

GENERAL SYNOD

**THE DRAFT NATIONAL INSTITUTIONS OF THE CHURCH OF
ENGLAND (TRANSFER OF FUNCTIONS) ORDER 2007**

EXPLANATORY MEMORANDUM

Background

1. In January 2004 the Archbishops' Council and the Central Board of Finance of the Church of England ('the CBF') agreed that the CBF should be wound up, its various functions being transferred to other bodies as appropriate and any net assets remaining on its dissolution being transferred to the Council. Most of the functions previously undertaken by the CBF have accordingly now been transferred to the Council or to other appropriate bodies.
2. The principal remaining tasks to be completed before the CBF can be wound up are (a) the transfer of the CBF's responsibilities as trustee of the Funds established under the Church Funds Investment Measure 1958 and (b) the transfer to the Council of a number of miscellaneous functions currently vested in the CBF by Church legislation and the making of consequential amendments to the legislation concerned. The steps required to achieve task (a), and the role of the Synod in completing them, are described in GS 1640. Task (b) will be achieved by the making of the National Institutions of the Church of England (Transfer of Functions) Order 2007 ('the Order').
3. The Order will be made under section 5 of the National Institutions Measure 1998. That allows the Archbishops of Canterbury and York, acting jointly, and after consultation with any body appearing to them to be significantly affected, to make an order transferring to the Archbishops' Council or such other body as they may specify any function previously exercisable by (*inter alia*) the CBF. Any such order can contain such incidental, consequential and supplemental provisions as may be necessary or expedient for the purpose of giving full effect to the Order.
4. A draft of any order proposed to be made under section 5 must first be laid before the General Synod before it is referred to the Archbishops.

If the order has been approved by the General Synod without any amendment, the Archbishops can then make the order. If it has been approved by the General Synod with amendment, the Archbishops have a discretion as to whether or not to make the order. Once made, the Order must be laid before both Houses of Parliament under the ‘negative resolution procedure’ (which means that it will pass into law unless one or both Houses of Parliament resolve that it should not do so).

5. The Archbishops accordingly propose to make the Order, which will transfer to the Archbishops’ Council miscellaneous functions currently exercisable by the CBF. It will also make consequential amendments to some of the statutory provisions in question.
6. The Archbishops have consulted the Archbishops’ Council about the Order, and the Council has agreed that it should be made in the form proposed. The Church Commissioners have also been consulted. The General Synod is accordingly asked to approve the Order before it is made by the Archbishops and laid before Parliament as a Statutory Instrument.

Terms of the Order

7. Article 1 deals with citation, commencement and interpretation.
8. Article 2(1) will transfer from the CBF to the Archbishops’ Council the functions currently exercised by the CBF under the following statutory provisions:
 - *Article 2(1)(a) - Section 1 of the Ecclesiastical Commissioners (Loans for Church Training Colleges) Measure 1931* (which gives the Church Commissioners power to make loans for the purpose of defraying expenditure on buildings or land for any Church of England training college for teachers, any such loan being made either to the CBF or, if the CBF so requests, directly to the College in question);
 - *Article 2(1)(b) - Section 62(1) of the Ecclesiastical Jurisdiction Measure 1963* (which makes provision for the CBF to meet the costs and expenses of all courts, commissions, etc. under the 1963 Measure, subject to the power conferred by subsection (2) of that Measure for the Church Commissioners to make a contribution);
 - *Article 2(1)(c) - Section 1(a) of the Church Commissioners (Loans for Theological Colleges and Training Houses) Measure 1964*

- (which gives the Church Commissioners power, on the application of the CBF, to make loans to the CBF for the purposes of defraying expenditure on theological colleges);
- *Article 2(1)(d) - Paragraph 4 of Schedule 2 to the Incumbents (Vacation of Benefices) Measure 1977* (which provides that a resettlement allowance payable in accordance with section 13 of the 1977 Measure is to be of a specified amount or such greater amount as the CBF may determine); and
 - *Article 2(1)(e) - Section 1(3) of the Church of England (Legal Aid) Measure 1994* (which provides that the Legal Aid Fund constituted by the 1994 Measure is to be held by the CBF on behalf of the Synod and that it may, in accordance with the 1994 Measure, make payments out of the fund as authorised by certificates issued by the Legal Aid Commission).
9. Article 2(2) will provide for any function of the CBF that it exercises as a trustee of a charitable trust to be transferred to the Archbishops' Council, if it has not already been transferred at the point at which Article 2(2) of the Order takes effect. The background to this provision is that the CBF has historically acted as a trustee in some form or another of a large number of charities connected with the Church of England. As part of the process of winding it up, the CBF's trusteeships of all those charities of which it is aware and which it is intended should continue in existence has been reviewed and in consequence have been, or are being, transferred to some other person or body - including in some cases to the Council. However, it is conceivable that at some future date further trusts might come to light of which the CBF has been appointed as trustee. In order to prevent any difficulty arising in that event as a result of the CBF having been wound up, the effect of Article 2(2) will be to transfer any such unidentified trusteeships to the Council.
10. Article 3 (and the Schedule) make consequential provision, including by making a number of consequential amendments to various pieces of Church legislation.

The Legal Office
Elizabeth House
London SE1

January 2007