises (taken as a whole) would continue to be used primarily as a place of worship.

18. In discussion, the Committee fully endorsed the Steering Committee's assessment and advice on the submissions from Mr Hargreaves-Smith and the Archdeacon of Lewisham and expressed its clear support for the draft Measure proceeding as quickly as possible. The Committee concluded that those public funding bodies currently requiring a lease before making grants available (or the Treasury under whose regulations these bodies mostly operated) would not be persuaded to change their position and, indeed, that the Church could not mount a strong argument for them doing so. The Committee also noted the warning given by Chancellor Coningsby in the First Consideration debate against placing reliance on a 'beefed-up' licence as an alternative to the proposals in the draft Measure.

19. The Committee was also largely unconvinced by Mr Hargreaves-Smith's anxieties over the possible implications of the draft Measure in practice. In that connection the Committee was reassured to learn from the Dean of the Arches of the possibility of the Ecclesiastical Judges Association providing chancellors with a 'model' lease for use in cases proceeding under the draft Measure. The Committee was also satisfied that, given the inevitable involvement of archdeacons, the DAC and the chancellors, parishes would not in practice be allowed to proceed without proper legal advice and guidance. In the final analysis, the Committee returned to the important role that the draft Measure would play in assisting parishes to use parts of their church buildings in imaginative ways that assisted mission and the continued primary use of the church concerned as a place of worship.

20. The Steering Committee advised the Committee that if it agreed with the points being made by Mr Hargreaves-Smith and the Archdeacon of Lewisham in their submissions, then there were two procedural routes that the Committee could take: either a recommendation to the Synod in its report that the draft Measure should be withdrawn[4], or an adjournment of the Committee's proceedings (so as to allow consultation with public bodies to take place).

21. At the conclusion of the Committee's discussion of the submissions from Mr Hargreaves-Smith and the Archdeacon of Lewisham no member of the Committee proposed that the draft Measure should be withdrawn or that the Committee should adjourn its proceedings.

Consideration of the draft Measure 'clause by clause' including proposals for amendment

Clause 1(a)

22. The Committee made no amendments to clause 1(a) and agreed that clause 1(a) should stand part of the draft Measure.

[4] Under Standing Order 54(a) the Revision Committee can include a recommendation in its report that the draft Measure be withdrawn and then move a motion to that effect immediately after the Synod has taken note of its report.

Clause 1(b) – new subsection (2A)

23. Mr David Cheetham questioned whether subsection (2A) as drafted gave power to the consistory court to grant a lease by faculty. He argued that sections 56(1) and (2) of the Pastoral Measure 1983 had reflected the common law position that neither the incumbent nor the PCC could dispose of church property, making it unlawful to "sell, lease of otherwise dispose of any church or part of a church….". The new subsection (2A) that would be inserted into section 56 of the Pastoral Measure by the draft Measure would not in terms override this common law principle, saying only that "the court may grant a faculty for a lease". Mr Cheetham therefore suggested that the draft Measure should expressly confer power to grant a lease as such.

24. Standing Counsel advised the Committee that he did not consider the new subsection (2A) to need any amendment in this respect. He explained to the Committee that in his view, read as a whole, the new power for the court to grant a faculty for a lease conferred the power to grant the lease itself by necessary implication. The Committee accepted Standing Counsel's advice and no member proposed any amendment on this point.

25. In discussion, the Committee noted that the words "used primarily as a place of worship" were appropriate as they reflected the wording in the Statutory Instrument which established the ecclesiastical exemption from the listed building laws[5]. Nevertheless, it was recognised that guidance would be needed for parishes on the practical interpretation of this phrase. The Committee noted that it was generally standard practice for the Legal Office to issue guidance on new Measures when they came into force and therefore requested that this point be covered in detail in that guidance.

26. The Committee agreed that clause 1(b) – new subsection (2A), unamended, should stand part of the draft Measure.

Clause 1(b) – new subsection (2B)

27. The Committee noted that in his submission Mr Peter White, the diocesan registrar of the diocese of Winchester, appeared to be

[5] The Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994 (SI 1994/1771)

questioning whether the draft Measure made it sufficiently clear that the power to authorise the granting of a lease would also extend to the granting of 'easements' (e.g. rights of way) required in connection with the lease. The Steering Committee advised the Committee that there was no difficulty from this point of view: although the draft Measure did not expressly refer to the possibility of granting easements to give effect to leases authorised under the new power, the Steering Committee advised the Committee that it did not need to do so since that power would exist by necessary implication. It was also noted that if new easements were required after the granting of a lease by faculty, then the consistory court could vary the lease accordingly. No member of the Committee proposed an amendment to the new subsection (2B) on this point.

28. The Committee agreed that clause 1(b) – new subsection (2B), unamended, should stand part of the draft Measure.

Clause 1(b) – new subsection (2C)

29. Standing Counsel advised the Committee that, on reflection, the use of the expressions 'terms', 'conditions' and 'covenants' in the new subsections (2C), (2E), (2F), (2I) and (2J) of the draft Measure were not perhaps as consistent as they might have been in reflecting the particular meaning of these terms in landlord and tenant law. The Steering Committee, advised by Standing Counsel, therefore proposed the first of a series of amendments, the first to the new subsection (2C) to omit the words "or condition". The Committee agreed to this amendment being made. (Further amendments to other new subsections were considered by the Committee: paragraphs 42, 48, 54 and 56 below refer).

30. The Committee agreed that clause 1(b) – new subsection(2C), as amended, should stand part of the draft Measure.

Clause 1(b) – new subsection (2D)

31. In his submission, Mr Peter Smith suggested that it ought to be possible for a lease to be granted in return for the payment of a premium rather than rent. The Steering Committee agreed and indeed understood that it was always intended that that should be possible. Whilst it might not be strictly necessary to do so, to put the matter beyond doubt the Steering Committee proposed that in the new subsection (2D) the words "or other payment" should be

inserted after the word "rent". The Committee agreed to this amendment being made.

32. In discussion, the Committee considered the provision in the new subsection (2D) for payment to be made to the parochial church council. It was understood that the PCC had been specified in the draft Measure because it was the body entrusted with the financial administration of the parish and the preparation of its accounts. The PCC was also thought a more satisfactory repository for any rent or other payment, from a practical point of view, than an individual (such as the incumbent or churchwardens). Nevertheless, members of the Committee could see arguments in favour of a more flexible approach where a premium was paid. There might be advantages, for example, in moneys being held in trust by the DBF and the interest returned to the parish as and when needed. Or, in a parish with more than one church, it might in some circumstances be desirable for the payments arising from a lease of one of those churches to be 'earmarked' specifically for the use of that church and not for other churches in the parish. Arising from this discussion, Standing Counsel advised the Committee that the insertion of the words "Subject to any directions of the court," at the start of the new subsection (2D), would allow the court, in granting a particular lease, to direct that payments should go to some body or individual other than the PCC, thereby providing the greater flexibility that the Committee seemed to be favouring. The Chairman proposed from the chair that an amendment be made to the new subsection (2D) using the words provided by Standing Counsel; and this proposal was agreed by the Committee.

33. The Committee agreed that clause 1(b) – new subsection (2D), as amended, should stand part of the draft Measure.

Clause 1(b) – a new subsection (2E) proposed by Mr Lee Humby

34. The Steering Committee advised the Committee that Mr Lee Humby proposed the insertion of a new subsection (2E) requiring the consistory court, when deciding whether or not to grant a faculty authorising a lease or, it seemed, a licence: (a) "to have due regard to the role of the church as a local centre of worship and mission"; (b) if a faculty was granted, to specify the use or types of use for which the premises might be used and, where the faculty was for a lease, to make such use a 'condition' of the lease; and (c)

not to grant a faculty "in respect of any use which in the opinion of the court would or could be damaging to the mission of the church (whether locally or nationally) or would be inconsistent with the faith and doctrine of the Church of England".

35. As regards proposal (a) above, Mr Humby explained that the formula he employed reflected that in section 1 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991.[6] And, as he again explained, it had been held by the Court of Arches[7] that that provision does not apply to chancellors in exercising the faculty jurisdiction. Mr Humby suggested that it would accordingly be desirable to require chancellors to have regard to this formula "to establish legislative consistency and provide a useful starting point in the chancellor's deliberations".

36. However, it seemed unclear to the Steering Committee how Mr Humby's proposal would promote consistency when the duty imposed by section 1 of the 1991 Measure does not apply to chancellors in the exercise of the general faculty jurisdiction. As regards Mr Humby's second argument, the Steering Committee had been advised that the Court of Arches took the view in *Re St Luke, Maidstone* that, had that duty applied, "it would have added nothing to the existing duty and practice of chancellors"[8].That being so, the Steering Committee agreed that it would be not only unnecessary, but also inappropriate, to make the amendment proposed by Mr Humby: were the duty to be imposed expressly on chancellors in the exercise of the particular jurisdiction conferred by the draft Measure, but not in relation to the wider faculty jurisdiction, that would inevitably suggest the existence of some sort of difference between the jurisdictions, which would be undesirable.

37. As regards his proposal (b) above, Mr Humby appeared to the Steering Committee to consider that the lease should specify the proposed use, so that if it were desired to change the intended use in any way, the matter would have to be referred back to the court, thus in effect requiring its consent for any change of intended use. But the Steering Committee felt that there was much to be said for

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[6] "Any person or body carrying out functions of care and conservation under this Measure or under any other enactment or rule of law relating to churches shall have due regard to the role of a church as a local centre of worship and mission."

[7] Re St Luke, Maidstone [1995] Fam 1

[8] [1995] Fam 1, 7 per Sir John Owen

leaving the question of whether or not to specify the intended use to the chancellor: the current jurisdiction to authorise licences was not subject to any restriction in this respect and it was not clear why the position should be different just because the use will take place under a lease.

38. Finally, as regards Mr Humby's proposal (c) above, this concerned proposed secular uses which might not infringe the requirement of the new subsection (2F)(a) (because they would not be inconsistent with the use of the rest of the premises primarily as a place of worship as such) but which might nonetheless be thought, by some members of the Church at least, to be inappropriate. Mr Humby's proposal therefore would require chancellors, before authorising a lease, to consider whether the proposed use "would or could be damaging to the mission of the church … or would be inconsistent with the faith and doctrine of the Church of England".

39. The questions accordingly seemed to the Steering Committee to be whether (i) the restriction imposed by the new subsection (2F)(a) was adequate and (ii) if not, whether the draft Measure should specify further restriction(s) (as Mr Humby proposed) or whether it should be left to the chancellor to take a view on the need for, and nature of, any further restriction(s) in the circumstances of the particular case. If it were desired to fill any such lacuna, the precise wording proposed by Mr Humby did not seem entirely satisfactory to the Steering Committee, not least because the scope of a requirement preventing "use which in the opinion of the court would or could be damaging to the mission of the church (whether locally or nationally)" seemed somewhat uncertain.

40. The Steering Committee's recommendation to the Committee on Mr Humby's proposal (c) above was to leave the question of whether or not to impose any further restrictions to the chancellor, again on the basis that (i) the current jurisdiction to authorise licences was not subject to any restriction in this respect and it was not clear why the position should be different just because the use would take place under a lease and (ii) the need for any further restrictions, and their nature, was best assessed in the context of the particular case concerned.

41. In discussion, the Committee concurred fully with the Steering Committee's assessment of all of Mr Humby's proposals which, in

general, it considered to be over-prescriptive. The Committee did not, therefore, accept any of Mr Humby's proposed amendments.

Clause 1(b) – new subsection (2E)

42. In his submission, Mr Peter Smith had suggested that in the new subsection (2E) there should be included a reference to 'covenants' as well as to 'conditions'. Standing Counsel referred the Committee to his previous explanation of this series of amendments (paragraph 29 above refers) and accordingly the Steering Committee proposed that in subsection (2E) for the word "conditions", in both places in which it appeared, the word "terms" should be substituted. The Committee agreed to these amendments being made.

43. Mr David Cheetham also raised the question of applications to the court to vary the conditions of a lease. Subsection (2E) in the draft Measure would only allow "any party to the lease" to make an application to the court for a variation. He suggested that circumstances might arise when a third party, and in particular the relevant archdeacon, might properly wish to apply for a variation. The Committee recognised that the involvement of the archdeacon could be particularly valuable during a vacancy in a parish or if there was some dispute which prevented the PCC from reaching a decision. Standing Counsel advised the Committee that the insertion of the words "or otherwise as authorised by the court" after the words "party to the lease" at the end of subsection (2E) would achieve what the Committee appeared to desire. He explained that this would provide any third party, including of course an archdeacon, with the right to seek the authorisation of the court to apply for a variation of the conditions of the original lease. The Chairman proposed this amendment from the chair and it was agreed by the Committee.

44. The Committee agreed that clause 1(b) – new subsection (2E), as amended, should stand part of the draft Measure.

Clause 1(b) – new subsection (2F)

45. In his submission Mr Peter Smith questioned the appropriateness of the requirement in the new subsection (2F)(a) that the purpose and manner of use must not be inconsistent with the use of the rest of the premises primarily as a place of worship. In speaking to his

submission, he underlined his view that restrictive user clauses in leases could prove unenforceable over time, say thirty five years during which the actual use of the building could 'evolve' into areas not necessarily envisaged when the lease was originally granted. He also argued that a restrictive user clause could reduce the amount of rent that could be charged.

46. In response, whatever the practical difficulties in enforcement, or the economic advantages of a less restricted use, the Steering Committee believed that to omit the current requirement in the draft Measure would open the way for uses which might be either inconsistent in principle with, or inimical in practice to, the continued use of the church building for the primary purpose for which it is intended. Noting its previous consideration of this matter (paragraphs 34 to 41 above refer), the Committee concurred and no member of the Committee proposed an amendment on this matter.

47. Mr Smith also suggested, in effect, that the reference in the new subsection (2F)(b) to residence by "an employee of the lessor or otherwise" should be a reference to an employee of the lessee. The Steering Committee explained to the Committee that the existing wording had been deliberately drafted to apply equally to the lessor or the lessee, an employee of the lessee falling within the word "otherwise". And there seemed to the Steering Committee to be no reason to exclude employees of the lessor from residing in accommodation comprised in the lease: whilst it may be the better course (as Mr Smith suggested) to reserve any accommodation required for that purpose out of the lease, the Steering Committee did not feel that it should be a requirement that matters should be arranged in that way. The Committee concurred and agreed that that no amendment should be made in this respect.

48. The Steering Committee proposed two further amendments in the series brought on the advice of Standing Counsel, (paragraph 29 above refers), this time, in the new subsection (2F) to substitute the word "terms" for the word "conditions" in the two places where it occurred. The Committee agreed to these two amendments being made.

49. The Committee agreed that clause 1(b) – new subsection (2F), as amended, should stand part of the draft Measure.

Clause 1(b) – new subsection (2G)

50. Mr Peter Smith raised the possibility in his submission that the draft Measure might state in terms that any covenant by the lessor to renew for a further term must not fall foul of the Law of Property Act 1922. The Steering Committee advised the Committee that the effect of the 1922 Act is that, where a lease contains a covenant for perpetual renewal, the lease will automatically take effect as one for a term of two thousand years. Whilst a provision along these lines could therefore have a seriously prejudicial consequence, it seemed to the Steering Committee that, rather than amending the draft Measure to prevent this particular possible consequence, reliance should be placed on those advising a PCC to ensure that its interests were not prejudiced in this (or any other) way. The Committee concurred and no member proposed any amendment on this point.

51. The Steering Committee, on the advice of Standing Counsel, proposed the following amendments (all of a drafting nature) to ensure that the new subsection (2G) fitted with the new subsection (2B): in paragraph (2G)(a) to substitute the word "premises" for the words "part of the building"; in paragraph (2G)(b) to omit the words "of part of the building"; and in paragraph (2G)(c) to substitute the word "land" for the words "part of the building". The Committee agreed to all these amendments being made.

52. The Committee agreed that clause 1(b) – new subsection (2G), as amended, should stand part of the draft Measure.

Clause 1(b) – new subsection (2H)

53. The Committee made no amendments to the new subsection (2H) and agreed that clause 1(b) - new subsection (2H) should stand part of the draft Measure.

Clause 1(b) – new subsection (2I)

54. In the series of amendments brought on the advice of Standing Counsel (paragraph 29 above refers), the Steering Committee proposed that the word "terms" should be substituted for the word "conditions". The Committee agreed to this amendment being made.

55. The Committee agreed that clause 1(b) – new subsection (2I), as amended, should stand part of the draft Measure.

Clause 1(b) – new subsection (2J)

56. The Steering Committee proposed the last in the series of amendments (paragraph 29 above refers), in this case that the words "or condition" should be omitted. The Committee agreed to this amendment being made.

57. The Committee agreed that clause 1(b) – new subsection (2J), as amended, should stand part of the draft Measure.

Clause 1(b) - insertion of a new subsection (2K)

58. The previous discussion in the Committee on variations to a lease (paragraph 43 above refers) led the Committee to consider the wider interest of the archdeacon in the faculty proceedings to be established by the draft Measure. Standing Counsel advised the Committee that section 16(2) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 provided that "for the purposes of any proceedings for obtaining a faculty the archdeacon shall be deemed to have an interest as such". The Committee agreed that this right on the part of the archdeacon in general faculty proceedings should extend equally to the new jurisdiction to be created by the draft Measure. Standing Counsel accordingly provided the Committee with the wording of a new subsection (2K) which would bring this about. The Committee agreed that this new subsection should be inserted into the draft Measure and that the existing subsection (2K) should relettered accordingly.

Clause 1(b) – relettered subsection (2L)

59. The Committee made no amendments to the new relettered subsection (2L) and agreed that clause 1(b) - new subsection (2L) should stand part of the draft Measure.

Clause 2

60. The Committee made no amendments to clause 2 and agreed that clause 2 should stand part of the draft Measure.

The Long Title

61. The Committee made no amendments to the Long Title and agreed that the Long Title should stand part of the draft Measure.

On behalf of the Committee
Timothy Allen
Chairman

8 June 2004

APPENDIX

A SUMMARY OF PROPOSALS FOR AMENDMENT RECEIVED UNDER SO 53(A) ALONG WITH THE COMMITTEE'S DECISIONS (AS REQUIRED BY STANDING ORDER 54(B)) AND OTHER AMENDMENTS CONSIDERED BY THE COMMITTEE ALONG WITH THE COMMITTEE'S DECISIONS

Clause of the draft Measure at First Consideration (GS 1524)	***From (if blank, amendments raised in Committee)***	***Proposed amendment***	***Committee decision***
Clause 1(b) new subsection (2B)	Mr Peter White	Not sufficiently clear whether power to authorise a lease would extend to granting of easements.	No amendment necessary.
Clause 1(b) new subsection (2C)	Steering Committee	Omit the words "or condition".	Accepted.
Clause 1(b) new subsection (2D)	 Steering Committee	Insert the words "Subject to any directions of the court" at the start of the subsection. The words "or other payment" to be inserted after the word "rent".	Accepted. Accepted.
	Mr Lee Humby	A new subsection (2E) requiring the consistory court, when deciding whether or not to grant a faculty authorising a lease or, it seemed a licence: (a) "to have due regard to the role of the church as a	All three proposals not accepted.

		local centre of worship and mission"; (b) if a faculty is granted, to specify the use or types of use for which the premises may be used and, where the faculty is for a lease, to make such use a 'condition' of the lease; and (c) not to grant a faculty "in respect of any use which in the opinion of the court would or could be damaging to the mission of the church (whether locally or nationally) or would be inconsistent with the faith and doctrine of the Church of England".	
Clause 1(b) new subsection (2E)	Steering Committee	Substitute the word "terms" for the word "conditions" in both places it appears. Insert the words "or otherwise as authorised by the court" after the words "party to the lease".	Accepted. Accepted.
Clause 1(b) new subsection (2F)	Steering Committee	Substitute the word "terms" for the word "conditions" in the two places it occurs.	Accepted.

Clause 1(b) new subsection (2F)(b)	Mr Peter Smith	Reference to "an employee of the lessor or otherwise" should be a reference to an employee of the lessee.	Not Accepted.
Clause 1(b) new subsection (2G)	Mr Peter Smith	State in terms that any covenant by the lessor to renew must not fall foul of the Law of Property Act 1922.	Not Accepted.
Clause 1(b) new subsection (2G)(a)	Steering Committee	Substitute the word "premises" for the words "part of the building".	Accepted.
Clause 1(b) new subsection (2G)(b)	Steering Committee	Omit the words "of part of the building".	Accepted.
Clause 1(b) new subsection (2G)(c)	Steering Committee	Substitute the word "land" for the words "part of the building".	Accepted.
Clause 1(b) new subsection (2I)	Steering Committee	Substitute the word "terms" for the word "conditions".	Accepted.
Clause 1(b) new subsection (2J)	Steering Committee	Omit the words "or condition".	Accepted.
		Insert a new subsection (2K) to provide for the right on the part of the archdeacon in general faculty proceedings to be extended to the new jurisdiction created by the draft Measure.	Accepted.