

GENERAL SYNOD
DRAFT DIOCESES, PASTORAL AND MISSION MEASURE
DRAFT AMENDING CANON NO. 27
DRAFT VACANCY IN SEE COMMITTEES (AMENDMENT) REGULATION

AN OVERVIEW OF THE DRAFT LEGISLATION AND ITS CONTEXT
REPORT OF THE FOLLOW-UP GROUP TO THE REVIEW OF THE
DIOCESES AND PASTORAL AND RELATED MEASURES
EXPLANATORY MEMORANDUM

AN OVERVIEW OF THE DRAFT LEGISLATION AND ITS CONTEXT

The process and its objects – legislation to meet the needs of mission and ministry in the 21st Century

1. The draft Dioceses, Pastoral and Mission Measure, together with some other pieces of draft legislation that accompany it, comes to the new General Synod for First Consideration. This marks an important milestone in a process which the Archbishops' Council set in train at the end of 2000. The object has been to ensure that some of the basic building-blocks in the Church's legislation on mission and ministry can, in reshaped form, meet the needs and challenges of the opening of the 21st century. The Church needs the capacity to respond more rapidly, flexibly and creatively to future needs and challenges presented by a rapidly changing world.
2. With the presentation of the drafts, the work enters a new phase for which the General Synod is primarily responsible, involving as it does the passing of new legislation to replace or amend existing provisions and to put entirely new ones in place. This will form a major element of the newly elected Synod's business in the first part of the 2005-2010 quinquennium, and has clear links to other major topics the Synod will be addressing at the same time.
3. In late 2000, the Archbishops' Council set up a Review Group, which was chaired by Professor Peter Toyne (a member of the Council). Its terms of reference required it to review the Pastoral Measure 1983, the Dioceses Measure 1978 and other related legislation, in consultation with other interested parties, in order to ensure flexible and cost-effective procedures which fully meet changing pastoral and mission needs.

4. The Review Group's report *A Measure for Measures: In mission and ministry* (GS 1528) was published in January 2004 and was considered by the General Synod in February 2004. Following a welcoming and positive debate, the Synod passed a motion approving the report's recommendations (with one minor variation) and asked for a Follow-Up group to be set up to prepare draft legislation to implement those recommendations which required it and to oversee the implementation of the others.
5. The Archbishops' Council, with the Business Committee, accordingly set up a Follow-Up Group, with terms of reference based on the Synod resolution, and asked it to produce draft legislation in time for introduction into the Synod in November 2005.

The draft legislation

6. The Follow-Up Group, chaired by the Bishop of Exeter and with a membership including some element of continuity with the original Review Group, now brings to the Synod, with the consent of the Archbishops' Council and the Business Committee:
 - the *draft Dioceses, Pastoral and Mission Measure* (GS 1597) The draft Measure is the main piece of legislation, and consists of three main building blocks, dealing with:
 - *the provincial and diocesan structure of the Church* (This material consists mainly of the replacement of the Dioceses Measure 1978);
 - *the areas which the Toyne report designated as "neighbourhood and network"* (including amendments to the Pastoral Measure 1983 relating to the process for pastoral reorganisation and other matters and wholly new provisions on "mission initiatives"); and
 - *church buildings* (in particular churches closed or to be closed for regular public worship. Again, the material consists in part of amendments to the Pastoral Measure 1983 and in part of new provisions, in this case to establish the Council for the Care of Churches as a new, statutory body and give it an enhanced role as a single unified central Church source of information and advice on church buildings.)

Further details about the ways in which the Measure deals with these topics will be found in the Follow-Up Group's report on pages 6-15 of this document.

 - *draft Amending Canon No. 27* (GS 1598) This contains a number of amendments to existing Canon law, relating to ecumenical relations, the exercise by ministers of their ministry and the licensing of ministers, which are needed in connection with the provisions on "mission initiatives".
 - *the draft Vacancy in See Committees (Amendment) Regulation* (GS 1599) This forms an integral part of the legislation under the general heading of provincial and diocesan structure.- 7. The resulting legislative package is the most substantial to have come to the Synod for over 20 years. It raises a number of important ecclesiological issues which have been

carefully considered both by the Toyne group itself and the Follow-Up group. The legislation spans a very broad range of separate if related areas of the Church's life and work. It includes three different sorts of provision: complete replacement of some existing provisions; amendment of some provisions which will remain in force in an altered form; and some wholly new provisions. This makes it a challenging task for the Synod, and to assist members the draft Measure is accompanied by copies of some parts of the Pastoral Measure which are being amended rather than replaced, showing how the amending provisions fit into the present text.

8. One of the Toyne Review's general recommendations was that the legislation to give effect to its proposals should take the form of a single Measure covering the whole of the relevant ground, structured in a logical and user-friendly way. The Follow-Up Group shared this vision, but after careful consideration it has concluded that the best way – indeed the only satisfactory way in practice – to make the vision a reality is to tackle the task in two stages. The first is the legislation now before the Synod to make the substantive changes to the law; the second, to follow when the work on the first is completed, is to use the much simpler processes of a consolidation Measure, bringing together all the relevant law in a coherently structured whole. The Group's reason for this conclusion are explained in more detail in paragraphs 7-9 of the Follow-Up Group's Report, on pages 7-8 of this document.
9. Another of the Toyne Review's guiding principles was that the new legislation should be "light touch", in the sense of avoiding a detailed legal regulation except where it is really necessary. The Follow-Up Group has taken this very much to heart, and because of it has decided at a number of points in its work to leave matters for guidance on good practice rather than include a mass of detailed legal provisions. As explained in the following paragraphs, members of General Synod will in due course have an opportunity to consider the Measure and what is proposed regarding guidance notes at the same time.
10. Moreover, it has been recognised throughout the process that the draft legislation will need to be supplemented by a variety of different types of guidance material, which not only explain the legal effect of the new provisions but also outline the possibilities which the legislation will open up for the Church, and set out good practice inputting the legislation into effect. This material will play a crucial part in the successful implementation of the new law. A substantial amount of work will need to be done on it while the legislation is before the Synod, so that by the time members are asked to give the legislation Final Approval they will have a reasonably clear general idea of what kind of guidance will be available to assist the Church in putting it into effect.
11. In addition, the "mission initiative" clauses expressly require a Code of Practice on those provisions, to be produced by the House of Bishops and approved by the Synod. It will have statutory status, in that those involved in implementing the new law are required to have regard to it. Here too, the intention is that a draft code should be prepared, and given preliminary consideration by the House of Bishops, before the draft legislation comes to the Synod for Final Approval.

The legislative process

12. If the Synod passes the motions relating to these items which stand in the Agenda for the November 2005 Group of Sessions, the next steps in the legislative process, with what at this stage must necessarily be a provisional timetable, will be as follows:
- a Revision Committee of Synod members will be appointed to scrutinise the drafts in detail. Any member of Synod may submit proposals for amendment of any part of the legislation to the Committee;
 - The drafts, with any amendments made by the Revision Committee, will then come back to the floor of the Synod for the Revision Stage, at which members can if they wish ask the Synod itself to review any matters in the Revision Committees report;
 - After final consideration of the detailed provisions of the drafts, they will come back again to the floor of the Synod for the “Final Drafting Stage” and then Final Approval.

The aim is that this stage will be reached during 2007;

- the Legislative Committee of the Synod will then transmit the draft Measure to the Ecclesiastical Committee of Parliament, (consisting of members of both the House of Commons and the House of Lords) with its comments and explanations;
- assuming the Ecclesiastical Committee reports favourably on the Measure, it will be submitted to each House of Parliament for approval, and then receive the Royal Assent, which means that it becomes law;
- It will then be for the Archbishops to bring the Measure into force, for the final steps to be taken in the Synod procedures for the other two pieces of legislation, and for the process of implementation to begin.

The aim here is that this stage should be reached during 2008.

13. Before the debate on First Consideration, Synod members will also receive a Financial Memorandum giving an estimate of the cost of the legislative process and, so far as it can arrived at now the cost of implementing it. The factors outlined in paragraph 7 above mean that the synodical process will take up more in terms of resources than an average Measure, but this must of course be seen in the context of the Church’s need for the proposed changes in the law. Similarly the costs of implementation, which are never easy to assess accurately at this early stage, have to be set against some potential savings (to which the Financial Memorandum will also draw attention) and the benefits, financial and non-financial, which will accrue in terms of the life of the Church.

Links with other major current topics

14. In February 2004, when the Synod considered the report of the Toyne Review, it also had before it::

- the report of the Cray Group on *A Mission Shaped Church*. This was debated immediately before the Toyne Group report, and
 - the first report of the McClean Group on clergy terms of service.
15. The essential connection with *A Mission-Shaped Church* lies in the fact that one of the main aims of the Toyne process as a whole has been to provide a new legislative framework to support and facilitate mission initiatives and “new ways of being Church”, provided they can be structured in a way that is consistent with the underlying ecclesiology of the Church of England, supports and enables its basic mission strategies and is subject to proper oversight and accountability
 16. In the case of the McClean Group on Clergy Terms of Service, those concerned with the Toyne process have recognised that what they produce in the field of ministry must avoid conflicting with or impeding the evolving McClean proposals, but that both are working to further the same aim of providing the Church with the ministry it needs in the 21st Century. It has meant that the Toyne process has had to leave some topics which it might otherwise have addressed for the McClean process, or at least to delay action until the McClean Group has had an opportunity to develop its proposals.
 17. The report of the Follow-Up Group on pages 6-15 of this document explains more fully how that Group has related its work to the Cray and McClean processes, with assistance from both the Rt Revd Graham Cray and Professor David McClean.

Conclusion

18. The draft legislation is now placed in the hands of the Synod, to scrutinise, develop and improve it. It is in this way that the Synod fulfils one of its primary functions as laid down in the Synodical Government Measure 1969, and makes an essential and distinctive contribution to the life of the Church.

October 2005

REPORT OF THE FOLLOW-UP GROUP TO THE REVIEW OF THE DIOCESES AND PASTORAL AND RELATED MEASURES

Terms of reference of the Follow-Up Group

1. The terms of reference of the Group appointed by the Archbishops' Council were:
 - (i) to prepare draft legislation to implement those recommendations in GS 1528 which require it. The Council asked for this to be ready for introduction into the General Synod in November 2005; and
 - (ii) to oversee the implementation of the other recommendations.

Membership and meetings

2. The membership of the Group and the consultants (including some element of continuity with the original Toyne Review) were as follows:

Members

The Bishop of Exeter (the Rt Revd Michael Langrish) (Chair)
Canon Professor Michael Clarke (Worcester) (Vice-chair)
The Revd Simon Bessant (Blackburn) Professor David McClean (Sheffield)
Mrs Caroline Chamberlain (Exeter) Canon Liz Paver (Sheffield)
Canon Ian Garden (Blackburn) The Revd Stephen Trott (Peterborough)
The Ven Alistair Magowan (Archdeacon of Dorset)

Consultants

The Ven Christine Hardman (Archdeacon of Lewisham)
Dr Matthew Lavis (Diocesan Secretary, Diocese of Ely)
Canon John Rees (Registrar of the Province of Canterbury and the Diocese of Oxford).

Staff support

Sir Anthony Hammond (Standing Counsel)
Ingrid Slaughter (Assistant Legal Adviser)
Paul Lewis (Pastoral and Redundant Churches Secretary, Church Commissioners)
Sue Jones (Official Solicitor, Church Commissioners)
Dr Colin Podmore (Secretary, Dioceses Commission)
Andrea Mulkeen (Secretary)

3. In order to meet the challenging timetable set by the Council the Group has met on 16 occasions (including a residential meeting).

Approach to the task

4. GS 1528 envisaged both a large number of substantive changes - some of them very major ones - to the existing legislation and also some completely new legislation in the

field of mission initiatives. In approaching this task two of the underlying principles the Group adopted were:

- to help improve the Church's structures and processes in a way that would enable it to further its mission, in the broadest sense; and
 - to set in place processes which are clear, straightforward and streamlined, which avoid unnecessary bureaucracy, but which at the same time also avoid undermining such safeguards as the Group is satisfied are still needed.
5. In carrying out its work the Group has kept in touch with developments in other areas which might impact on the draft legislation, notably work on the Review of Clergy Terms of Service and on taking forward *Mission Shaped Church* (GS 1523). In relation to the first of these, it has been assisted by Professor David McClean's membership of the Group.
 6. Draft legislation has been prepared on the basis of the recommendations summarised on pages 96-105 of GS 1528, subject to the small qualification agreed by Synod in relation to recommendation 41(c). In the case of a few individual Toyne recommendations (the most significant being that on suspension of presentation), it has come to the conclusion, with Professor McClean's support, that the subject-matter is linked with the Clergy Terms of Service Process to such an extent that it would not be right for the Group to attempt to draft legislation now - see also paragraph 26 below. The expectation is that by the time the Synod has taken the First Consideration stage of the Group's draft legislation, it will be possible to decide, in the light of progress on the Clergy Terms of Service work, how and where best to deal with these matters.
 7. The Toyne Review recommended that the new legislation should be structured in what it considered should be a more logical and user friendly way. The Follow-Up Group gave very careful consideration to how best to achieve this. After discussion with Standing Counsel, it concluded that the right course was to bring to Synod a draft Measure:
 - replacing in its entirety the Dioceses Measure and those parts of the Pastoral Measure and any other legislation which are to be substantially amended;
 - including where necessary completely new provisions; and
 - making detailed amendments to other existing provisions which could otherwise remain in force unamended.
 8. To have gone further and attempted a total rewrite of the Pastoral Measure would have greatly added to the length of both the legislation and the task faced by the Group. It would have been contrary to the normal approach taken by Standing Counsel and Synod - and indeed by Parliamentary Counsel and Parliament - in relation to legislation.
 9. Once, however, the new Measure has become law, it will be possible to produce a new "consolidating" Measure, to bring together the whole of the new material, and the parts of the existing Pastoral Measure (and any other relevant legislation) that have not been replaced, into a single new, coherently structured Measure. The Synod has a special

"fast track" procedure for consolidating Measures of this kind, given that they are not designed to change the law substantively. It was the approach followed for the last major revision of the Pastoral Measure, and is to be used for the (much less challenging) revision of the Care of Cathedrals legislation.

The draft legislation

10. The draft legislation consists of:
 - the draft Dioceses, Pastoral and Mission Measure, which is around 50 pages long, running to 66 clauses and 7 Schedules;
 - draft Amending Canon No 27, which makes amendments to Canons B43 and B44 and Canons C8 and C12; and
 - a draft Vacancy in See Committees (Amendment) Regulation.
11. The final part of this document contains the usual explanatory memorandum which gives a fairly detailed guide to draft legislation presented to the Synod for First Consideration. In addition, the texts of the main sections of the Pastoral Measure 1983 that are being amended, rather than replaced, are being provided for Synod members (as paper GS 1597W) so that they can see how the amendments “fit in” to the existing texts.
12. As explained in the introductory part of this document, the three main “building blocks” of material in the draft legislation are summarised below and relate to:
 - the provincial and diocesan structure of the Church;
 - the areas which the Toyne report designated as “neighbourhood and network”;
 - churches closed for regular public worship.

Provincial and diocesan structure

13. This material, based on Toyne recommendations 1-15, 60 (partly) and 61 on “Dioceses”, will replace the Dioceses Measure 1978 and some related legislation. The main features include:
 - the **creation of a new Dioceses Commission**, with a proactive rather than a purely reactive role, including a general duty to keep under review the provincial and diocesan structure of the Church and a role in furthering shared diocesan administration;
 - power for either diocesan bishops or the Diocese Commission to initiate “reorganisation” schemes which can provide for matters such as the alteration of diocesan boundaries and the creation or abolition of dioceses;
 - if a diocesan synod refuses to agree to a draft reorganisation scheme, power for the archbishop to direct that it should nevertheless be submitted to the General

Synod for approval, if he considers that the diocese concerned has only a very small interest in the scheme or that there are wider considerations affecting the Province or the Church as a whole which require the scheme to go to General Synod;

- a comprehensive set of **provisions on the delegation of episcopal functions**, which would in all cases be a matter for the diocese rather than (as at present in the case of formal area schemes) involving the General Synod; and
- a **“scrutiny” process for proposals to fill most suffragan sees**, with power for the archbishop (in agreement with the Dioceses Commission) to require a particular proposal to be laid before the diocesan synod and General Synod for approval.

14. These proposals were accepted by the General Synod in principle when it debated the Toyne Report and, in relation to the Dioceses Commission, were seen as essential if the new process was to have “teeth” to achieve diocesan reorganisation where that was clearly in the interests of the Church. However, the Follow-Up Group was clear that there were important ecclesiological issues involved concerning the relationship between the powers of a diocese as a local expression of the church universal and those of the provincial, metropolitan or national authorities of which it is a part. Any process must also build in provision for wide and fully informed consultation with all the interested parties; so far as the diocese is concerned this will include the bishop himself, the bishop’s council and standing committee, the diocesan synod and the cathedral chapter.

15. In addition the consultation on the details of draft proposals will be accompanied by:

- a statement of what the Dioceses Commission sees as the effect of the proposals on the mission of the Church; and
- a detailed estimate of the financial effects of the proposals

so that those consulted have the opportunity to make a fully informed response.

16. The draft legislation incorporates most of the Toyne recommendations relating to Dioceses. However, following further consideration, in a small number of instances the Group has either not followed a particular recommendation or has taken it forward in an amended form:

- **Recommendation 5(e):** “The new Measure should require each diocesan synod to undertake such consultation within the diocese as it thinks necessary.” The Group entirely agreed with this recommendation, but considered that to include an express provision about it in the legislation was unnecessary.
- **Recommendation 6:** “Every diocese should be represented on the central body by voting members when proposals affecting its continuation or substantial changes to its boundaries are under consideration”. The Group felt the process already enabled diocesan input at various stages. It also considered the implications for the size and composition of the membership of the Dioceses Commission where several dioceses were affected by any given set of proposals, and decided that the disadvantages in this respect would

outweigh the advantages of the recommendation. It agreed instead that the affected diocese(s) should have the opportunity to produce a diocesan statement for presentation to the Commission.

- **Recommendation 9:** “There should be power for a decision, involving the Archbishop of the Province, to be taken to petition the Crown for a delay in nomination to a diocesan see pending consideration of reorganisation proposals”. The Group agreed, following consultation with the Prime Minister’s Secretary for Appointments and the Archbishops’ Secretary for Appointments, that amending the Vacancy in See Committees Regulation to insert a “delaying mechanism” before the process of filling a vacancy in see got under way provided a more satisfactory way of giving effect to the intention underlying this recommendation.
- **Recommendation 13:** “The Measure should provide that a condition of the agreement of the central body to the creation or renewal of a suffragan see, or to the filling of a vacancy, could be the diocesan bishop agreeing to the suffragan serving also as an assistant bishop in a neighbouring diocese.” Given that other provisions of the draft legislation encourage a broad exploration of the provision of episcopal ministry, and that any express provision to give effect to this recommendation would necessarily be complex and difficult to implement in practice, the Group decided that its objective could best be achieved by guidance on good practice.

“Neighbourhood and Network”

17. The Toyne recommendations regarding “Neighbourhood and Network” were set out in Recommendations 16-38, 60 and 65 of GS 1528. These varied from proposals for detailed amendments to the present legislation (primarily the Pastoral Measure 1983), to the major new policy innovation of episcopally authorised “mission initiatives” to help the Church meet needs which, for whatever reason, the parochial system is not fully meeting (Recommendation 18).

Mission Initiatives

18. The proposals on “mission initiatives” have presented the Group with probably its greatest challenge, namely to find a legislative means of promoting a “mixed economy” church and supporting the variety of ‘fresh expressions’, including cross boundary and non boundary churches, on the basis of the Toyne proposals that:
 - existing incumbents and parishes should not have a veto but their views must be taken into account;
 - initiatives should supplement but not undermine the existing parochial system; and
 - initiatives and parishes should ideally be mutually supportive.
19. Throughout its work in this area the Group has been very conscious that the Church expected it to be ready to break new ground. While it is clear that many mission activities in the life of the church do not require fresh legislation at all, there are initiatives involving an intention to promote or further the mission of the Church through fostering or developing different forms of Christian community where there is need for provisions which will both permit legitimate new developments whilst

protecting the proper rights of those affected by them. So, the Group's aim has been to provide a legal structure which would :

- be sufficiently flexible to cover the whole range of experiments, initiatives and fresh expressions of Church, including those as yet undreamed of which lie in the future;
- support, encourage and nurture the green shoots as they grow, help them to develop in the best direction but not stunt or constrict their growth or stifle initiative;
- affirm, recognise and provide legal authority and proper supervision without a legal straightjacket;
- build up relations with the established legal institutions and those involved with them; and
- provide a framework of regular reviews within reasonable time-limits. One object of this would be to help the successful initiatives to move on to something more permanent as and when the time is right. But the Group also wanted to provide for closure where experiments had been tried in good faith but not prospered.

20. The basic structure the Group has provided for this involves, in particular:

- an order by the Bishop, accepted by those leading the initiative – thus making episcopal authority and acknowledgement of that authority the key – made after full consultation (including with those having the cure of souls) with the consent of the diocesan pastoral committee, ensuring that the impact the initiative would have on the existing work of the Church in the diocese as a whole is fully considered;
- a “visitor” acting on behalf of the bishop as guide, counsellor and friend and also providing oversight and conducting periodic reviews, and
- a carefully written House of Bishops’ Code of Practice to which the bishop, the leaders of the initiative and the visitor must have regard.
- The legislation will also involve some limited amendments to the Canons, taking account, for example, of ecumenical considerations, with express provisions for mission initiatives to be “slotted in” to the overall framework of the existing Ecumenical Canons.

21. The Group accepted that successful mission initiatives should not be left to continue indefinitely without a careful evaluation of the way in which they were operating and the impact they were having on the life of the Church as a whole. The draft legislation provides for an order of a maximum of five years, with a full review by the end of that period. At that point, it may well be that the permanence of a successful initiative may best be secured by means of other provisions within this Measure or other pieces of existing legislation such as the Extra Parochial Ministry Measure 1967. However, if the bishop is satisfied it is proper to do so, and the diocesan pastoral committee agrees, the

initiative can be allowed to continue for up to another five years. At the end of that time there will be another full review, after which the mission order will continue only if the bishop considers that there is no other suitable means for achieving the initiative's objectives. Here again the need for the pastoral committee's consent is an important safeguard against anything that might tend to undermine the Church's parochial ministry.

22. In view of the proposals set out above, the Group decided it was not necessary or desirable to pursue the possibility of amending the Extra Parochial Ministry Measure 1967, which had been raised for further consideration in Recommendation 37. Likewise, it considered the rules already in place on the faculty jurisdiction dealt adequately with the possible application of that jurisdiction to mission initiative places of worship.
23. The draft legislation itself will be only "half the story". The Group sees the Code of Practice, which is to be produced by the House of Bishops and presented to General Synod for approval, as a vital document, providing detailed practical guidance on how the legislation is to be implemented, and those with responsibilities regarding mission initiatives will have to have regard to it when discharging them. It is intended that work on the Code should start as soon as possible as the draft legislation works its way through the Synodical process. Aspects likely to be covered include:
 - specimen case examples
 - model forms/precedents for orders and supplementary instruments
 - guidance on such matters as consultation, ecumenical considerations, the role of the visitor, governance, representation within synodical structures, and finance and property issues
 - the review process and options for making permanent arrangements where desirable
 - information about other legal structures.
24. The Group has met and kept in touch with Bishop Graham Cray who has been supportive of its work in devising this set of proposals. It recognises that others may have misgivings – about whether the new provisions allow too much or too little- and that the draft provisions are bound to be the subject of close scrutiny at the revision stage.

Other "Neighbourhood and Network" provisions

25. The draft legislation also incorporates other important "neighbourhood and network" aspects highlighted by GS 1528 which primarily relate to and involve amending the Pastoral Measure 1983. These include:
 - providing greater flexibility to diocesan synods in devising the arrangements for carrying out the diocesan pastoral committee functions, and ensuring that mission and financial considerations are explicitly referred to in their remit;
 - devolving to dioceses the preparation and publication of draft schemes not involving closure of churches; and

- encouraging forms of collaborative ministry other than formal teams, providing the bishop with the possibility of giving experienced assistant curates some of the types of special pastoral responsibility that could be entrusted to a team vicar, and of using descriptions such as “associate minister” in the curate’s licence.
26. It has already been noted that the Group concluded that it should not attempt to draft legislation on Recommendation 27 on suspension of presentation into the 1983 Measure given the work in progress on the Clergy Terms of Service Review. For similar reasons it has not taken forward Recommendation 29 on the procedures for dealing with parsonages and Recommendation 36 on the acquisition of property under the New Parishes Measure 1943.
27. There were also some other aspects of recommendations in the area of “Neighbourhood and Network” which, following further consideration, the Group has not provided for:
- **Recommendation 20:** “As a general principle provision in the new Measure for the operation of teams and groups should be confined to dealing with the responsibilities of team members, patronage and property.” The Group examined the existing provisions which fell outside this formula, and decided that a good case had been made out for retaining each of them.
 - **Recommendation 21:** “The interim provisions for representation of the laity in team ministries should be retained and where applied should continue automatically unless formally rescinded or replaced”. The Group concluded that to allow a team council set up by or under a pastoral scheme to continue indefinitely in this way could create an anomaly when viewed alongside the provisions relating to non-team parishes.
 - **Recommendation 23:** “Provision relating to the appointment of team vicars should be transferred to the Patronage (Benefices) Measure 1986 with the Team Council (if any) appointing the parish representatives.” The Group noted that the procedure under the Patronage (Benefices) Measure 1986 for the appointment of a new incumbent was a ‘heavier’ one, in the sense of one subject to more detailed regulation, than the present one for the appointment of team vicars. Unless a separate and ‘lighter’ procedure was set up for team vicars the result would be the reverse of the Toyne Group’s general objectives and the Group decided not to proceed with this part of the recommendation.
 - **Recommendation 24:** “Permissive powers should be made in schemes to provide for non-stipendiary (NSM) posts either in a team ministry or attached to (non-team ministry) benefices.” The Group recognised that there was nothing in the existing law to preclude NSM appointment to such posts, and concluded that so far as this was aimed at providing reassurance to parishioners about what would happen in the future this was a matter more appropriately dealt with in a separate letter from the bishop than the scheme itself.
 - **Recommendation 33:** “ (c) Adjudication should continue to be based primarily on written representations but objectors should have a right, on request, to make (time limited) oral representations before the adjudicating body.” The Group noted that the Church Commissioners were already introducing an opportunity for those making representations to seek the opportunity to speak at a hearing of the relevant Committee, on the basis that this was possible under the existing legislation, and considered this was an appropriate way forward.
 - **Recommendation 35:** “There should be a “deemed consent” rule where no response is received after 28 days following service of notice of a draft shortened procedure order”.

The Group was not able to find a satisfactory way of implementing this in practice, and took the view that any further suggestions for doing so needed further consideration and should be taken to the Revision Committee.

Church buildings

28. Recommendations 39-59 and, in part, 60 in GS 1528 concerned church buildings and in particular arrangements for those being considered for closure, or whose future was to be settled following closure for regular public worship. Generally these recommendations did not propose fundamental changes to the broad framework within Part III of the 1983 Measure, but nevertheless included some significant proposals.
29. One of the main proposals was that it should be possible to grant a lease of part of a church still in use. This has been taken forward in the Pastoral (Amendment) Measure which has received Final Approval from the Synod and which the Ecclesiastical Committee will consider in the near future.
30. Other important aspects of the part of the new draft legislation which deals with church buildings include:
 - provision for the diocesan pastoral committee to assume responsibility for the functions of the current diocesan redundant churches uses committee, with greater flexibility as to how these are exercised;
 - reconstituting the Council for the Care of Churches as a new body with an enhanced role as the single central Church source of information and advice on church buildings, including all the processes under the Pastoral Measure. This involves giving the Council a statutory constitution which safeguards an ‘independent strand’ in its membership, consisting of 4 members appointed by the Archbishops following consultation with the Secretary of State);
 - adapting the terminology for dealing with church buildings no longer needed for regular public worship better to reflect the process and outcomes achieved;
 - allowing for the possibility of deciding to demolish an unlisted church outside a conservation area at the time of closure; and
 - reducing the “maximum” use seeking period from 3 to 2 years.
31. There were three areas in which the Toyne recommendations on church buildings called for further exploration of particular issues, namely the possibility of providing for disposal for unspecified use at the time of closure (Recommendation 55); the possibility of simplifying the consultation process when dealing with tombstones, monuments and memorials (Recommendation 57); and the scope for making minor changes regarding the use of leased churches without necessitating amending schemes (Recommendation 59). These were considered by the Group but in each instance it concluded that taking these forward was either not feasible or not desirable. However there may be scope to review the provisions within the Pastoral Measure relating to human remains, tombstones, monuments and memorials when the outcome of the Government’s Review of burials legislation is known.

32. During its work the Group received a submission from the Churches Conservation Trust requesting that it be given new legislative powers, including an enabling power to exercise an advisory and capacity building role to assist churches which would be potential candidates for vesting in the Trust in the event of redundancy. As this proposal raised new issues affecting the wider Church, and had not been part of the Toyne recommendations, the Group did not consider it suitable for inclusion in the draft legislation. It remains open, however, for the Trust to raise this matter with the Revision Committee in due course.

Code of Recommended Practice and other guidance material

33. In addition to the House of Bishops' Code of Practice on mission initiatives, the Group also sees the preparation of a Code of Practice and a range of other guidance material, to explain and supplement the new legislation, as an essential part of implementing the Toyne recommendations and the new legislation itself. Work on this will clearly make substantial demands on staff resources, and will need to begin at an early stage after the draft legislation is introduced into General Synod.
34. There are various options for presenting guidance material. While some would always wish to work with a paper document, others might prefer an electronic format, via the Internet or CD Rom. It should be possible to accommodate each of these in due course in a 'user friendly' lay-out.

Non- legislative recommendations

35. The Group has kept under review progress on implementing the non-legislative recommendations. Most of these concerned the Pastoral Measure 1983 and fell largely to the Church Commissioners to take forward, in consultation with others, under the Group's oversight. They related mainly to the provision of guidance in respect of the 1983 Measure, and particularly in relation to its existing scope and versatility in responding to changing mission and pastoral needs (Recommendation 65).
36. This has resulted in work on various scenarios to provide for innovative mission and pastoral arrangements, details of which have been circulated to dioceses and are available on the Commissioners' Pastoral Division website. The preparation of popular leaflets on key topics (Recommendation 65 again) is also in hand, as is draft guidance on carrying out local building audits (Recommendation 40), which it is hoped will be available by the end of the year.

On behalf of the Follow-Up Group

+ Michael Exon:
October 2005

EXPLANATORY MEMORANDUM

A. DRAFT DIOCESES, PASTORAL AND MISSION MEASURE (GS 1597)

PART I – GENERAL PRINCIPLE

1. **Clause 1** lays down the general principle that any person or body who is exercising functions under the new Dioceses, Pastoral and Mission Measure (“the Measure”) or under the Pastoral Measure 1983 (“the 1983 Measure”) must “have due regard to the mission of the Church of England”.
2. This has to be read with **clause 62**, dealing with the interpretation of the Measure, under which:
 - “functions” includes both powers and duties; and
 - “mission” means “the whole mission of the Church of England, pastoral, evangelistic, social and ecumenical”. (This definition is a well-established one, which appears in section 2(2)(a) of the Parochial Church Councils (Powers) Measure 1956 in relation to the functions of a parochial church council, in section 5(3)(b) of the Synodical Government Measure 1969 in relation to the functions of a deanery synod, and in other Measures.)

PART II –PROVINCIAL AND DIOCESAN STRUCTURE (CLAUSES 2-22 AND 64 AND SCHEDULES 1, 2 AND 6)

3. These clauses and Schedules, together with some of the repeals in Schedule 7, completely replace the Dioceses Measure 1978 (“the 1978 Measure”), and related provisions in two other Measures.

The Dioceses Commission (clauses 2-3 and Schedule 1)

4. **Clause 2** abolishes the existing body known as the Dioceses Commission, which was set up by the 1978 Measure, and establishes a new body of the same name, which is to report annually on its activities to the General Synod. The functions of the new Dioceses Commission (“the Commission”) differ in a number of significant respects from those of the existing body, in particular in that the Measure gives it a proactive role in reviewing the Church’s provincial and diocesan structure and proposing “reorganisation schemes” to improve the provincial and diocesan structure of the Church.
5. The detailed provisions regarding the membership and procedures of the Commission are to be found in **Schedule 1**. As regards membership, **paragraphs 1-11** of that Schedule provide, in particular, for:
 - a chair and a vice-chair, to be appointed by the Archbishops jointly from among the members of the Houses of Clergy and Laity of the General Synod;

- eight other members, four of them to be elected by the General Synod from among its members, and four (who may be but need not be members of the General Synod) to be appointed by the Appointments Committee; and
 - a 5 year term of office for all members, with the possibility of being re-elected or reappointed for one further 5 year term only.
6. The remaining provisions in **paragraphs 12-18 of Schedule 1**:
- give the Commission power to appoint committees and delegate functions to them; and
 - deal with the quorum for and chairing of meetings, and other aspects of the Commission's proceedings.
7. **Clause 3** sets out the Commission's general powers and duties. It imposes a duty on the Commission to keep the Church's provincial and diocesan structure under review. This includes, in particular:
- the size, boundaries and number of provinces and dioceses and the distribution of dioceses between the provinces; and
 - the number and distribution of episcopal offices and arrangements for episcopal oversight.
8. In fulfilling those duties, the Commission is required by **clause 3(2)**:
- to ensure that it is kept informed of views within the Church on matters within the previous paragraph and of any changes which are relevant to its work;
 - to consider actively whether changes are needed, bring forward proposals for discussion, engage in consultation about them and encourage detailed and reasoned responses;
 - disseminate guidance and information on good practice;
 - give appropriate advice, on request, on particular issues; and
 - issue reports.
9. Under **clause 3(4)**, the Commission has power to request any information it considers necessary for its work. Under **clause 3(5)**, where it consults the Church Commissioners, a diocesan bishop, a diocesan synod or a bishop's council and standing committee, or asks any of them for information, the person or body in question must so far as practicable provide the comments or information the Commission has requested.

Reorganisation schemes (clauses 4-10 and Schedule 2)

10. **Clause 4** contains the basic provisions about "reorganisation schemes" to improve the provincial and diocesan structure of the Church. They replace the schemes of the same

name that could be made under the 1978 Measure, and may do any of the following:

- create and abolish dioceses;
 - transfer the whole of one diocese to another, or alter diocesan boundaries by transferring a part or parts of a diocese to one or more other dioceses;
 - transfer a diocese from one province to another.
11. Reorganisation schemes are prepared by the Commission. One of the most significant new features of this part of the Measure is that the Commission may now prepare a scheme either after receiving proposals from a diocesan bishop or bishops or on its own initiative. The scheme must be approved by the General Synod and confirmed by Order by Her Majesty In Council before it can take effect. The procedures for this are set out in clauses 5-9 – see paragraphs 13-21 below.
12. **Schedule 2** is a lengthy Schedule dealing in detail with the provisions which a reorganisation scheme may or must contain. It replaces, with amendments, a similar Schedule in the 1978 Measure. Some of the main areas covered by the Schedule are:
- diocesan bishops and bishoprics, including the provisions needed when a diocese is created or dissolved;
 - cathedrals, including the provisions needed to establish a new cathedral or pro-cathedral and a body to carry out the election of a diocesan bishop for a new diocese; or to abolish a cathedral and the bodies and offices belonging to it; or (where a diocese will have more than one existing cathedral within its boundaries as a result of the scheme) to allow that diocese to have more than one cathedral;
 - suffragan bishoprics, including the abolition or creation of a suffragan bishopric, or changing a diocesan into a suffragan see or vice versa;
 - archdeaconries and deaneries; including provision for archidiaconal supervision for a new diocese or (in the context of wider reorganisation schemes) for creating, altering or dissolving an archdeaconry or deanery;
 - patronage, including provision for transferring patronage rights held by a diocesan bishop, diocesan board of patronage or office-holder in the diocese or cathedral in an appropriate case where the diocese is affected by the scheme;
 - diocesan synods, including provision for establishing a diocesan synod and other bodies for a new diocese or winding up those for a diocese that is to be dissolved;
 - property, including transferring property held by a diocesan body, and altering the terms of a charity which impose trustee responsibilities on a diocesan body or office-holder, in cases where that is appropriate because a new diocese is to be created or diocesan boundaries are to be adjusted;
 - the transfer of parochial and diocesan records and documents;

- compensation for any person who held an office which is abolished, vacated or reduced in status under the scheme and suffers loss as a result (unless her or she also has employee status in respect of the same functions, in which case the normal compensation arrangements for employees would apply). The Schedule provides for rules setting out the general principles which are to be applied in determining these rights to compensation to be drawn up by the Commission and to be subject to approval by the General Synod;
 - proceedings pending in a consistory court, in cases where the diocese is abolished or the subject-matter of the proceedings is transferred to another diocese; and
 - supplementary matters.
13. **Clause 5** deals with the initial stages in the process for a reorganisation scheme where the initiative for it comes from the diocesan bishop. It provides for the bishop to prepare proposals after preliminary consultation with the diocesan synod and any other consultation he thinks fit, and to submit them to the Commission. If the proposals would affect two or more dioceses, the scheme must be prepared and submitted by the bishops of all the dioceses concerned, after each of them has undertaken preliminary consultation with his diocesan synod and such other bodies or persons as he thinks fit.
14. **Clause 6** provides that when the Commission receives a scheme prepared under clause 5, it must first consult the “interested parties”. Under **clause 6(1)**, these are:
- the bishop of every diocese which would be affected, the diocesan synod, the bishop’s council and standing committee and the Chapter of the cathedral;
 - the archbishop of the province, and the archbishop of the other province if the proposals would involve transferring a diocese from one province to the other;
 - the Church Commissioners and the Archbishops’ Council; and
 - so far as the Commission thinks fit, any other persons or bodies particularly affected.
15. The next stages in the process are laid down by **clause 6(2)**. The Commission must prepare a statement of the effect of the proposals on the mission of the Church of England and a “financial estimate” – a detailed estimate of the financial effect of the proposals. It may then proceed to prepare a draft scheme to give effect to the proposals, with any amendments the Commission thinks should be made. However, if it decides not to do so (because it considers the objectives could better achieved without a scheme or for some other reason), it must report this to the bishops of all the dioceses concerned, with its reasons.
16. Where the Commission is preparing a draft scheme on its own initiative rather than as a result of proposals from a diocesan bishop or bishops, **clause 6(3)** requires the Commission to prepare a statement of the effect on the mission of the Church and (after consulting the Church Commissioners) a financial estimate, as under clause 6(2).

17. Once the Commission has prepared a draft scheme, **clause 6(4)–(8)** require it to send a copy to every interested party, together with the statement of the effect on mission and the financial estimate, and to invite written representations. When it has considered the representations, if any:
- it may decide not to proceed with the scheme, and in that case it must report this to the diocesan bishop or bishops concerned, with its reasons; but
 - otherwise, it must submit the scheme to the diocesan synod (incorporating any amendments it has made as a result of the representations), the statement of the effect on mission and financial estimate (again with any amendments) and a summary of any representations to it which the Commission thinks should be brought to the diocesan synod's attention.
18. **Clause 7** covers the part of the process involving the General Synod and the steps leading up to it. Under **clause 7(1)-(2)**, if the diocesan synod or all the diocesan synods concerned consent to the scheme, the Commission must lay it before the General Synod for approval. However, even if a diocesan synod does not give its consent, the archbishop of the province may authorise the Commission to lay the scheme before the General Synod if he considers that:
- the interest of that diocese in the scheme is so small that the fact that its diocesan synod has withheld its consent should not preclude the submission of the scheme to the General Synod; or
 - there are wider considerations affecting the province or the Church of England as a whole which require it to be submitted to the General Synod.
19. Under **clause 7(3)-(7)**, where a scheme is submitted to the Synod, it will be accompanied by a report containing the statement of the effect on mission and the financial estimate and, if applicable, the archbishop's reasons for deciding that the scheme should be brought to the General Synod even though a diocesan synod does not consent to it. The General Synod may:
- approve the scheme; or
 - decline to approve it; or
 - ask for a specific matter to be reconsidered. In this case, the Commission must withdraw the scheme, and decide whether to proceed no further with it, to resubmit it to the General Synod as it stands, or to resubmit it with amendments, in which case the process from clause 6(3) onwards must be repeated.
20. **Clause 8** deals with the final stage in the process for a reorganisation scheme, after it has been approved by the General Synod. Under clause 8(1) it must then be submitted for confirmation by Order in Council before it becomes effective as a matter of law.
21. **Clause 9** contains supplementary provisions regarding the coming into force of reorganisation schemes, and the procedure for amending or revoking them.

22. **Clause 10** deals with the membership of the Convocations and the House of Laity of the General Synod where a reorganisation scheme creates a new diocese, alters the area of a diocese or transfers a diocese from one Province to another. In those circumstances, it gives the Synod power to adjust the representation of individual dioceses in the relevant Convocation or the House of Laity, to take account of the changes made by the scheme, for a transitional period until the dissolution of that Synod (and a general election of a new Synod). However, the Synod may not use this power so as to increase the total number of proctors or the total number of elected members of the House of Laity.

Change of name of see

23. **Clause 11** provides for Her Majesty in Council to change the name of a diocesan or suffragan see on a petition by the diocesan bishop of the diocese concerned. However, before submitting the petition, the bishop must:
- consult the Commission;
 - obtain the approval of the diocesan synod; and
 - lay the petition and a report on it by the Commission before the General Synod and obtain its approval.

This replaces section 6 of the Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988; the only new provisions are those requiring the Commission to be consulted and to make a report to the Synod.

General duty of diocesan bishop to keep episcopal ministry under review (clause 12)

24. **Clause 12** imposes a duty on each diocesan bishop to keep under review the provision of episcopal ministry and oversight in his diocese. In doing so, he is required to consult widely, although which persons and bodies he consults is a matter for his discretion.

Delegation of episcopal functions (clauses 13-16)

25. These clauses replace sections 10-16 of the 1978 Measure, which provided for a diocesan bishop to delegate functions temporarily to a suffragan bishop and for permanent delegation under an area scheme, which bound the successors of the diocesan bishop who was in office when it took effect and which required the approval of the General Synod. A separate provision on delegation of a diocesan bishop's functions in section 8 of the Church of England (Miscellaneous Provisions) Measure 1983 is also replaced (see paragraphs 31-34 below). The provisions for area schemes are completely repealed, although existing schemes will continue in force (until revoked) under transitional provisions in the draft Measure – see paragraph 49 below. The principle underlying the new provisions is that decisions as to the powers and duties delegated to suffragan bishops should be taken within the diocese concerned.
26. **Clause 13** gives a diocesan bishop power, subject to paragraph 29 below, to delegate any of his functions to a suffragan bishop by a written instrument signed by the diocesan. (The main function of practical importance which is excluded from this is the

diocesan bishop's power to request permission from the archbishop for a person to be ordained even though he or she has remarried and has a former spouse still living or is married to someone with a former spouse still living.)

27. Under **clause 13(2)-(5) and (15)**, the delegation does not divest the diocesan bishop of any of his functions, and it may:
 - be subject to conditions;
 - extend to the whole diocese or a particular area;
 - provide for the functions in question to be discharged by the diocesan bishop and the suffragan jointly;
 - be for a fixed period (although this does not prevent the diocesan bishop making a fresh delegation at the end of the period).
28. Under **clause 13(6)-(7) and (9)-(10)**, the diocesan bishop may vary or revoke such an instrument at any time. Subject to that, the basic principle is that it will come to an end when any period fixed by the instrument itself expires or, unless the instrument provides otherwise, when the diocesan bishop who makes the delegation or the suffragan to whom it is made ceases to hold office. However:
 - the instrument itself may provide for the delegation to continue for a specified period after the diocesan or the suffragan concerned ceases to hold office. (In the case of the suffragan, this will mean that it continues with his successor in office taking his place); and
 - in any other case, it will continue (unless varied or revoked) for six months after a new diocesan or a new suffragan takes up office.
29. The diocesan bishop is normally required by **clause 13(8)** to secure the diocesan synod's approval before making the delegation. If he considers the matter is urgent and it is not practicable to obtain the diocesan synod's approval, he may instead obtain the approval of the bishop's council and standing committee, but this option does not apply in a case where the instrument itself is to provide for the delegation to continue for a period after the diocesan or the suffragan bishop ceases to hold office.
30. The **remainder of clause 13** contains a number of supplementary provisions.
31. **Clause 14** replaces section 8 of the Church of England (Miscellaneous Provisions) Measure 1983, with a few amendments, none of them on major issues of principle. It applies, under **clause 14(1)**, where the diocesan bishop has resigned or is about to be translated to another see, or where he considers he will not be able to discharge some or all of his functions because of disability, illness or absence from the diocese. In those circumstances, if there is no bishop in the diocese authorised to discharge the functions concerned, the bishop may delegate his functions for a period of up to 12 months to any person holding office in the Church of England as a diocesan, suffragan or assistant bishop. (The functions excluded from the scope of the clause are the same as under clause 13.) The bishop does not need the consent of the diocesan synod, but he must

consult the bishop's council and standing committee unless he is unable to do so because of illness or disability.

32. Under **clause 14(5), (8) and (10)**, the delegation may be to two or more persons, and may divide the functions among them on the basis of geographical area or in some other way. The delegation may be varied or revoked by a subsequent instrument made under the same powers. It does not divest the diocesan bishop of any of his functions.
33. There are also provisions in **clause 14(2) and (3)** for the archbishop to extend the original period of the delegation, or to make the delegation himself, if the see is vacant or if, because of any of the circumstances set out in clause 14(1) the diocesan bishop cannot or has not himself made a delegation. The archbishop does not need to consult the bishop's council and standing committee of the diocese concerned.
34. The **remainder of clause 14** contains a number of supplementary provisions.
35. **Clause 15** contain a special provision for cases where a diocesan bishop has the right to appoint the incumbent of a benefice. While the see is vacant, the exercise of that right passes to the Crown, and this overrides any provision in a reorganisation scheme or a delegation under clause 13 or 14 for the suffragan bishop to exercise the right of patronage.
36. **Clause 16** ensures that a delegation of a diocesan bishop's functions under clause 13 or 14 or a reorganisation scheme will be effective even where a separate piece of legislation expressly confers or imposes the function on the diocesan bishop.

Suffragan sees (clauses 17-18)

37. These clauses replace existing provisions in the 1978 Measure for approval of proposals to create new suffragan sees. The corresponding provision in the 1978 Measure regarding the revival of a suffragan see that has been vacant for five years is replaced by a new general provision for ensuring that proposals to fill vacancies in suffragan sees receive appropriate consideration.
38. **Clause 17**, which is a new provision, applies to a proposal to fill any vacancy in a suffragan see (except, by virtue of clause 17(8), to the see of Dover, whose suffragan bishop fulfils a major part of the Archbishop of Canterbury's role as a diocesan bishop on his behalf, and to a see where it is intended that the next bishop should be a provincial episcopal visitor under the Episcopal Ministry Act of Synod 1993).
39. Under **clause 17(1)-(5)**, the diocesan bishop must first consider, taking account of his general duty under clause 12, whether a proposal to fill the vacancy should be considered. If so, he must consult the diocesan synod. If he then takes the view that the vacancy should be filled, he must inform the archbishop of the province and the Commission, giving his reasons. If the Commission agrees with the bishop's proposal to fill the see, or if the Commission thinks the proposal needs further consideration but the archbishop does not share that view, the bishop may proceed to take the normal steps to have the vacancy filled.

40. However, if the Commission takes the view that the proposal needs further consideration and the archbishop agrees, **clause 17(6) and (7)** require that the same synodical process as under Clause 18 for creating a suffragan see should be followed. The Commission prepares a report, including a statement of the effect of the proposal on the mission of the Church of England and an estimate (prepared in consultation with the Church Commissioners) of the financial effect of the proposal. If in the light of this the diocesan bishop still wishes to proceed with filling the vacancy, he must obtain the approval of the diocesan synod and then of the General Synod, which in each case will have the Commission's report before it when it considers the matter.
41. **Clause 18** provides that a diocesan bishop may not take the steps needed in order for a new suffragan see to be established unless that has been approved by the diocesan synod and then the General Synod. The diocesan bishop must first consult the archbishop of the province and then send his proposal and his reasons for it to the Commission, which must prepare a report including a statement of the effect on the mission of the Church and a financial estimate as under clause 17. If the bishop then decides to take the proposal forward, the diocesan synod and, if it approves the proposal, the General Synod will each have the Commission's report before it when it considers the matter.

Schemes for shared administration by dioceses (clauses 19 and 20)

42. These clauses replace, with a limited number of changes, the provisions in the 1978 Measure for two or more dioceses to make a scheme for shared administration.
43. **Clause 19** makes it possible for a such a scheme to apply to the functions of all or any of the corporate bodies and committees established for a diocese, except the diocesan synod and the bishop's council and standing committee. The scheme may take the form of:
- a new body to carry out the functions of the relevant bodies for all the participating dioceses;
 - arrangements for the existing bodies to discharge their functions jointly, for example through a joint committee; or
 - arrangements for the relevant body of one diocese to discharge the functions of the corresponding body for another diocese or other dioceses, or to do so by means of a committee or subcommittee.
44. Under **clause 19(2)-(6)** the bishops of the proposed participating dioceses must first obtain the Commission's consent to a draft scheme. (This replaces the requirement under the 1978 Measure for the Archbishops' Council to consent.) They must then consult the Church Commissioners on the draft scheme. If the proposals would affect a charity within the jurisdiction of the Charity Commission, it must also be consulted and the scheme cannot proceed if it objects. The bishops will finalise the scheme in the light of comments from the Church Commissioners and the Charity Commission and submit it, with those comments, to the diocesan synods of the participating dioceses, each of which must approve the scheme before it can come into operation.

45. The **remainder of clause 19** contains supplementary provisions.
46. **Clause 20** also contains supplementary provisions.

Miscellaneous and Supplemental Provisions (clause 21 and 22)

47. **Clause 21** in substance repeats a provision in the 1978 Measure giving the Church Commissioners power, where a reorganisation scheme creates a new bishopric and diocese, to pay the stipend and expenses of the diocesan bishop and any suffragan bishop of the diocese and (after consulting the bishop's council and standing committee) to provide the diocesan bishop with a suitable residence.
48. **Clause 22** contains interpretation provisions for Part II of the Measure.

Related provisions in other parts of the draft Measure (Clauses 64 and 65, Schedule 6 and part of Schedule 7) and other parts of the draft legislation

49. The following parts of the draft Measure contain related provisions:
- **Clause 64 and Schedule 6** contain transitional provisions relating to the Dioceses Measure 1978. In most cases they provide for schemes or instruments which are still in operation, and proposals to create suffragan sees which are under consideration, to take effect under the corresponding provisions of the new Measure. The Schedule also provides that area schemes under section 11 the 1978 Measure will continue in force until revoked by the diocesan bishop with the consent of the diocesan synod, but that in the meantime they may also be amended by the bishop, again with the diocesan synod's consent; and.
 - **Clause 65 and Schedule 7** repeal the whole of the 1978 Measure (including a provisions on area synods which has not been replaced in the new Measure), and the provisions in the Church of England (Miscellaneous Provisions) Measure 1983 and the Church of England (Legal Aid and Miscellaneous Provisions Measure 1988 referred to under clauses 11 and 14.
50. The **draft Vacancy in See Committees (Amendment) Regulation** also contains related provisions – see paragraphs 154-158 below.

PART III – PROCEDURE FOR MAKING PASTORAL SCHEMES AND ORDERS AND PASTORAL CHURCH SCHEMES (CLAUSES 23-38)

Introduction

51. **Clause 23** explains that the amendments in Part III relate to Part I of the Pastoral Measure 1983 (“the 1983 Measure”). This deals with the procedure for making pastoral schemes and orders. **Pastoral schemes** are legal documents which change local organisational arrangements affecting, for example, the status of parishes and benefices, team and group ministries, and church buildings. **Pastoral orders** deal with simpler matters, including alterations to parish or benefice boundaries or names and pluralities and involve a “lighter” consultation procedure.

52. Under **clause 23(2)**, the closure of a church, previously known as a “declaration of redundancy”, is now to be known as a “declaration of closure for regular public worship”, which more accurately describes what is being achieved. A scheme which involves proposals to close a church for regular public worship is to be known as a **pastoral church scheme**. The term “pastoral scheme” is thus to be reserved for schemes which do not involve such proposals.
53. Under the 1983 Measure as it stands at present, all pastoral schemes are drafted and published by the Church Commissioners. In future there are to be two separate routes and sets of procedures for making pastoral and pastoral church schemes:
- pastoral schemes, i.e. those not involving a proposal to close a church for regular public worship, are to be drafted and published by dioceses (with the Church Commissioners exercising a “validating” role). Under **clauses 23(3) and 24**, the set of amendments to Part I of the 1983 Measure in clauses 25-33 are to apply to these and to pastoral orders; and
 - pastoral church schemes will continue to be drafted and published centrally by the Church Commissioners. Under **clauses 23(4) and 34** the amendments in clauses 34-38 will apply in these cases.

Pastoral schemes and orders

54. **Clause 24** provides that the amendments in sections 25 to 33 apply only to those proposals and pastoral schemes which do not contain a declaration of closure of a church for public worship, and to pastoral orders.
55. **Clause 25** amends section 3 of the 1983 Measure and removes local planning authorities as one of the interested parties to be consulted on draft proposals and draft pastoral schemes and orders, on the basis that this is not necessary where there is no proposal involving the possible closure of a church. It also omits those sub-sections dealing with procedures arising where possible closure of a church is being considered, as these apply only in respect of pastoral church schemes.
56. **Clause 26** replaces section 4 and deals with the new arrangements for drafting pastoral schemes within each diocese. It provides that if the bishop approves the draft proposals prepared by the diocesan pastoral committee in the light of local consultations, the diocesan pastoral committee will then prepare a draft scheme or order to give the proposals effect and submit this to the Church Commissioners. The existing practice of circulating the bishop’s signed proposals ahead of the publication of a draft scheme is to be discontinued, thereby streamlining the process.
57. **Clause 27** replaces section 5. The new section sets out the Church Commissioners’ revised role in considering draft schemes or orders prepared by the diocese:
- The Commissioners are to check that the draft scheme or order has the effect intended and is legally permissible, and that the earlier consultation procedures have been properly carried out. In the light of this, they make any amendments they think appropriate.

- If the Commissioners have not made any amendments, other than of a minor nature, they then return the draft to the pastoral committee to proceed with publication.
 - If the Commissioners have made more substantial amendments, they then refer the draft back to the pastoral committee for further consideration. The pastoral committee may, with the bishop's agreement, make any further amendments it thinks fit. It then resubmits the draft to the Commissioners for further consideration.
 - If the Commissioners consider it is not possible to amend the draft scheme or order in a way in which it might proceed in a correct form, or that the correct procedures have not been applied, they may return it to the pastoral committee for further consideration. The pastoral committee then has to consult the bishop and consider whether to prepare a new draft scheme or order.
58. **Clause 28** amends section 6, dealing with the notice and publication of draft schemes or orders. It provides for the diocesan pastoral committee rather than, as at present, the Commissioners to serve notice of the draft scheme on the interested parties (and also the Commissioners) and of the date by which any representations should be submitted to the Commissioners. Where a draft scheme affects churchyards or burial grounds under section 30 of the 1983 Measure a notice is also served by the committee on the Commonwealth War Graves Commission and a notice is published in a local newspaper.
59. **Clause 29** amends section 7 so that the Commissioners may at any time after a copy of the draft scheme or order is served on them exercise their existing powers to amend the draft at the bishop's request after consultation with the pastoral committee, or as a result of any representations.
60. **Clause 30** amends section 8 so that the Commissioners are no longer required to seal copies of pastoral orders before they are made. Instead the Commissioners are to issue a certificate to indicate either that no representations have been received or that notwithstanding any representations they propose that the order should proceed unamended. This is to be sent to the bishop with the draft order.
61. **Clause 31** amends section 10 to make the pastoral committee, and not the Commissioners, responsible for the transmission of copies of schemes and orders to interested parties and to the registrar for filing in the diocesan registry.
62. **Clause 32** replaces section 15, dealing with the withdrawal of schemes or orders at the request of the bishop. If the bishop wishes any proposals or any draft scheme or order not to proceed, he may, following consultation with the pastoral committee, direct the committee or the Commissioners (if the draft scheme or order is with them for checking etc or the consideration of representations) not to proceed with the proposals or the draft scheme or order.
63. **Clause 33** replaces subsection (1) of section 16. It provides for either the pastoral committee, up to the time notice is given to the Commissioners of a draft scheme or order, or the Commissioners thereafter, to make any amendments to the proposals or the

draft scheme or order which appear to be necessary in order to correct a drafting mistake or omission.

Pastoral Church Schemes

64. **Clause 34** provides that the amendments set out in sections 35 to 38 to Part 1 of the 1983 Measure apply to **pastoral church schemes**, which are any pastoral schemes which contain a declaration of closure of a church for regular public worship. Such schemes may also contain other elements of pastoral reorganisation.
65. **Clause 35** amends section 3 in respect of pastoral church schemes, and replaces the term ‘declaration of redundancy’ with the term ‘declaration of closure for regular public worship’. It also expands the scope of the report commissioned from the Council for the Care of Churches by the pastoral committee to include any information and advice the Council considers appropriate concerning possible architectural or structural changes, either to facilitate its use for wider purposes while remaining in use as a church, or in the event of its closure. This takes into account the changes in the Pastoral (Amendment) Measure which received Final Approval in February 2005, but which at the time of writing has not yet been considered by the Ecclesiastical Committee of Parliament, to permit the lease of part of a church for wider purposes where the church remains primarily in use for worship. It also takes account of the transfer of the functions of the Advisory Board for Redundant Churches to the Council, enabling consideration at an early stage of possible alternative use in the event of closure.
66. **Clause 36** makes consequential amendments to section 5 regarding the amendment of proposals and the preparation of draft pastoral church schemes, which are to continue to be the responsibility of the Church Commissioners. It replaces subsection (4) and provides that if, with the agreement of the bishop, following consultation with the pastoral committee, the Commissioners decide a declaration of closure should be excluded from the proposals; they are to refer the remaining proposals back to the pastoral committee to prepare a draft pastoral scheme.
67. **Clause 37** makes consequential amendments to section 6, regarding the notice and publication of draft schemes, by replacing subsection (3)(a). The new provision sets out the further interested parties, as at present, to be served with notice where the draft scheme provides for a declaration of closure for regular public worship, but replacing the Advisory Board for Redundant Churches with the Council for the Care of Churches.
68. **Clause 38** make a consequential amendment to section 10, regarding the transmission of copies of the scheme, again by replacing the Advisory Board for Redundant Churches with the Council for the Care of Churches.

PART IV – CHURCHES CLOSED FOR REGULAR PUBLIC WORSHIP (CLAUSES 39-45)

Introduction

69. **Clause 39** provides for Part IV of the draft Measure to amend Part III of the 1983 Measure.

70. **Clause 40** replaces section 42 of the 1983 Measure. In place of the current separate statutory diocesan redundant churches uses committee, the diocesan pastoral committee is to assume, in an amended form, its responsibilities for buildings closed for regular public worship. As well as facilitating the one stage procedure for settling the future of such buildings at the time of closure (see paragraphs 73-74 below), this will allow for greater flexibility in establishing arrangements to carry out those responsibilities. (See also paragraph 102-109 below, relating to clauses 51-52 and Schedule 3, on the constitution and procedure of the pastoral committee).
71. The pastoral committee is under the following duties in respect of churches which are closed or are proposed to be closed for regular public worship:
- to make every endeavour to find suitable alternative uses for churches which are listed buildings, and for unlisted churches situated in conservation areas;
 - to develop proposals for the future of other churches, either for suitable use or for demolition or disposal of the site;
 - to obtain advice in carrying out those functions, from the Church Commissioners, from those with expertise in the management, development and disposal of property and from any other professional adviser the committee thinks fit;
 - to report at least every six months to the Church Commissioners (or more frequently if the Commissioners require it to do so) on the progress it has made in discharging its duties, and when it has found a suitable alternative use or uses for the building or reached the conclusion that no such use can be found, to report to the Church Commissioners with its recommendations.
72. Under the new section 42(5), the Commissioners may take over the duties in relation to the future of a church which has been closed, by requiring the pastoral committee to refer the case to them. They are then required to consult the pastoral committee in discharging those duties.

One-stage procedure for settling the future of closed churches

73. **Clause 41** substantially amends and simplifies section 46 of the 1983 Measure, dealing with provisions in pastoral church schemes for the future of a church which is proposed for closure and replacement.. Under the amended section 46, the pastoral church scheme itself may provide for the future of the building where the Commissioners are satisfied that a new church or place of worship is to be provided in the benefice and, following consultation with the Council for the Care of Churches, are also satisfied with the proposals for the future of the church to be closed.
74. **Clause 42** amends section 47 and incorporates a new subsection (2A), which enables a pastoral church scheme to provide for the demolition of a church which is unlisted and is situated outside a conservation area at the time of closure for regular public worship. This removes the duty to seek a suitable use for such churches.

Two-stage procedure for settling the future of closed churches

75. As part of revising the terminology of redundancy the draft legislation replaces the term “redundancy scheme”, used where the future of a closed church is settled by a second scheme under the two-stage procedure, with the term ‘**pastoral (church disposal) scheme**’.
76. **Clause 43** amends section 49, which deals with the period between closure and settling the future of a closed church, by:
- changing the name by which this period is known from the “waiting period” to the “use seeking period”;
 - replacing the provisions at the end of subsection (1) so that the only cases where the Commissioners must wait for a minimum period, of at least six months, after the declaration of closure before preparing a pastoral (church disposal) scheme are those involving a proposal to demolish a church which is a listed building, or an unlisted church in a conservation area. Even then, the six months “minimum” period does not apply where the Commissioners are satisfied, after consulting the Council for the Care of Churches, that there is no objection to the demolition taking place; and
 - requiring the diocesan board of finance to consult the diocesan advisory committee and the Chancellor of the consistory court before transferring the contents of a closed church for safekeeping (which does not require a faculty) unless the board considers the urgency of the need makes such consultation impracticable.
77. **Clause 44** makes consequential amendments to section 50, dealing with the procedure for making pastoral (church disposal) schemes, and also provides for reducing the “maximum” use seeking period from three to two years, by which time a scheme has to be made to settle the future of the building.
78. **Clause 45** makes consequential amendments to section 51, dealing with the contents of pastoral (church disposal) schemes, and provides:
- in an amendment to section 51(2)(c), that the diocesan board of finance (as well as at present the Commissioners) may dispose of the freehold of a closed church; and
 - in an amendment to section 51(9), for an extendable three year time limit from the time of closure for the preparation of a pastoral (church disposal) scheme under which any proceeds arising from disposal of the closed church can be applied towards the provision of a new church or place of worship in the same benefice.

Related provisions

79. The provisions of the 1983 Measure repealed by **clause 65 and Schedule 7** include paragraphs 5-12 of Schedule 5, relating to the diocesan redundant churches uses committees, which will no longer exist – see clause 40 and paragraph 70 above. There are also some consequential amendments in **Schedule 5**.

PART V – MISSION (CLAUSES 46-50)

80. Part V of the Measure contains a completely new set of provisions under which a bishop may make a "bishop's mission order" endorsing certain types of "mission initiatives". It sets out the conditions which must be satisfied before such an order is made, the provisions which must or may be included in the order or a supplementary instrument, oversight, participation in a local ecumenical project, synodical representation, the review, variation, revocation and duration of the order, and also provision for a House of Bishops' Code of Practice. The provisions of Part V are linked to those of the draft Amending Canon No 27, which also relates to "mission initiatives".
81. **Clause 46** contains the basic provisions regarding mission initiatives and the orders endorsing them. Under **Clause 46(1)-(3)**, where:
- a person or group of persons is carrying out an initiative in any part of the diocese, or proposes or wishes to do so; and
 - the bishop is satisfied that it would be likely to promote or further the mission of the Church, or any aspect of it, through fostering or developing a form of Christian community;
- the bishop may make a "bishop's mission order" (in the following paragraphs referred to as "the order") endorsing that "mission initiative". If the initiative is to extend to more than one diocese, the order will need to be made by bishops of all the dioceses concerned, acting jointly.
82. Under **clause 46(4)**, the order must specify:
- the objectives of the mission initiative;
 - the areas in which it is being or is to be carried out; and
 - one or more individuals or a group of people who are to lead the mission initiative and are to be responsible to the bishop for its conduct (the "leader" or "leaders") and their role.
83. The requirements which the bishop must satisfy before he makes the order, under **clause 46(5) and (6)**, are that he must:
- obtain the consent of the diocesan pastoral committee;
 - consult those who it appears to him have an interest in the order or are likely to be affected by it, and anyone else he thinks fit. (The bishop may consult a representative body if he thinks that appropriate); and
 - consult such other Churches and religious organisations as he thinks fit.

The bishop may also authorise someone else to carry out those consultations on his behalf.

84. Under **clause 46(7)**, a priest or deacon may not officiate in any place in accordance with a bishop's mission order unless he has a separate authority from the bishop to do so (by institution into a benefice or by licence or permission to officiate) unless Canon Law permits him or her to officiate there without the bishop's permission. Likewise, a deaconess, reader or lay worker may only officiate in any place in accordance with such an order if he or she is separately authorised to do so under Canon law.
85. Under **clause 46(8)**, the order may authorise a minister to exercise his or her ministry in relation to the mission initiative without the consent of the person having the cure of souls in the place concerned. Before including such a provision in the order, the bishop must consult the incumbent or priest-in-charge or, if the order affects more than one parish, the House of Clergy of the deanery synod. (There are special provisions for consultation with the House of Clergy of the deanery or diocesan synod if the initiative would affect a whole deanery or parishes in more than one deanery.)
86. There are further provisions in **clauses 46(9)-(12)**:
- dealing with collections;
 - authorising the performance of divine service (including Holy Communion) either in the parish church, a parish centre of worship or a building licensed for public worship (but in each case only with the consent of the minister with cure of souls there) or in some other building (provided the person with the general management and control of the building consents); and
 - making it clear that nothing in the clause dispenses with the need to comply with a resolution under the Priests (Ordination of Women) Measure 1993.
87. **Clause 47** deals with the "Visitor", who is a person (chosen by the bishop) designated by the order. The Visitor's main functions are set out in **clause 47(1)** and are:
- to exercise oversight of the initiative on the bishop's behalf and encourage and provide support for it;
 - to review the initiative at least every 18 months (or more frequently if the order requires), and also at the end of the period of the order, and to send the report of each review to the bishop with copies to the leader(s) and, in the case of the review at the end of the period, to the diocesan pastoral committee;
 - to report regularly to the bishop on the progress of the initiative and Visitor's work, again sending copies to the leader(s);
 - to ensure proper accounts are kept for the initiative; and
 - to advise the bishop and the leader(s) on setting up and developing appropriate methods of governance.
88. Under **clause 47(2)** the leader(s) must consult the Visitor regularly about the general direction and development of the initiative, and must supply the Visitor with the annual

accounts and any other information the Visitor needs in order to carry out his or her functions.

89. Under **clause 47(3)**, anyone may draw a matter regarding the initiative to the Visitor's attention if it is something he or she thinks the Visitor should be aware of.
90. **Clause 48** contains supplementary provisions. Under **clause 48(1) and (2)**, the bishop may include any supplementary provisions in the order to further the initiative's objectives, or may include them in a supplementary instrument.
91. A number of matters for which the order or the supplementary instrument may make provision are set out in **clause 48(2)**. These include, for example:
 - how a person exercising functions under the order is to be replaced if necessary;
 - the organisation, governance and financing of the initiative and the management and control of property;
 - protection for children, young people and other vulnerable people, health and safety and insurance;
 - relationships between those involved in the initiative on the one hand, and those having the cure of souls in the relevant area and other Churches, institutions and religious organisations on the other;
 - ecumenical co-operation with other Churches in matters affecting the ministry, congregational life and buildings of the Churches concerned; and
 - synodical representation.
92. Under **clause 48(3)**, where the order is to provide for the initiative to participate in a local ecumenical project (in the sense in which that term is used in the Church of England (Ecumenical Relations) Measure 1988), the bishop must consult the appropriate authority of each participating Church before the Order is made. (See paragraph 151 below.)
93. The provision in **clause 48(4)** takes the form of an amendment to the Church Representation Rules under which a diocesan synod may, at the bishop's request, provide a scheme for the representation of a mission initiative on a deanery synod.
94. Under **clause 48(5)-(7)** the bishop may revoke or vary an order or a supplementary instrument but, in the case of an order, the bishop must first:
 - consult the leader(s), the Visitor, the person with the cure of souls, and anyone else the bishop thinks fit; and
 - obtain the consent of the diocesan pastoral committee. Any leader will have the right to make representations to the pastoral committee about the proposed revocation or variation.

95. There are further requirements in **clause 48(8) and (9)** that:
- the order or a supplementary instrument must specify for how long it is to continue. The general principle is that this may not be for more than five years, but this is subject to clause 49 – see paragraphs 97-98 below; and
 - an order or supplementary instrument must be signed by the leader(s) and contain a declaration by the leader(s) accepting its terms.
96. **Clause 49** deals with the duration of mission initiatives, reviews carried out in that connection and some other related matters.
97. Under **clause 49(1)-(5)**, not more than 6 months before the end of the period fixed for the order under clause 48(8) (see paragraph 95 above), the Visitor must conduct a review of the initiative, in consultation with the leader, with the diocesan pastoral committee, and with others as the Visitor thinks fit. The Visitor must then report to the bishop on the outcome of the review, and that report is to include recommendations on whether the initiative should continue, if so whether the order should be renewed and for how long, and if not, how the initiative or its objectives should be continued. After any further consultation, and provided the pastoral committee consents, the bishop may renew the order:
- for a further period of up to 5 years; or
 - for up to 18 months so that arrangements can be made for the initiative or its objectives to be continued in some other way.
98. If the bishop makes a further order of up to five years (as opposed to a temporary one for up to 18 months) after the first review under clause 49, **clause 49(6)-(8)** will apply, and the Visitor is to repeat the process of reviewing the initiative and reporting to the bishop before the end of that period. If the pastoral committee consents and if the bishop considers there is no other suitable means for achieving the initiative or its objectives, the bishop may then make a further order without any fixed time limit, which will continue until the bishop revokes or varies it.
99. The **remainder of clause 49** makes it clear that the provisions in clause 48 on revoking and varying orders and instruments and on the need for the leader(s) to sign orders and instruments and accept their terms also apply to those made under clause 49.
100. **Clause 50** requires the House of Bishops to produce a Code of Practice regarding the exercise of the functions under clauses 46-49. The Code must be approved by the General Synod before it comes into force, and bishops, Visitors, leaders and pastoral committees acting under those clauses must have regard to the Code in doing so.

Related provisions

101. **Clause 63(2)** contains an amendment to the Church of England (Ecumenical Relations) Measure 1988 which is related to the provisions in Part V of the draft Measure – see paragraph 141 below. There are further related provisions in **draft Amending Canon No. 27** – see paragraphs 146-153 below.

**PART VI – PASTORAL AND CHURCHES USES FUNCTIONS
(CLAUSES 51 AND 52 AND SCHEDULE 3)**

Pastoral committees

102. **Clause 51** provides for each diocesan synod to establish a committee, referred to in the draft Measure as “the pastoral committee”, but to be called by whatever name the diocesan synod decides. That is to be done within eighteen months of the date of the coming into force of this provision of the draft Measure. The committee may be a new or an existing body, and may have functions other than those conferred by the draft Measure, but it cannot be the pastoral committee established under section 1 of the 1983 Measure unless that committee is reconstituted in accordance with the draft Measure. The pastoral committee is to assume, in an amended form, the role of the current redundant churches uses committee, which will cease to exist – see also paragraphs 70-71 above.
103. Under **clause 51(5)** the pastoral committee must present annual reports:
- to the diocesan synod on its activities during the previous year; and
 - to the Church Commissioners on the exercise of its functions in settling the future of churches which have been or are proposed to be closed for regular public worship – see paragraph 71 above.
104. The diocesan synod is required by **clause 51(4)** to provide the pastoral committee with a new or amended written constitution which complies with **Schedule 3**. That Schedule also contains provisions regarding the constitution and procedure of the pastoral committee.
105. The membership of the committee is dealt with by **paragraphs 1-5 of Schedule 3** as follows:
- there is to be a chair, who may be the diocesan bishop if he so wishes, but who will otherwise be appointed by the bishop;
 - if he is not the chair, the bishop may, if he wishes, be a member;
 - all archdeacons in the diocese are to be members; and
 - the number of other members, the manner of their appointment or election and their period of office are to be determined by the diocesan synod, but so that the number of clergy and lay members is, as nearly as possible, the same.
106. The remaining provisions in **paragraphs 6-12 of Schedule 3** deal with the quorum for and other aspects of the committee’s proceedings, and make provision for the committee to have power:
- to provide for the appointment of a secretary;

- to appoint subcommittees, which may include non-members of the committee, subject to any requirements in the constitution of the committee prescribing a minimum number or proportion of sub-committee members who are members of the main committee;
- to appoint persons with appropriate expertise to provide advice; and
- to delegate any of its functions, except the duty under section 3(5) of the 1983 Measure to afford opportunities to incumbents and team vicars to meet the committee itself in relation to certain types of possible recommendations.

107. **Clause 52** sets out the functions of the pastoral committee and the considerations to which it must have regard. Without prejudice to the general principle set out in clause 1 of the draft Measure (see paragraph 1 above), the committee must have regard to “worship, mission and community as central to the life and work of the Church of England”. In carrying out its functions the committee also has to have regard to a number of other factors:

- the financial implications for the diocese and the Church of England as a whole;
- the need to allocate appropriate spheres of work and to ensure that those employed or holding office in the diocese enjoy appropriate conditions of service and (where relevant) that those engaged in the cure of souls have reasonable remuneration provided for them. (However, the committee is not empowered to fix or alter terms of service);
- the traditions, needs and characteristics of particular parishes; and
- any other aspects of the diocesan synod’s policies to which it has asked the committee to have regard.

108. In carrying out its functions, the committee is also required by **clause 52(4)** to consult other persons and bodies with functions or activities relevant to those of the committee (whether or not they are within the Church of England) so far as the committee thinks appropriate.

109. Under **clause 52(3)** the committee’s duties are as follows (subject to a general provision in clause 52(5) that this does not enable the committee to exercise functions conferred on any other person or body under any enactment):

- to make or assist in making better provision for the cure of souls in the diocese as a whole and, so far as the committee thinks appropriate, in particular parts of the diocese or particular parishes;
- from time to time, as the bishop directs or the committee thinks fit, to review arrangements for pastoral supervision and care in the diocese or any part of it (including sharing agreements);

- from time to time, as the bishop directs or the committee thinks fit, to prepare strategies or proposals for carrying those functions into effect, for submission to the bishop and diocesan synod for approval;
- to exercise oversight of matters relating to church buildings and their use (other than those which are the responsibility of the consistory court or the Diocesan Advisory Committee);
- to carry out the use-seeking role in respect of churches which are listed buildings or in conservation areas and which have been or are proposed to be closed, and to develop proposals for the future of other closed churches - see also paragraphs 70-71 above;
- where the committee considers that desirable, to make recommendations to the bishop under section 3 of the 1983 Measure for matters which may be provided for in schemes and orders under the 1983 Measure; and
- to carry out any other functions formerly conferred on a pastoral committee or a redundant churches uses committee under the 1983 Measure or any other enactment.

Related provisions

110. **Clause 65 and Schedule 7** repeal sections 1 and 2 of and Schedule 1 to the 1983 Measure, which deal with the constitution, procedure and functions of the present pastoral committees, as well as paragraphs 5-12 of Schedule 5 to the 1983 Measure, dealing with diocesan redundant churches uses committees. There are also consequential amendments in **Schedule 5**, introduced by **clause 63(1)**.

PART VII – OTHER PROVISIONS (CLAUSES 53-61 AND SCHEDULE 4)

The Council for the Care of Churches (clauses 53-56 and Schedule 4)

111. **Clause 53** provides for a new Council for Care of Churches (“the Council”), constituted as a statutory body, which is to provide the single unified central Church source of information and advice on church buildings. It will be responsible for the functions in relation to closure of churches for regular public worship (known under the existing legislation as “redundancy”- see paragraphs 52 and 65 above), including advising the Church Commissioners, which are at present carried out by the Advisory Board for Redundant Churches, and under **clause 53(4)** that body will cease to exist.
112. Under **clause 53(3)**, in carrying out its functions, the Council is to have due regard:
- to the role of a church as a local centre of worship and mission, reflecting the provisions of section 1 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991; and

- where appropriate, and particularly in carrying out functions in relation to the closure of churches for regular public worship, to the provisions of the Pastoral Measure 1983 (“the 1983 Measure”).
113. The detailed provisions regarding the membership and procedures of the Council are to be found in **Schedule 4**, introduced by **clause 53(2)**. As regards membership, **paragraphs 1-4** of Schedule 4 provide for a chair and not more than 23 other members (as compared with the Council’s current membership of a chair and 22 other members), made up as follows:
- the chair is to be appointed by the Archbishops jointly after consultation with the Appointments Committee;
 - four members are to be appointed by the Archbishops jointly after consultation with the Secretary of State, including persons who between them have special knowledge of or expertise in history, architecture, archaeology and aesthetics. This new category of members of the Council is intended to ensure an independent strand of membership, in view of the functions which the draft Measure gives to the Council in advising the Church Commissioners under the 1983 Measure regarding churches closed, or proposed for closure, for regular public worship;
 - thirteen other members are to be appointed by the Archbishops jointly, consisting of the following:
 - three members of the General Synod with knowledge of or expertise in matters relevant to the Council’s work, to be appointed on the nomination of the Appointments Committee;
 - three members, again with knowledge of or expertise in matters relevant to the Council’s work, to be appointed on the nomination of the Council itself;
 - three members to be appointed on the nomination of an annual meeting of the chairmen and secretaries of the Diocesan Advisory Committees;
 - one member to be appointed on the nomination of the Cathedrals Fabric Commission for England (“the CFCE”); and
 - three members to be appointed on the nomination of the Appointments Committee, which is to have regard to the need to include expertise in history, architecture, archaeology, archives, art and liturgy within the Council’s membership;
 - not more than three persons may be co-opted as members by the Council itself, to reflect specialist interests not otherwise represented; and
 - three members are to be elected by the General Synod from among its members and are to have knowledge of or expertise in matters relevant to the Council’s work.
114. The rules as to persons who are not eligible to be members of the Council are set out in **paragraph 5** of Schedule 4. It provides that:

- members, trustees and employees of the Church Commissioners, members of its Committees, and members or employees of the Churches Conservation Trust, are not eligible for membership of the Council; and
 - members or employees of the Archbishops' Council, and members of the General Synod or any diocesan body, are not eligible to be among the members appointed after consultation with the Secretary of State.
115. The term of office of Council members and the filling of casual vacancies are dealt with in **paragraphs 6-13**, which provide in particular for:
- a term of office for the chair of up to 5 years, fixed by the Archbishops, with the possibility of reappointment for one further term only of not more than 5 years; and
 - a five year term of office for all other members, with the possibility of being re-elected or re-appointed for one further 5 year term only.
116. The remaining provisions in **paragraphs 14-20 of Schedule 4**:
- give the Council power to appoint committees and delegate functions to them; and
 - deal with quorum for and chairing of meetings, and other aspects of the Council's proceedings.
117. **Clause 54** sets out the functions of the Council in relation to churches in use, and takes account of the present Council's existing functions under its current constitution drawn up under the Standing Orders of the General Synod. In relation to this clause and clause 56 "church" is defined by **clause 54(5)** as including Church of England places of worship generally (including those subject to formal sharing agreements with other Churches), the curtilage, churchyard or burial ground of a church or place of worship and other parochial burial grounds, and also the contents of churches and places of worship, but it does not include cathedrals.
118. Under **clause 54(1)**, the Council's duties include the following:
- advising the Archbishops' Council and the General Synod, on request, on matters relating to churches;
 - considering consultation by and requests for advice from ecclesiastical courts, judges and registrars and Diocesan Advisory Committees about faculty applications and possible faculty applications and certain other matters, and responding so far as the Council thinks appropriate;
 - promoting the care and conservation of churches, greater knowledge, understanding and enjoyment of churches, and artistic activity in relation to them;
 - promoting standards of good practice in relation to the use, care, conservation, repair, planning, design and development of churches, for example by issuing

guidance. The Council is to act in consultation with others as it thinks fit for this purpose; and

- convening an annual meeting of chairmen and secretaries of Diocesan Advisory Committees, and so far as practicable maintaining regular contact with Diocesan Advisory Committees.

119. The Council's powers, under **clause 54(2)-(4)**, include the following:

- giving information and advice, generally or in relation to particular buildings, to persons or bodies within the Church of England with responsibilities or functions relating to the use, care, conservation, repair, planning, design and development of churches;
- giving advice in relation to specific buildings to other persons or bodies with corresponding functions or responsibilities. The Council has power to charge fees and recover its expenses in relation to advice to persons or bodies other than those within the Church of England;
- liaising, co-operating and exchanging information with government departments, local authorities and others, holding conferences with or for them, and advising them where appropriate, on the matters specified in the first bullet point in this paragraph, and also on obtaining or granting funds or permission for works, and formulating policy or proposals for legislation, in relation to the same matters; and
- on request, allocating funds on behalf of bodies which make funds available for the care of conservation of churches, and giving advice in relation to those subjects.

120. **Clause 55** sets out the functions which the present Council already has or which are conferred on the Council by the draft Measure in relation to churches which are considered for closure for regular public worship, or where questions arise as to their use, demolition or preservation in the event of such closure. It also includes previously closed churches where the freehold has been disposed of and the question of possible acquisition by the Churches Conservation Trust arises. "Church" for this purpose includes part of a church, and includes any curtilage, churchyard or burial ground annexed to the church.

121. Under **clause 55(1)** the Council's duties in this context include the following:

- preparing reports for diocesan pastoral committees on the historic interest and architectural quality of churches which may be considered for closure for regular public worship, the historic interest and aesthetic qualities of their contents, and any special features of the churchyards or burial grounds belonging to them. This duty, which already rests with the present Council under section 3(8) of the 1983 Measure, applies where the diocesan pastoral committee gives the Council notice in relation to the church. The duty is expanded by clause 35 of the draft Measure to include giving advice on possible architectural or structural changes, either in the event of the closure of the church or, in the event of its not being closed,

where changes would facilitate its use for other purposes consistent with regular public worship – see paragraph 65 above;

- giving information and advice to the Church Commissioners (including doing so in response to consultation or requests for advice under a number of specific provisions of the 1983 Measure) about the following matters in relation to any church as defined by clause 55:
 - the historic and archaeological interest and architectural quality of the church as defined by clause 55;
 - the historic and architectural interest and aesthetic qualities of the contents of the church;
 - the value of the church as part of its seating and surrounding landscape;
 - the overall importance of the church; and
 - in the light of the above matters, the potential impact of any architectural or structural changes or physical alterations;
- advising the Churches Conservation Trust about any of the matters set out in the previous bullet point, in response to consultation or requests for advice under the 1983 Measure;
- considering whether to make representations on draft schemes sent to it under section 6(3) or 50(3) of the 1983 Measure and, so far as the Council thinks appropriate, making such representations; and
- providing the Archbishops' Council, the Church Commissioners or the General Synod, on request, with information and advice on the matters set out in the first bullet point in this paragraph, in relation to churches generally or particular categories of churches.

122. Under **clause 55(2)** the Council also has power to advise diocesan bodies and others on these matters on request but, in the case of advice to anyone other than a diocesan body, only following consultation with the Commissioners, or in relation to matters which the Church Commissioners and the Council have agreed in writing do not require such consultation.

123. **Clause 56** sets out other general functions of the Council, including:

- a duty to work closely with the CFCE on matters of common concern;
- a duty to maintain, jointly with the CFCE, a library relating to churches and cathedrals. This mirrors the statutory duty already laid on the CFCE under the Care of Cathedrals Measure 1990 to maintain a library jointly with the CCC; see also under paragraph 142 below;
- a duty to present an annual report to the Synod (which may be combined with an annual report by the CFCE);
- power to acquire books, plans and other material relating to churches and their contents;

- power to administer trusts connected with the carrying out of its functions; and
- functions imposed or conferred on the Council under other enactments.

124. In addition, **clause 56(4)** gives the Church Commissioners power to make grants to the Council in respect of expenses incurred in providing information or advice to the Commissioners.

Related provisions

125. **Clause 65 and Schedule 7** repeal sections 41 and 45 of the 1983 Measure and paragraphs 1-4 of Schedule 5, all of which deal with the Advisory Board for Redundant Churches (see paragraph 111 above). In addition, **Schedule 5**, introduced by **clause 63(1)**, contains consequential amendments to the 1983 Measure.

Group ministries – pastoral orders

126. **Clause 57** amends section 37(1) of the 1983 Measure, dealing with powers exercisable by pastoral order. At present there is power to alter a group ministry by the “lighter” procedure of a pastoral order. This provision extends the powers exercisable by pastoral order to include the establishment and termination of a group ministry, which at present require a scheme under the 1983 Measure. It also makes consequential amendments to Schedule 3 to the 1983 Measure.

Churches Conservation Trust

127. **Clause 58** makes two separate amendments to section 44(2) of the 1983 Measure, dealing with the membership of the Churches Conservation Trust:
- it increases the maximum number of possible members (in addition to the chairman) from six to nine. This is to enable the Trust to draw on a wider range of expertise among its members; and
 - section 44(2) at present provides for the appointment members by Her Majesty on advice from the Archbishops of Canterbury and York, submitted through the Prime Minister. Under the amendment, that advice will be given following consultation with the Church Commissioners and the Secretary of State. This recognises that the Commissioners and the Department of Culture, Media and Sport, as the Trust’s “joint paymasters”, should play a part in the appointments process.

Team ministries

128. **Clause 59** amends paragraphs 1 and 2 of Schedule 3 to the 1983 Measure, which deal with the appointment of team rectors and team vicars for team ministries. At present, when the right to present the team rector is vested either in the diocesan board of patronage or a patronage board constituted by the scheme which established the team ministry, the team vicars, and certain other members of the team, are entitled to attend meetings of the board at which the person to be presented as rector is considered and chosen, and between them have one vote. The same applies to the appointment of team

vicars if the board also appoints them and in that case the team rector is also entitled to attend and has a separate vote.

129. The effect of **clause 59(2)-(6)** is that there is no change where the diocesan board of patronage makes the appointments. However, so far as the appointments are made by a patronage board constituted by the scheme which established the team ministry, the persons who would otherwise be entitled to attend and vote under the principles set out above are to be members of the board (although in the case of the team rector only for the purpose of appointments of team vicars) and are to retain the same voting rights as at present. The clause also makes it clear that a persons who wishes to be considered the appointment under consideration may not attend or vote.
130. The purpose of the amendments is to make the arrangements easier for, say, parishioners and “interested parties” – to understand., and to avoid the possibility of “double voting” in cases where the person concerned is a member of board by virtue of the terms of the scheme. However, to avoid unforeseen retrospective effects, **clause 59(7)** provides that the amendments are to apply only in the case of:
- new team ministries established by a scheme under the 1983 Measure after the new provisions come into force; and
 - an existing team ministry if the scheme which establishes it is amended in terms which expressly apply the new provisions.
131. In addition, **clause 59(8)** amends the provisions in paragraph 2 of Schedule 3 to the 1983 Measure under which “parish representatives” are appointed to discharge broadly the same function in relation to the appointment of a team vicar as the representatives of the parochial church council exercise under the Patronage (Benefices) Measure 1986 in relation to the appointment of an incumbent. The amendment will apply where there is a team ministry for a multi-parish benefice which has a team council. In that case the team council will appoints two parish representatives, rather than each parochial church council in the team ministry appointing two representatives. This mirrors the position under the Patronage (Benefices) Measure 1986.

Compensation of clergy

132. **Clause 60** amends Schedule 4 to the 1983 Measure. This deals with the compensation which incumbents, team vicars and archdeacons may claim if they suffer loss through losing their office as a result of or in connection with pastoral reorganisation and if they fulfil the other conditions set out in the Schedule. The Schedule provides for the compensation to be assessed by the diocesan pastoral committee, subject to a right of appeal by the member of the clergy concerned to a Provincial Appeal Tribunal. The amendment alters the existing provision under which the Church Commissioners appoint the secretary of each tribunal. Under the Schedule as amended, the secretary is to be appointed by the Provincial Registrar, and may be the registrar him or her self. In addition, the registrars for the two Provinces may agree to appoint the same secretary for both Tribunals, and that person may be one of the Registrars.

Assistant Curates

133. **Clause 61** contains two separate provisions regarding assistant curates. Under **clause 61(1)-(4)**, the bishop is given the power to direct that the holder a particular office of assistant curate is to be known by some other specified description, and if he does so any licence to that office is to use that description. Before exercising this power, or revoking or varying a direction, the bishop must consult the incumbent or priest-in-charge of the benefice or, in the case of a team ministry, the team chapter; and when revoking or varying a direction he must also consult any curate holding the office in question.
134. Under **clause 61(5)**, the bishop's licence to an assistant curate may assign to him or her:
- a special cure of souls in part of the benefice (and, if the bishop thinks fit, responsibility for a particular church); or
 - a special responsibility for a particular pastoral function.

This provision therefore makes it possible for the bishop to give an assistant curate some of the same types of special responsibility as may be conferred on a team vicar in a team ministry. However, they do not diminish the general duties or responsibilities of the incumbent or priest in charge, and before granting a licence in such terms the bishop must consult the incumbent or priest in charge or, in the case of a team ministry, the team chapter.

PART VIII– MISCELLANEOUS (CLAUSES 62-66 AND SCHEDULES 5-7)

135. **Clause 62** deals with the interpretation of the Measure.
136. The meanings of some expressions used throughout the draft Measure are given in **clause 62(1)**; two of these are explained more fully in paragraph 2 above. Under **clause 62(2)**, expressions used in Parts VI and VII of the Measure have the same meanings as in the 1983 Measure unless the context requires otherwise.
137. Under **clause 62(3)**, where the draft Measure requires a document to be sent, the provisions in section 83 of the 1983 Measure as to how, to whom and to what address they are to be sent are to apply. In addition, where the Measure or the 1983 Measure requires a document to be sent to the Church Commissioners, it is to be addressed to the Secretary to the Commissioners.
138. **Clause 63** makes amendments to the 1983 Measure and other Measures.
139. The amendments to the 1983 Measure are set out in **Schedule 5**, introduced by **clause 63(1)**. Most of them are consequential on other provisions of the Measure; there are also two which are consequential on the amendments recently made to the 1983 Measure by the Church of England (Miscellaneous Provisions) Measure 2005.

140. In addition, **paragraph 5 of Schedule 5** amends section 64 of the 1983 Measure, dealing with the destination of the contents of a church closed for regular public worship and which is to be demolished or appropriated for some other use. As a result of the amendment:
- the font, communion table and plate used for Holy Communion are to be dealt with in accordance with directions by the bishop unless the scheme directs otherwise;
 - if the bishop's directions have not been given or have not been fully implemented by the time the church is demolished or appropriated to the other use, the diocesan board of finance is to be responsible for the care, maintenance and safeguarding of the items; and
 - subject to any provision in the scheme, if the font, communion table or plate are disposed of under the bishop's directions, or other contents (apart from tombstones, monuments and memorials) are disposed of under the part of section 64 that is not amended, the bishop is to give directions as to how the proceeds of sale are to be applied.
141. The amendments to other Measures appear in **clause 63(2) and (3)**. **Clause 63(2)** amends section 2(2) of the Church of England (Ecumenical Relations) Measure 1988 so that the Canon on Local Ecumenical Projects can be extended to include provisions for LEPs in connection with mission initiatives endorsed by bishops' mission orders under Part V of the draft Measure. Draft Amending Canon No. 27 includes such provisions - see paragraph 157 below.
142. The final amendment in clause 63 appears in **clause 63(3)**. It makes a minor change in the wording of section 3 of the Care of Cathedrals Measure 1990 to enable the Cathedrals Fabric Commission for England to join with the Council for the Care of Churches in maintaining a joint library of material in relation to both churches and cathedrals - see paragraph 123 above.
143. **Clause 64 and Schedule 6** contain transitional provisions; please see paragraph 49 above.
144. **Clause 65 and Schedule 7** contain repeals. Some of these have already been explained - please see paragraphs 49, 79, 110 and 125 above; other repeals are minor ones which are consequential on other provisions of the draft Measure.
145. **Clause 66** provides for the citation, commencement and extent of the draft Measure

B. AMENDING CANON NO. 27 (GS 1598)

146. This Canon makes a number of amendments to the existing Canons on ecumenical relations, on ministers exercising their ministry, and on the licensing of ministers, in connection with the provisions on mission initiatives in Part V of the draft Measure.

Canon B43

147. **Paragraphs 1-5** relate to Canon B43, “Of relations with other Churches”, made under the Church of England (Ecumenical Relations) Measure 1988 (“the Ecumenical Relations Measure”).
148. **Paragraph 2** inserts a new paragraph 1A into Canon B43. In effect, it applies the provisions of paragraph 1 of Canon B43, under which a person from another Church to which the Canon applies may be invited to perform certain duties in Church of England worship, to cases where:-
- a bishop’s mission order is in force in respect of a mission initiative;
 - the order authorises a minister to exercise his or her ministry in a particular place and also authorises the performance of divine service there;
 - the bishop who made the order approves the invitation; and
 - in the case of worship in a parish church, parish centre of worship or building licensed for public worship, the minister having the cure of souls there consents.
149. **Paragraphs 3 and 4** of the draft Canon insert the following new paragraphs into Canon B43:
- a new paragraph 3A , under which the provisions in paragraph 3 of Canon B43, regarding Church of England clergy invited to take part in services of other Churches to which the Canon applies will also apply to a minister who is authorised to exercises his or her ministry in a place in accordance with a bishop’s mission order, provided the bishop who made the order approves; and
 - paragraph 6A, making corresponding provision for deaconesses, lay workers and readers.
150. **Paragraph 5** inserts a new paragraph 10A into Canon B43, under which the leader(s) of a mission initiative which is endorsed by a bishop’s mission order authorising the performance of divine service may, with the bishop’s consent:
- invite members of another Church to which the Canon applies to take part in joint worship with the Church of England, with the consent of the minister having the cure of souls (in the case of a parish church, parish centre of worship or building licensed for public worship) or the person with the management and control of the building (in any other case); and
 - in the case of a building which is not a parish church, parish centre of worship or building licensed for public worship. invite members of another Church to which the Canon applies to use the building for worship according to their own forms of service, provided the person who has the management and control of the building consents.

Canon B44

151. **Paragraph 6** inserts a new paragraph into Canon B44, “Of local ecumenical projects”, also made under the Ecumenical Relations Measure. This makes it possible for the bishop, after consultation (including that required by clause 48 of the draft Measure), and provided the diocesan pastoral committee consents, to enter into an agreement with the appropriate authorities of other participating Churches to establish a Local Ecumenical Project (“LEP”) in connection with a bishop’s mission order. Other provisions of Canon B44 regarding LEPs will then apply, with suitable modifications

Canons C8 and C 12

152. **Paragraph 7** of the draft Amending Canon amends paragraph 4 of Canon C8, under which a minister may not exercise his or her ministry in a place without the permission of the minister having the cure of souls there unless one of a very small number of exceptions applies. The amendment adds a further exception in cases where a bishop’s mission order authorises a minister to exercise his or her ministry in the place in question without the consent of the person having the cure of souls there.
153. **Paragraph 8** amends Canon C12, dealing with the licensing of ministers. At present, a licence granted by a bishop to a minister to serve within his diocese must be in the form either of a general licence to serve or minister in a particular parish or of a licence to discharge a particular office. The Amending Canon adds a new provision to the second of those alternatives, under which the licence may instead be to serve in relation to a mission initiative which the bishop has endorsed by a bishop’s mission order.

C. DRAFT VACANCY IN SEE COMMITTEES (AMENDMENT) REGULATION (GS 1599)

154. This forms an integral part of the legislation under the general heading of provincial and diocesan structure in Part II of the draft Measure. It amends the Vacancy in See Committees Regulation 1993 (“the 1993 Regulation”) (as already amended), which has effect as an Act of Synod, so as to provide a possible “delaying mechanism” in relation to the filling of a vacant diocesan see pending the outcome of reorganisation proposals which would substantially affect the diocese.
155. **Paragraph 1** of the draft Regulation deals with citation, interpretation and the coming into force of the amendment.
156. **Paragraphs 2 and 3** contain amendments which are consequential on paragraph 4.
157. **Paragraph 4** adds a new paragraph 5A after paragraph 5 of the 1993 Regulation:
- The paragraph applies where a vacancy in a diocesan bishopric has been announced and where the Dioceses Commission (“the Commission”) has already decided to prepare a reorganisation scheme under what would be section 7 of the new Measure, which would either abolish the diocese or have such a significant effect on it that it would be desirable to delay filling the vacancy. Before any steps are taken under the 1993 Regulation in relation to filling the vacancy, the

Commission may request the Archbishop to direct that no such steps are to be taken. The Archbishop then has a discretion as to whether to issue the direction. If he does, the process under the 1993 Regulation and the Crown Nominations Commission process which follows it will not begin while the direction remains in force.

- The Archbishop may revoke the direction if the reorganisation scheme (provided it does not abolish the diocese) has been confirmed by Order in Council, if the General Synod has decided not to approve the scheme, or if the Commission has decided not proceed with it. He may also revoke the direction if the Commission informs him that it would not be appropriate to delay the filling of the vacancy any further. If the direction is revoked, the process under the 1993 Regulation begins as if the vacancy had been announced on the day the revocation takes place.
- Any direction or revocation under the new paragraph is to be in writing and signed by the bishop, and a copy to be sent to the two Secretaries for Appointments referred to above, the Secretary of the House of Bishops and the Commission.

158. It is intended that the Commission will keep the Archbishops' and the Prime Minister's Secretaries for Appointments informed of any proposals in relation to a diocese which could have the effect described in the new paragraph. In view of the Crown's right regarding the appointment of diocesan bishops, it is also intended that informal consultation should take place with the Prime Minister's Appointments Secretary before the power is exercised.