GENERAL SYNOD

DRAFT CHURCH OF ENGLAND (MISCELLANEOUS PROVISIONS) MEASURE

REVISION COMMITTEE REPORT

Chair:	The Very Reverend George Nairn-Briggs (the Dean of Wakefield) (Northern Deans)
Steering Committee (Ex officio):	Mrs Penny Granger (Ely) (Chair) Miss Anne Ashton (Portsmouth) Canon Peter Bruinvels (Guildford) The Reverend David Felix (Chester) Mrs Sue Johns (Norwich)
Appointed Members:	The Reverend Michael Ainsworth (Manchester) Mrs Janet Atkinson (Durham) The Venerable Roger Combes (the Archdeacon of Horsham) (Chichester) Mr Lee Humby (London) The Reverend Canon Jane Sinclair (Sheffield)

Consultants

Church Commissioners:	Miss Sue Jones (Official Solicitor) Mr Alan Guthrie-Jones (Pastoral Division)
Diocesan Secretaries:	Mr Tony Beck (Sheffield)
Diocesan Registrars:	Mr Peter White (Winchester)

1. The Church of England (Miscellaneous Provisions) Measure 200- ("the draft Measure") received First Consideration from the General Synod ("the Synod") at the July 2004 Group of Sessions. The period for the submission of proposals for amendment expired on 13th August 2004.

2. Proposals for amendment were received from two members of the Synod, the Right Worshipful Sheila Cameron QC (the Dean of the Arches and Auditor) (Ex-officio) and Professor David McClean QC (Sheffield), before the closing date mentioned in paragraph 1, as required by Standing Order 54(b). A further proposal was

received from the Dean of the Arches after the closing date mentioned in paragraph 1 but the Committee agreed unanimously that it would also consider this further proposal (paragraph 33 below refers). Professor McClean also raised a number of questions in his submission, some of which led to the Steering Committee to propose amendments to the draft Measure. The Steering Committee itself also identified a number of issues which led it to propose further amendments to the draft Measure. Both the Dean of the Arches and Professor McClean attended the Revision Committee ("the Committee") in person and spoke to their proposals.

3. The Committee met on one occasion and the proposals which the Committee accepted form the basis for the draft of the Measure (GS 1555A) now before the Synod (in which amendments accepted by the Committee are shown in bold). Set out in Appendix A to this Report, the Synod will find a summary of the amendments considered by the Committee as well as the Committee's decision on each.

4. When referred to in this Report, the numbering and lettering of the draft Measure relates (save in Appendix A to this report) to that of the draft Measure (GS 1555A) as now returned to the Synod. Appendix B to this Report contains a destination table showing how the provisions in the draft Measure at First Consideration (GS 1555) relate to those in the draft Measure now before the Synod and where new provisions have been inserted.

5. The decisions of the Committee were all unanimous, except in the one instance indicated to the contrary below.

Clause 1 – Amendment of Parsonages Measure 1938

6. The Committee made no amendments to clause 1 and agreed that clause 1 should stand part of the draft Measure.

Clause 2 - Amendment of Church Commissioners Measure 1947

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

Clause 3 – Amendment of Diocesan Stipends Funds Measure 1953

Sub-clauses (1) and (2)

8. The Committee made no amendments to sub-clauses (1) and (2).

Sub-clause (3)

9. On clause 3(2)(a), Professor McClean drew attention to the fact that, although this provision simply reflected the current reference in section 4(1)(aa) of the Diocesan Stipends Funds Measure 1953 to "investment in any subsidiary of the board under a scheme made under section 19A of the Endowments and Glebe Measure 1976", the substantive power to make schemes was in fact conferred by section 19 of the 1976 Measure, not section 19A: the latter provision simply widened the scope of the schemes that can be made under section 19. The Steering Committee agreed with Professor McClean and proposed an amendment to clause 3(2)(a) that "19" be substituted for "19A".

10. The Committee agreed to this amendment and that clause 3, as amended, should stand part of the draft Measure.

New Clause 4 – Amendment of Church Funds Investment Measure 1958

11. The Church Funds Investment Measure 1958 permits the Central Board of Finance of the Church of England ("the CBF") to establish a scheme for the making of investments by a number of specified bodies, with the CBF acting as trustee for the purposes of that scheme. The bodies which may invest under such a scheme are specified in section 2 of the 1958 Measure. Section 2 does not currently contain any express reference to the Archbishops' Council; but the Council would expect to be able to invest its corporate funds in the Church of England Investments Funds established under the Schedule to the 1958 Measure – and indeed has already done so. It was true that section 2(d) of the 1958 Measure extends the power to invest in the Church Investments Funds to "any funds held for the time being by the Central Board or Diocesan Authority or any other person or body upon any trust for [charitable objects connected with the work of the Church of England]". However, it seems doubtful whether this would apply to

the corporate property of the Archbishops' Council (i.e. its own general funds rather than property held by it as trustee)[1].

12. On that basis the Steering Committee proposed an amendment to section 2 of the 1958 Measure so as to include an express reference to funds representing the corporate property of the Archbishops' Council, a proposal that was supported by the Finance Division of the Council. The Steering Committee also proposed that this amendment should provide that the Council should be deemed always to have had power to invest its corporate funds in this way, given that corporate funds of the Council had already been invested in the Church of England Funds. The Committee agreed to both amendments.

13. The Committee agreed that the new clause 4 should be inserted into the draft Measure.

Clause 5 - Amendment of Church Property (Miscellaneous Provisions) Measure 1960

14. The Steering Committee proposed that clause 5 be amended so that in the second line after the word "words" there should be inserted the word "from". (This would correct an inadvertent omission.)

15. The Committee agreed to this amendment and that clause 5, as amended, should stand part of the draft Measure.

Clause 6 - Powers of the Church Commissioners relating to Farnham Castle

16. The Committee made no amendments to clause 6 and agreed that clause 6 should stand part of the draft Measure.

Clause 7 - Amendment of Ecclesiastical Jurisdiction Measure 1963

Appointment and terms of office of deputy chancellors

17. In his submission Professor McClean drew attention to the fact that at present deputy chancellors may only be appointed under section

[1] This is because the better view is that the corporate property of a corporation which is not an 'eleemosynary' corporation (which the Council is not) is not held on a trust.

4(1) of the 1963 Measure, where the chancellor is unable to act or the office is vacant; or under section 4(1A), either for a period not exceeding twelve months or for such purpose as may be specified in the instrument of appointment. Professor McClean questioned whether the power in section 4(1A) conferred authority for the practice which had grown up in recent years (and which appeared to be widely seen as desirable) of appointing deputy chancellors on a 'standing' basis. He also suggested that there might be difficulties from the Human Rights Act point of view in judicial appointments on an annual basis[2]. Finally, Professor McClean also raised the question of whether there should be a retirement age set for deputy chancellors as there currently was for chancellors.

18. In her submission, the Dean of the Arches raised similar concerns over the Human Rights Act implications of the currently limited security of tenure enjoyed by deputy chancellors. In speaking to her submission, she explained that she had encouraged the practice of appointing deputy chancellors under section 4(1A) for two principal reasons: firstly, so that cover could be provided for the chancellor in a variety of circumstances and, secondly, to equip a new generation of lawyers with the practical experience that would qualify them to perform the duties of chancellor in the future.

19. In the light of these submissions, the Steering Committee had canvassed three possible options. These were (a) to provide that the appointment of a deputy chancellor should continue indefinitely (subject to the provisions concerning retirement age etc.) notwithstanding that the chancellor ceases to hold office and is succeeded by another (which would mean that the incoming chancellor would be bound by their predecessor's appointment); (b) to provide for the possibility of term appointments (so that the incoming chancellor would be bound by their predecessor's appointment only for the remaining duration of the term); or (c) to ensure that the incoming chancellor is not bound by their predecessor's appointment, by providing for the deputy chancellor's office to come to an end when the chancellor ceases to hold office (relying on the power contained in section 4(1) of the 1963 Measure to appoint a deputy chancellor – who might or might not be the previous deputy – to act during the interregnum). The

[2] By reference to the decision of the High Court of Justiciary in Scotland in *Starrs v Ruxton*.

Steering Committee put forward for discussion by the Committee some possible amendments to clause 7, giving effect to option (c).

20. However, in speaking to his submission Professor McClean argued that it would be unfortunate if the appointment of a deputy chancellor came to an end at the same time as the appointment of the chancellor. This would create a 'double vacancy' just at the time when the services of the deputy chancellor would, in all probability, be needed most. His preference was therefore for option (a) to be adopted, but in an amended form, so that the appointment of a deputy chancellor would not be indefinite but should continue until the end of a period of, say, three months after the appointment of the new chancellor.

21. In contrast, in speaking to her submission the Dean of the Arches indicated that she did not see the need for any new provision to allow for a deputy to continue in office after the chancellor has ceased to hold office. She envisaged three scenarios in which the appointment of a chancellor would come to an end: (i) retirement, (ii) terminal illness and death and (iii) sudden and unexpected death. With (i) and (ii) it should be possible to plan sufficiently enough ahead for a new chancellor to be appointed soon after the previous chancellor had left office or died. In the case of scenario (iii), this eventuality could be (and in the recent past had been) addressed by relying on the power conferred by the existing section 4(1).

22. The Dean was concerned that a provision that would allow for a deputy to continue in office indefinitely could have a number of adverse consequences: firstly, a deputy might be willing and able to act in a limited capacity as a deputy to a sitting chancellor but might not necessarily be willing or able (through other commitments) to act as a 'full time' chancellor; secondly, the continuation of a deputy in office could create an expectation that he or she would be appointed as the next chancellor; and, finally, the continuation of the deputy in office indefinitely could make the appointment of the next chancellor less of a priority than it might otherwise be.

23. However, the Dean indicated that, if the Committee was minded to accept Professor McClean's proposal, she would regard it as preferable for the appointment of a deputy chancellor to continue to until the end of a period of, say, three months <u>after the vacancy had occurred.</u>

24. In discussion, the members of the Committee raised a number of issues:

(a) There were different procedures for the appointment of chancellors and deputy chancellors (the chancellor being appointed by the bishop (after consultation with the Lord Chancellor and the Dean of the Arches), whilst a deputy chancellor, other than in cases of incapacity or during a vacancy, was appointed by the chancellor (with the consent of the bishop)). The Committee agreed with Professor McClean's assessment that this arrangement was an accurate reflection of the reality of the relationship between bishop, chancellor and deputy. The bishop would appoint his chancellor but would not usually want to get involved (other than being consulted) in the appointment of a deputy chancellor or in the working arrangements between the chancellor and his or her deputy.

(b) Reference was made to the legal principle that a person to whom certain powers are delegated cannot then delegate those powers to others or exercise those powers when the person who delegated them has left office. However, the Committee was advised that that was susceptible to amendment by statute and that a Measure could therefore provide for the deputy chancellor to continue to hold office.

(c) The question was also raised of whether providing for a 'fixed' continuation of office for a deputy chancellor after the chancellor had left office might be incompatible with the Human Rights Act, given Professor McClean's reference in his submission to judicial appointments on an annual basis being central to the decision in the High Court of Justiciary in Scotland in *Starrs v Ruxtion*. Professor McClean considered that it would not, as the thrust of the decision by the Scottish court was that a system based around short term appointments was incompatible with the requirement for an 'independent and impartial tribunal', not that fixed appointments per se were objectionable. The Committee accepted that view.

(d) Mrs Penny Granger proposed that the word "may" should be inserted before the word "perform" in the new sub-clause

(1B). Her amendment was permissive and would give the chancellor some flexibility over the range of duties that a deputy would perform. The Dean of the Arches argued against this amendment on the grounds that, as a deputy chancellor was to have all the powers of the office of chancellor, he or she could not choose whether or not to perform some of those duties. The Committee concurred and Mrs Granger agreed to withdraw her proposal.

(e) The Committee noted what the Dean of the Arches had said about different scenarios for the ending of a chancellorship, but agreed that any provision to deal with a continuation of the appointment of a deputy should not distinguish between different circumstances. To do so would make the legislation unnecessarily complicated and the Committee was not convinced that continuation in office of a deputy would not be applicable in her scenarios (i) and (ii). (For example, a chancellor might resign or decide to take early retirement with little notice given or might die sooner than expected after the diagnosis of a terminal illness.)

(f) The Committee discussed the length of time for which the appointment of a deputy chancellor should continue after the chancellor ceased to hold office. The practical alternatives seemed to be either three or six months. The Committee favoured the former as a reasonable time in which to arrange for the appointment of a new chancellor.

25. Having heard the views of the Dean of the Arches and the Committee's discussion, Professor McClean informed the Committee that he was willing to amend his earlier proposal (paragraph 20 above refers) so as to concur with the Dean of the Arches – namely, that when a chancellor left office the appointment of a deputy chancellor would continue until the end of a period of three months after the vacancy had occurred (and not after the appointment of the new chancellor). The Committee accepted that proposal.

26. Sub-clauses (4) and (5) of the draft new clause 7 put forward as a basis for discussion by the Steering Committee would remove the existing provisions regarding the appointment of deputy chancellors from section 4(1A) of the 1963 Measure and include them in a new section 4(1B) and (1C), whilst leaving intact the

power conferred by section 4(1) to appoint a deputy chancellor when the chancellor is unable to act or their office is vacant.

27. If amended to reflect the Committee's decision on the length of tenure (paragraph 25 above refers), the new sections 4(1B) and (1C) would allow a chancellor to appoint a deputy chancellor (with the bishop's consent as at present) on an indefinite basis (the current provision for a 'fixed term' of up to twelve months or for an appointment for 'certain purposes only' being removed), but so that the appointment would terminate at the end of a period of three months after a vacancy had occurred in the office of chancellor or (and these were provisions that had previously not applied to deputy chancellors) when the deputy chancellor reached the retirement age for chancellors, resigned or was removed by the chancellor on the grounds that the deputy was incapable of acting or was unfit to act. As drafted for consideration by the Steering Committee, clause 4(1C)(c) would provide for a deputy chancellor to continue to act as chancellor for the purpose of any proceedings etc. during which the deputy chancellor attained the retirement age. The Committee therefore noted that, reflecting its earlier decision, this provision would need to be modified to provide for a deputy chancellor also to continue to act for the purpose of any proceedings etc. during which he or she reached the end of the three month period following a chancellor ceasing to hold office.

28. Mr Lee Humby raised the possibility of a further amendment to the new section 4(1C)(b). He considered that, as the chancellor's appointment of a deputy chancellor required the bishop's consent, it might be argued that the consent of the bishop should similarly be required before a deputy chancellor could be removed from office by the chancellor. After discussion, including of the possibility that the Dean of the Arches rather than the bishop should be required to give consent, the Committee agreed that this provision should be amended so as to require the bishop to be consulted before the deputy chancellor could be removed.

29. The Chair of the Steering Committee proposed an amendment to section 2A(1) and (2) of the 1963 Measure to the effect that the existing power under that section for the House of Bishops to make provision "with respect to the maximum number of chancellorships of dioceses which any one person may hold" be extended to cover deputy chancellorships. Regulations under this section had already been made to restrict to two the number of chancellorships that any

one person could hold at any one time. If this proposed amendment were passed it would enable the House to make a similar provision for deputy chancellors. The advantage of this proposal, it was argued, would be that it would restrict the number of deputy chancellorships that sitting chancellors could hold, thereby enlarging the 'pool' from which deputy chancellors were drawn and so giving more scope to involve a new generation of lawyers.

30. The Dean of the Arches indicated that on balance she would prefer this matter to be left to her and the chancellors to regulate informally themselves. However, if the Committee preferred that the House of Bishops should be given this enabling power, she would have no objection to that. The Committee accordingly agreed to insert a new clause 7(3) into the draft Measure to amend section 2A(1) and (2) as proposed, voting five in favour, two against with two abstentions (including the Chair).

Deputy Dean of the Arches

31. In his submission Professor McClean had also raised the possibility of the draft Measure amending section 4(1) of the 1963 Measure as regards the qualifications for appointment of the Deputy Dean. He had suggested making it a requirement that any person appointed as Deputy Dean of the Arches under the power it confers should have to be a chancellor or hold the office of Vicar-General of one of the provinces, rather than simply being "a fit and proper person". The Dean of the Arches in her submission had expressed reservations about this suggestion, preferring rather that the widest range of choice be preserved. She had also questioned the suitability of a Miscellaneous Provisions Measure for introducing such a change.

32. In the event, Professor McClean informed the Committee that he did not wish to pursue this proposal.

Appointment of Circuit judges as chancellors

33. In a separate submission which was received out of time but which the Committee nonetheless decided it should consider (paragraph 2 above refers), the Dean of the Arches raised the possibility of making another amendment to section 2(2) of the 1963 Measure, additional to the existing amendment (in the original clause 6 of the draft Measure).

34. The Dean suggested that section 2(2) should be further amended to provide for the appointment of Circuit judges as chancellors, in addition to those who hold or held high judicial office[3]. She argued that this change was required properly to reflect the position of Circuit judges in the hierarchy of the modern judiciary, which was considerably higher than in the 1960s when this provision was originally drafted.

35. The Committee noted that there was already some precedent in ecclesiastical law for what the Dean was proposing, in that section 3(1)(b) of the Clergy Discipline Measure 2003 already provides for holding (or having held) office as a Circuit judge to be one of the qualifications for appointment as one of the members of the Clergy Discipline Commission, with the consequent possibility of appointment as President or Deputy President of Tribunals under the 2003 Measure.

36. Mr Lee Humby suggested that an argument could be mounted that a Circuit judge was already eligible for appointment to the office of chancellor under the current section 2(2) of the 1963 Measure as a Circuit judge would have "a 7 year general qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990" because he or she would still have a right of audience even if debarred from exercising that right.

37. The Committee noted Mr Humby's point, but felt that an express provision allowing for the appointment of a Circuit judge as chancellor was needed the sake of certainty[4]. The Committee therefore agreed that an amendment should be made to clause 7(2) of the draft Measure to give effect to the Dean's proposal.

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[3] Such office does not qualify as 'high judicial office' for the purpose of section 2(2) of the 1963 Measure since it does not fall within the definition of that office contained in section 25 of the Appellate Jurisdiction Act 1876 (which is effectively incorporated into the 1963 Measure by section 66(1)). That definition is intended to be replaced by the Constitutional Reform Bill but, again, the new definition will not include office as a Circuit judge.

[4] It was advised that having "a 7 year general qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990" required the person concerned to have a right of audience in relation to certain specified types of proceedings; and that it appeared that a Circuit judge might not have such a right since he or she would be debarred from practice by section 75 and Schedule 11 of the 1990 Act.

38. The Committee accordingly agreed that for clause 6 in the previous draft of the draft Measure there should be substituted the new draft clause 7 put forward for consideration by the Steering Committee, subject to the various amendments made to it and described above.

Clause 8 - Amendment of Synodical Government Measure 1969

39. At the July 2004 Group of Sessions the Synod resolved to "invite the Standing Orders Committee, in consultation with the Business Committee, to introduce amendments to the Standing Orders and the Constitution to permit votes to be recorded electronically"[5].

40. The Business Committee had indicated that, if the Synod approved the principle of electronic voting, it would promote the required amendment to Article 5(4) to allow for a division of the whole Synod to be conducted electronically, if required. As the Synod had now done so, the Steering Committee accordingly proposed an amendment to clause 8 of the draft Measure to give effect to that commitment.

41. Mr Lee Humby questioned the provision in clause 8(b) for "other means" of voting, including electronic voting, to be determined by the Business Committee. He raised the question of whether such issues should not be more properly decided by the Synod, on a recommendation from the Business Committee. The Committee did not agree, noting that the Standing Committee's proposal was consistent with Standing Order 37(d) (which provides for the Business Committee, alone, to issue instructions on the conduct of voting).

42. The Committee agreed to insert the new clause 8(b) and that clause 8, as amended, should stand part of the draft Measure.

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[5] The reference to the need for an amendment to the Constitution of the General Synod is derived from the view (reported in paragraph 12 of GS 1542, *Making the Synod's Procedures More Effective*) that Article 5(4) of the Constitution has the effect that it is not possible to conduct a division of the whole Synod otherwise than by an 'actual' division. (The reason for this is that Article 5(4) states: "Where a vote is to be taken on a division by Houses, it may be taken either by an actual division or in such other manner as Standing Orders may provide". This seems to imply that, whilst a division by Houses can be taken otherwise than by an 'actual' division, a division of the whole Synod cannot.)

Clause 9 – Amendment of Repair of Benefice Buildings Measure 1972

43. The Committee made no amendments to clause 9 and agreed that clause 9 should stand part of the draft Measure.

Clause 10 – Amendment of Endowments and Glebe Measure 1976

44. The Committee made no amendments to clause 10 and agreed that clause 10 should stand part of the draft Measure.

New Clause 11 - Amendment of Church of England (Miscellaneous Provisions) Measure 1978

45. The Steering Committee proposed certain amendments to section 8 of the Church of England (Miscellaneous Provisions) Measure 1978, which makes provision for the operation of the compulsory purchase procedure during a vacancy in a benefice[6]. The Church Commissioners ("the Commissioners") desired to amend this provision firstly to substitute for the reference in sub-section (1) to the 'fee simple being in abeyance' a reference to 'ecclesiastical property being vested in the incumbent of a benefice which is vacant'. This amendment would ensure that sub-section (1) reflected the fact that, strictly, the fee simple is always in abeyance: it is the freehold that is in abeyance when the benefice is vacant. Secondly, it was desired to substitute for the reference in sub-section (1) to the Commissioners a reference to the Diocesan Board of Finance for the diocese in which the land is situated. The Committee agreed to these amendments being made.

46. The Committee agreed that the new clause 11 should be inserted into the draft Measure.

[6] Section 8(1) of the Church of England (Miscellaneous Provisions) Measure 1978 provides that "Where the fee simple of any ecclesiastical property is in abeyance, the fee simple shall for the purposes of the compulsory acquisition of the property under any enactment be treated as being vested in the Church Commissioners, and any notice to treat shall be served, or be deemed to have been served, accordingly". Sub-section (2) goes on to define 'ecclesiastical property' for the purposes of sub-section (1) as (effectively) a church and churchyard.

Clause 12 – Amendment of the Pastoral Measure 1983

47. The Committee made no amendments to clause 12 and agreed that clause 12 should stand part of the draft Measure.

New Clause 13 - Amendment of National Institutions Measure 1998

48. The Steering Committee proposed an amendment to correct an error in paragraph 9(1) of Schedule 1 to the National Institutions Measure 1998[7], the consequence of which is that bishops or other clergy appointed under paragraph 1(2) of the 1998 Measure are not entitled to ex officio membership of the House of Bishops or the House of Clergy (as the case may be). The Steering Committee agreed that this outcome was unintentional as it was hard to see what possible purpose the imposition of the requirement of 'actual communicant' status in respect of bishops and other clergy could serve.

49. As the problem identified by the Steering Committee related to membership of the House of Clergy and the House of Bishops of the General Synod, Mr Lee Humby questioned whether this matter should be resolved by relevant amendments to the Canons, rather than amendments to the 1998 Measure. However, the Committee understood that this was not the case. Both the Canons and the Church Representation Rules also made provision for ex officio membership of the relevant House by members of the Archbishops' Council in a manner which was consistent with what was proposed rather than with what the 1998 Measure currently required; and since the 1998 Measure conflicted with that provision and would override it, it was necessary to amend it to make it conform. The Committee therefore agreed to the Steering Committee's proposed amendment.

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[7] Paragraph 9(1) provides that: "A member of the Council appointed under paragraph 1(2) above who is an actual communicant (as defined in Rule 54(1) of the Church Representation Rules) shall, if not otherwise a member of the General Synod, be an ex officio member – (a) in the case of a bishop, of the House of Bishops, (b) in the case of any other clerk in Holy Orders, of the House of Clergy, and (c) in the case of a lay person, of the House of Laity". However, under Rule 54(1) of the Church Representation Rules one of the requirements of 'actual communicant' status is that the person concerned should have their name on the electoral roll of a parish; and under Rule 1 it is not possible for that requirement to be met in respect of a person in Holy Orders.

50. The Committee agreed that the new clause 13 should be inserted into the draft Measure.

Clause 14 – Miscellaneous Amendments of Acts

51. The Committee made no amendments to clause 14 and agreed that clause 14 should stand part of the draft Measure.

Clause 15 - Repeals

52. The Committee made no amendments to clauses 15 and agreed that clause 15 should stand part of the draft Measure.

Clause 16 – Citation, commencement and extent

Sub-clauses (1) and (2)

53. The Committee made no amendments to sub-clauses (1) and (2).

Sub-clause (3)

54. The Steering Committee explained that the new clause 11 should not be capable of extension to the Channel Islands and the Isle of Man, since section 8 of the Church of England (Miscellaneous Provisions) Measure 1978 was not capable of such extension. On the other hand, the National Institutions Measure 1998 automatically extends to the Channel Islands and to the Isle of Man. The Steering Committee therefore proposed that sub-clause (3) be amended accordingly. The Committee agreed.

Sub-clause (4)

55. The Steering Committee reported that discussions with the legislative draftsman of the Isle of Man had drawn attention to the fact that the Church Commissioners Measure 1947 is taken as extending automatically to the Isle of Man by necessary implication, so that the amendments made to it by clause 2 and Schedule 2 of the draft Measure should also extend automatically. Additionally, the previous reference in clause 13(4) (now clause 16(4)) to clause 8 (now clause 9)(which amends the Repair of Benefice Buildings Measure 1972) was inappropriate since that Measure does not extend to, and is incapable of being extended to, the Isle of Man: rather, the reference was intended to be to clause

10 (now clause 12) (which gives effect to Schedule 4). The Steering Committee therefore proposed that sub-clause (4) be amended accordingly. The Committee agreed.

Sub-clause (5)

56. The Steering Committee pointed out that the provisions of clause 6, relating to the Commissioners' powers as regards Farnham Castle, were not intended to extend to the Channel Islands. (The Farnham Castle Measure 1961 did not contain any provision for that.) A reference to clause 6 should accordingly be included amongst those provisions excepted in clause 16(5), as Professor McClean had pointed out in his submission. The Steering Committee therefore proposed that sub-clause (5) be amended accordingly. The Committee agreed.

57. The Committee agreed that clause 16, as amended, should stand part of the draft Measure.

Schedule 1 - Amendment of Parsonages Measure 1938

Paragraph 1

58. The Committee made no amendments to paragraph 1.

Paragraph 2

59. Professor McClean sought clarification of the purpose of this provision which he felt reversed a previous policy decision not to include 'exchange' in the provisions applying where a house (or part of its grounds) had ceased to be (or to be part of) the residence house of the benefice. He believed that this was probably unnecessary, except perhaps in multi-parish benefices, and even then he could not see that anything could be achieved by exchange, as against sale and purchase. The Committee understood that what the Commissioners were seeking by including a reference to section (1A) of the Parsonages Measure 1938 in section 1(4) of that Measure was the ability for the Church to deal with all parsonage houses and related pieces of land on an even-handed basis: the proposed amendment was required principally (if not exclusively) to facilitate dealings with isolated parcels of parsonage land, rather

than with parsonage houses as such[8]. The Committee was content with paragraph 2 as drafted.

Paragraph 3

60. The Steering Committee reported that simply to amend section 3(1) of the Parsonages Measure 1938 to substitute an obligation to give "written notice" rather than "the prescribed notice" of an intention to exercise powers under the Measure (as did paragraph 3 as originally drafted) could be unsatisfactory in that it would not impose any obligation either to tell the person on whom notice was served of their right to make representations or by when representations must be made[9]. In order to address this point, and substitute in section 3(1) an obligation to give written notice stating that representations may be made within the prescribed time, the Steering Committee proposed that in paragraph 3 there should be added at the end the words "and after the word "benefice", in the second place where it occurs, there shall be inserted the words "stating that representations may be made within the prescribed time".". The Committee agreed.

Paragraph 4

61. Professor McClean questioned the inclusion of the words "at the direction of the Board" in the new section 5(1)(h) to be inserted by paragraph 4. The Steering Committee agreed that he was right to do so, given that the power in question is conferred upon the relevant parsonages board itself, and proposed that the words "at the direction of the Board" be deleted from paragraph 4(h) of Schedule 1. The Committee agreed.

Paragraph 5

62. The Committee made no amendments to paragraph 5.

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[8] The Commissioners gave as an example (perhaps the most common one) the situation in which the proposed amendment would be relevant, that of where a person owning land adjacent to the new parsonage (which could beneficially be added to its site) is willing to take in exchange for it an isolated piece of former parsonage land rendered 'redundant' by a pastoral scheme which had made no express provision for it.

[9] At present, the prescribed notice – i.e. that required under the Parsonages Measure Rules 2000 made by the Commissioners under section 15 of the 1938 Measure – require the notice to give such details.

Paragraph 6

63. Professor McClean enquired as to the effect of this provision. Was it intended that the Diocesan Board of Finance would have to notify all the PCCs concerned of the use of any moneys held by the Board in connection with the sale or exchange of property of the benefice, even if the use was one for which notice was not normally required? The Committee understood that the Church of England (Miscellaneous Provisions) Measure 2000 substituted a new section 7 in the Parsonages Measure 1938, relating to the service of notices about the proposed application and distribution of parsonage sale proceeds under section 5. Section 5 itself would be amended by the current draft Measure (to provide that parsonage sale proceeds no longer need to be sent to the Commissioners for application and distribution).

64. The Commissioners explained that the amendments proposed to be made by paragraph 6 were intended to retain the current statutory requirements: it was not the intention that additional notices would have to be served beyond those currently required by the 1938 Measure. The obligation to give notice would apply not only where proceeds are received direct from a purchaser but also where they were transferred to a DBF from the Commissioners under section 5(3) (in the form it would take when amended by the draft Measure). The Committee was content with this explanation.

65. The Steering Committee reported that a similar point arose in relation to paragraph 6 of this Schedule as that on paragraph 3[10]. The Steering Committee therefore proposed an amendment to paragraph 6 to insert after the word "written" the words "after the word "affected" there shall be inserted the word "and"," and after the words "5(1)(h) or (i)" to insert the words "and after the word "Measure", in the second place where it occurs, there shall be inserted the words "stating that representations may be made within the prescribed time"". The Committee agreed[11].

[10] The need to ensure that the notice given under section 7 of the 1938 Measure explains the right to make representations and by when they must be made.

[11] It was explained to the Committee that it would be necessary to make consequential changes to the Parsonages Measure Rules before these two amendments could be brought into force. Such changes would involve removing the need for notices under sections 3(1) and 7 to be in the prescribed form. It would also seem desirable to provide for objections to notices under section 7 to be forwarded to the

Paragraphs 7 to 8

66. The Committee made no amendments to paragraphs 7 and 8.

67. The Committee agreed that Schedule 1, as amended, should stand part of the draft Measure.

Schedule 2 - Amendment of Church Commissioners Measure 1947

Paragraph 1

68. The Committee made no amendments to paragraph 1.

Paragraph 2

69. The Steering Committee explained that the law (on the basis of which the new sub-section 9(5) to be inserted into the 1947 Measure had been drafted) had now been changed in order to enable companies to delay 'delivery' of a deed where that was appropriate; and the provision might in any event be thought to be inconsistent with the scheme of 'delayed delivery' introduced by the Law of Property (Miscellaneous Provisions) Act 1989. The Commissioners considered that it would accordingly be better not to make any provision as to the time at which a deed is deemed to be 'delivered'. The Committee concurred and agreed that the words after "the Board" should be deleted from the new section 9(5) to be inserted by paragraph 2.

70. Additionally, the Steering Committee also proposed that the word "another" in the new section 9(6) to be inserted by paragraph 2 should read "other". The Committee agreed.

New paragraph 3

71. The Steering Committee explained that the existing paragraph 3(1)(a) would remove the word 'provost' from several places in the

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Commissioners by the Board within a specified period from the date of receipt, to bring the provisions into line with the existing provision for notices under section 3(1). The amendments to the Parsonages Rules would be achieved by a separate instrument made under section 15 of the 1938 Measure, which would need to be approved by the General Synod and laid before Parliament under the 'negative resolution' procedure.

Church Commissioners Measure 1947, to reflect the fact that there are no longer any such office holders. A further example of the use of that expression had now been identified, in the definition of 'dean' contained in section 18 of the 1947 Measure. The Committee agreed to the insertion of the new paragraph 3 to delete that reference.

Paragraph 4

72. In relation to the sub-paragraph in this Schedule (now renumbered 4(1)(a)), Professor McClean had questioned whether the words intended to be inserted ("whether or not those clerks are members of that House") should be inserted, as the amendment in the draft Measure then provided, "at the end" of paragraph 1(b) of Schedule 1 to the 1947 Measure. The Steering Committee confirmed that the words in question were in fact intended to be inserted at the end of the reference to "three other clerks in Holy Orders elected by those members of the House of Clergy of the General Synod who are not deans", as the purpose of this amendment was to make it clear that those elected need not be members of the Synod. The Committee agreed to substitute the words "after the words "who are deans"" for the words ", at the end," to correct this.

73. The Committee agreed that Schedule 2, as amended, should stand part of the draft Measure.

Schedule 3 - Amendment of Endowments and Glebe Measure 1976

74. The Committee made no amendments to Schedule 3 and agreed that Schedule 3 should stand part of the draft Measure.

Schedule 4 - Amendment of Pastoral Measure 1983

75. The Committee made no amendments to Schedule 4 and agreed that Schedule 4 should stand part of the draft Measure.

Schedule 5 - Miscellaneous Amendments of Acts

76. The Steering Committee explained that the amendments to be made by Schedule 5 would, with the agreement of the Government departments concerned, amend a large number of Acts of Parliament in order to replace references to Commissioners with references to other Church bodies that are more appropriately

placed to deal with the matters in question. They principally relate to requirements that notices be served (currently) on the Commissioners in relation to proposals to deal with benefice property or glebe at a time when the benefice is vacant.

77. The Steering Committee had identified the need for a number of adjustments to these complex provisions. In most cases these amendments were required to avoid any uncertainty as a result of referring to property which 'belongs to a benefice'. The root of the issue lay in the distinction in ecclesiastical law between property which 'belongs to a benefice' (which is now generally understood as largely confined to the parsonage house and parsonage land) and property vested in an incumbent in right of his or her office (which includes the church and churchyard). It had been suggested that some uncertainty might be created by introducing references to property which 'belongs to a benefice' into those provisions to be amended by Schedule 5 which (normally by including an express definition of the 'ecclesiastical property' to which they relate) already extend beyond 'property of the benefice' to include the church and churchyard as well. The Steering Committee therefore proposed a number of amendments to substitute for the references to land which 'belongs to the benefice' references to land 'vested in the incumbent of a benefice which is vacant'.

Paragraph 1

78. The Steering Committee proposed, for the sake of consistency with other legislation, that a revised paragraph (8) of Part I of Schedule 1 to the Small Holdings and Allotments Act 1908 should be substituted by paragraph 1. The Committee agreed.

Paragraph 2

79. The Steering Committee proposed that the words "from "belongs" to the end" should be substituted for the words "after the words "ecclesiastical benefice"" in order to achieve greater clarity. The Committee agreed.

Paragraphs 2, 4, 6, 7, 8, 9, 10, 11, 16, 19, 20, 21, 23, 26, 27, 28 and 30

80. The Steering Committee proposed a series of amendments to paragraphs 2, 4, 6, 7, 8, 9, 10, 11, 16, 19, 20, 21, 23, 26, 27, 28 and 30 respectively so that in each paragraph a reference to "land

vested in an incumbent of a benefice which is vacant" should be substituted for the reference to "ecclesiastical property [which] belongs to a benefice which is vacant". The Committee agreed to all these amendments.

Paragraph 3

81. The Committee made no amendments to paragraph 3.

Paragraph 5

82. The Committee made no amendments to paragraph 5.

Paragraph 9

83. The Steering Committee proposed the insertion of the new sub-paragraph 9(d). The Committee agreed.

Paragraph 12

84. The Steering Committee proposed the insertion of the word "and" after the word "situated" in sub-paragraph 12(2). The Committee agreed.

Paragraph 13

85. The Committee made no amendments to paragraph 13.

Paragraph 14

86. The Steering Committee explained that paragraph 14(c) was drafted in a way that assumed that paragraph 3 of Schedule 2 to the Forestry Act 1967 continued to apply to incumbents, overlooking the fact that section 47(3) and Schedule 7 of the Endowments and Glebe Measure 1976 disapplied the 1967 Act in relation to incumbents. The Steering Committee therefore proposed that a new sub-paragraph 14(a) should be substituted for the former sub-paragraphs 14(a) to (c) and that sub-paragraph 14(e) should be renumbered 14(b) accordingly. The Committee agreed that these amendments should be made.

Paragraph 15

87. The Steering Committee proposed that the words "in both places where they occur" should be added immediately after the words ""Church Commissioners"" in paragraph 15(b). The Committee agreed.

Paragraph 16

88. The Steering Committee proposed that paragraph 16(d) should be amended so as to amend section 31(5) of the 1969 Act so that "are" should read "is" and "owners" should read "owner". The Committee agreed.

Paragraph 17

89. The Steering Committee proposed that the word "vested" should be substituted for the word "situated". The Committee agreed.

Paragraph 18

90. The Committee made no amendments to paragraph 18.

Former paragraph 19

91. The Steering Committee reported that contrary to an earlier understanding, the Development of Rural Wales Act 1976 had in fact been repealed (by the Government of Wales Act 1998). Since paragraph 19 in the original draft Measure was therefore unnecessary, the Steering Committee proposed that it be omitted. The Committee agreed.

Paragraph 22

92. The Steering Committee proposed that in the new section 87(6)(a) of the Highways Act 1980 the word "vested" should be substituted for the word "situated" and that for the words "that section" in paragraph 22(1) there should be substituted the words "this section". The Committee agreed.

Paragraph 24

93. The Committee made no amendments to paragraph 24.

Paragraph 25

94. The Steering Committee proposed that in paragraph 25(a) the words "each place" should be substituted for the word "both places". The Committee agreed.

95. Professor McClean proposed two amendments to paragraph 25(b) more accurately to reflect the wording in section 41(1) of the 1982 Act, which refers to funds held "in trust for any ecclesiastical corporation in the Church of England". He accordingly proposed that instead of referring to "trusts held for the benefit of" a cathedral or a benefice respectively, paragraph 25(b) should refer to "funds held in trust for" a cathedral or benefice respectively. The Committee accepted both of these amendments.

Paragraph 28

96. The Steering Committee proposed an amendment to sub-paragraph 28(c) to insert the words ", the words "(in either case)" shall be omitted" after the word "situated". The Committee agreed.

Paragraph 29

97. The Steering Committee explained that in addition to containing the expression "the Church Commissioners" (which will be amended by paragraph 29(1)(a)) section 20(1)(b) of the 1991 Act also contains a reference to "the Commissioners". The Steering Committee therefore proposed that that after the word "occur" in sub-paragraph 29(1)(a) there should be inserted the words "and for the word "Commissioners"". The Committee agreed.

Paragraph 30

98. The Steering Committee explained that the second use of the word "Commissioners" in section 67(6) of the 1991 Act does not in fact occur in section 67(6)(b), as the amendment in paragraph 31(e) of the original Measure implied. The appropriate reference would be to "subsection (6)" rather than "subsection (6)(b)". The Steering Committee therefore proposed that "(b)" be omitted from paragraph 30(f). The Committee agreed.

Paragraph 31

99. The Steering Committee proposed that in sub-paragraph 31(b), the word "vested" should be substituted for the word "situated". The Committee agreed.

100. The Committee agreed that Schedule 5, as amended, should stand part of the draft Measure.

Schedule 6 - Repeals

101. The Committee made no amendments to Schedule 6 and agreed that it should stand part of the draft Measure.

102. The Steering Committee explained that the Long Title would need to be amended to include appropriate references to the three Measures not previously proposed to be dealt with in the draft Measure (the Church Funds Investment Measure 1958, the Church of England (Miscellaneous Provisions) Measure 1978 and the National Institutions Measure 1998). The Steering Committee therefore proposed that the Long Title be amended so as to include references to these three Measures and to omit the reference to section 2 of the Ecclesiastical Jurisdiction Measure 1963 (as section 4 was to be amended as well). The Committee agreed.

On behalf of the Committee
George Nairn-Briggs
Chair

17th December 2004

APPENDIX A

SUMMARY OF PROPOSED AMENDMENTS AND THE COMMITTEE'S DECISIONS

(The amendments below are Steering Committee amendments unless indicated otherwise).

Clause or Schedule of original Measure	***Proposed amendment***	***Committee decision***
Clause 3	Clause 3(2)(a) be amended to substitute "19" for "19A".	Accepted.
New clause 4	New clause to amend section 2 of the 1958 Measure so as to include an express reference to funds representing the corporate property of the Archbishops' Council and to provide that the Council should be deemed always to have had power to invest its corporate funds in this way.	Accepted.
Clause 4	In the second line after the word "words" there should be inserted the word "from".	Accepted.
Clause 6	***Deputy Chancellors*** Professor McClean questioned whether the power in section 4(1A) of the 1963 Measure conferred authority for the practice which has grown in recent years of appointing deputy chancellors on a 'standing' basis, and suggested that there may be difficulties from the Human Rights Act point of view in judicial appointments on an annual basis. Professor McClean also posed the question of whether there should be a retirement age set for deputy chancellors as there currently is for chancellors. The Dean of the Arches requested a	Agreed on new clause that would allow a chancellor to appoint a deputy chancellor (with the bishop's consent as at present) on an indefinite basis, but so that when the chancellor ceased to hold office the appointment of a deputy chancellor would continue until the end of a period of three months after the vacancy had

	widening of the power to appoint a deputy chancellor so that appointment could, for example, be for the term of office of chancellor. She also favoured a provision allowing for a deputy chancellor to resign and for the retirement age for chancellors to be applied also to deputy chancellors.	occurred, or would terminate when the deputy chancellor reached the retirement age for chancellors, resigned or was removed by the chancellor on the grounds that the deputy was incapable of acting or was unfit to act.
	Mr Lee Humby proposed that the consent of the bishop should be required before removal by the chancellor on grounds that deputy was incapable of acting or was unfit to act.	Accepted in a modified form, requiring consultation with the bishop only.
	Mrs Penny Granger proposed that the word "may" should be inserted before the word "perform" in the new sub-clause (1B).	Withdrawn.
	Section 2A(1) and (2) of the 1963 Measure should be amended to the effect that the existing power under that section to enable the House of Bishops to make provision "with respect to the maximum number of chancellorships of dioceses which any one person may hold" be extended to also cover deputy chancellorships.	Accepted.
	Deputy Dean of the Arches Professor McClean suggested an amendment to section 4(1) of the 1963 Measure to 'narrow' the qualifications for appointment of the Deputy Dean to make it a requirement that any person	Proposal withdrawn and not put forward by any member of the Committee.

	appointed as Deputy Dean of the Arches should have to be a chancellor or hold the office of Vicar-General, rather than simply being "a fit and proper person". ***Circuit judges as chancellors*** The Dean of the Arches proposed that section 2(2) of the 1963 Measure be amended to provide for the appointment of circuit judges as chancellors.	Accepted.
Clause 7	New Article 5(4) of the General Synod Constitution (as contained in Schedule 2 to Synodical Government Measure 1969) to enable divisions of the whole Synod to be conducted by 'other means', including electronic voting.	Accepted.
New Clause 11	An amendment to section 8(1) of the Miscellaneous Provisions Measure 1978 to enable the compulsory purchase procedure to operate during a vacancy in a benefice.	Accepted.
New Clause 13	An amendment to correct an error in paragraph 9(1) of Schedule 1 to the National Institutions Measure 1998, the consequence of which is that bishops or other clergy appointed under paragraph 1(2) of Schedule 1 are not entitled to ex officio membership of the House of Bishops or the House of Clergy (as the case may be).	Accepted.
Clause 13(3), (4) and (5)	Certain amendments relating to the application of the draft Measure to the Channel Islands and the Isle of Man.	All accepted.
Schedule 1 Paragraph 3	Insert in section 3(1) of Parsonages Measure 1938 alongside an obligation to give written notice that	Accepted.

	such notice should state that representations may be made within the prescribed time.	
Paragraph 4	Professor McClean questioned the inclusion of the words "at the direction of the Board" in the new section 5(1)(h) to be inserted by paragraph 4. The Steering Committee proposed that the words "at the direction of the Board" be deleted.	Accepted.
Paragraph 6	A similar amendment was proposed in relation to paragraph 6 as that on paragraph 3.	Accepted.
Schedule 2		
Paragraph 2	In new sub-section 9(5) to be inserted into the 1947 Measure, delete all the words after "Board" – i.e. the provision as to the time at which a deed is deemed to be 'delivered'.	Accepted.
	The word "another" in the new section 9(6) should read "other"	Accepted.
New paragraph 3	Remove the use of the expression 'provost' in the definition of 'dean' contained in section 18 of the 1947 Measure.	Accepted.
Paragraph 3(1)(a)	Professor McClean had questioned where the words "whether or not those clerks are members of that House" would be inserted. The Steering Committee proposed that these words should be inserted after the words "who are not deans".	Accepted.
Schedule 5		
Paragraph 1	For the sake of consistency with other legislation, a new paragraph	Accepted.

	(8) of Part I of Schedule 1 to the 1908 Act should be substituted.	
Paragraph 2	For the sake of clarity, the words "from "belongs" to the end" should be substituted for the words "after the words "ecclesiastical benefice"".	Accepted.
Paragraphs 2, 4, 6, 7, 8, 9, 10, 11, 16, 20, 21, 22, 24, 27, 28, 29 and 31.	In each paragraph, substitute for the references to land which 'belongs to the benefice' references to land 'vested in the incumbent of a benefice which is vacant'.	Accepted for all paragraphs.
Paragraph 9	Insert a new subsection (d) to provide that in subsection (5) of section 51 of the 1962 Act the word "it" should be substituted for "they".	Accepted.
Paragraph 12(2)	The word "and" should be inserted after the word "situated".	Accepted.
Paragraph 14(a)	Amend this to reflect the fact that paragraph 3 of Schedule 2 to the 1967 Act does not apply to incumbents.	Accepted.
Paragraph 15(b)	The words "in both places where they occur," should be inserted after the words "Church Commissioners"".	Accepted.
Paragraph 16(d)	Amend so that in section 31(5) of the 1969 Act "are" should read "is" and "owners" should read "owner".	Accepted.
Paragraph 17(a)	The word "vested" should be substituted for the word "situated".	Accepted.
Paragraph 19	Delete this paragraph as the Development of Rural Wales Act 1976 has been repealed.	Accepted.

Paragraph 23(1)	The word "vested" should be substituted for the word "situated" and the words "this section" should be substituted for the words "that section".	Accepted.
Paragraph 26(a)	The words "each place" should be substituted for the words "both places".	Accepted.
Paragraph 26(b)	Professor McClean proposed amendments to this sub-paragraph so that instead of referring to trusts held "for the benefit of" a cathedral or a benefice respectively, this paragraph should refer to "funds held in trust" for a cathedral or a benefice.	Accepted.
Paragraph 29(c)	The words "(in either case) shall be omitted" should be inserted into this paragraph after the word "situated".	Accepted.
Paragraph 30(1)(a)	Insert the words ", and for the word "Commissioners"," after the word "occur".	Accepted.
Paragraph 31(e)	That "(b)" be omitted from this sub-paragraph.	Accepted.
Paragraph 32(b)	The word "vested" should be substituted for the word "situated".	Accepted.
Long Title	Include references to three Measures not previously included in the Long Title and amend the existing reference to the Ecclesiastical Jurisdiction Measure 1963.	Accepted.

APPENDIX B - DESTINATION TABLE

GS 1555 ***(First Consideration)***	***GS 1555A*** ***(as revised by the Revision Committee)***
1 - 3	**1 - 3**
-	**4**
4	**5**
5	**6**
-	**7(1)**
6	**7(2)**
-	**7(2) –(5)**
7	**8(a)**
-	**8(b)**
8	**9**
9	**10**
-	**11**
10	**12**
-	**13**
11	**14**
12	**15**
13	**16**
Schedule 1	**Schedule 1**
1 - 8	**1 - 8**
Schedule 2	**Schedule 2**
1 - 2	**1 - 2**
-	**3**
3	**4**
Schedule 3	**Schedule 3**
1 - 6	**1 - 6**
Schedule 4	**Schedule 4**
1 - 5	**1 - 5**
Schedule 5	**Schedule 5**
1 - 8	**1 - 8**
9(a) – (c)	**9(a) – (c)**
-	**9(d)**
10 - 13	**10 - 13**
14 (a) – (d)	**14(a)**
14(e)	**14(b)**
15 - 18	**15 - 18**
19	**-**
20 - 30	**19 - 29**

31(a)	**30(a)**
-	**30(b)**
31(b) – (e)	**30(c) – (f)**
32	**31**
Schedule 6	**Schedule 6**