

GENERAL SYNOD

DRAFT CHURCH OF ENGLAND (MISCELLANEOUS PROVISIONS) MEASURE

REVISION COMMITTEE REPORT

Chair: Mr James Humphery (Salisbury)

**Ex-officio members
(Steering Committee):** The Venerable Trevor Jones (St Albans) (Chair)
Mr Joseph Brookfield (Blackburn)
The Reverend Paul Collier (Southwark)
Mr Hugh Privett (Salisbury)
Ms Jacqueline Humphreys (Bristol)

Appointed members: The Reverend Mark Bratton (Coventry)
Mr Jim Cheeseman (Rochester)
Mrs Jacqueline Frear (Sodor & Man)
Dr Rachel Jepson (Birmingham)
Mr David Robilliard (Channel Islands)

Consultants

Diocesan Registrars: Canon Chris Hodson (Southwell & Nottingham)
Diocesan Secretaries: Mr Simon Lloyd (Coventry)
Church Commissioners: Mr Tim Crow (Deputy Official Solicitor)

Staff

Legal Adviser: Mr Stephen Slack
The Reverend Alexander McGregor
Standing Counsel: Sir Anthony Hammond QC
Secretary: Mr Howard Cattermole

1. The draft Church of England (Miscellaneous Provisions) Measure ('the draft Measure') received First Consideration from the General Synod at the February 2008 Group of Sessions. The period for the submission of proposals for amendment under Standing Order 53(a) expired on 17th March 2008.
2. A proposal for amendment was received from one member of the Synod, Canon Peter Smith (St Edmundsbury & Ipswich), before the closing date mentioned in paragraph 1, as required by Standing Order 54(b). The Steering Committee itself also identified a number of issues which led it to propose further amendments to the draft Measure. With the agreement of the Revision Committee ('the Committee'), the Committee was attended in person by the Very Reverend Nicholas Coulton, Sub-Dean of Christ Church, Oxford, who assisted with the Committee's consideration of the proposed amendments to the draft Measure relating to that institution.
3. The Committee met on one occasion and the proposals which it accepted form the basis for the draft of the Measure (GS 1683A) now before the Synod (in which amendments accepted by the Committee are shown in bold). Set out in Appendix I to this Report, the Synod will find a

summary of the amendments considered by the Committee as well as the Committee's decision on each. Save in Appendix I, the numbering and lettering of the draft Measure referred to in this Report relates to that of the draft Measure as now returned to the Synod (GS 1683A). Appendix II to this Report contains a destination table showing how the provisions in the draft Measure at First Consideration (GS 1683) relate to those in the draft Measure now before the Synod and where new provisions have been inserted.

4. The decisions of the Committee were all unanimous.

Clause 1 – Amendment of New Parishes Measure 1943

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

Clause 2 – Amendment of Church Commissioners Measure 1947

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

Clause 3 – Amendment of Church Funds Investment Measure 1958

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

Clause 4 – Amendment of Clergy Pensions Measure 1961

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

Clause 5 – Amendment of Ecclesiastical Jurisdiction Measure 1963

9. The retirement age of chancellors appointed on or after 1 March 1993 is currently governed by section 2(4) and (4A) of the Ecclesiastical Jurisdiction Measure 1963 (as amended by the Care of Churches and Ecclesiastical Jurisdiction Measure 1991). As section 2(4) of the 1963 Measure stands, the basic position is that the appointment of a chancellor made on or after 1 March 1993 ends on the date on which he or she attains the age at which a Circuit judge is obliged to vacate office. When this provision was made in 1991 that meant 72; but this was subsequently reduced to 70 in relation to appointments to the office of Circuit judge made on or after 31 March 1995. That being so, the retirement age for chancellors to whom these provisions apply is 72 for those appointed between 1 March 1993 and 30 March 1995, and 70 for those appointed from 31 March 1995.
10. As it stands, subsection 2(4A) of the 1963 Measure goes on to provide a power for the bishop to retain a chancellor in office after he or she would otherwise retire, up to the age at which a High Court judge is obliged to vacate office. When this provision was made in 1991 that meant 75, however since 1995 the normal retirement age for High Court judges has also been 70. Thus whilst these provisions when first enacted allowed a bishop to continue a chancellor in office beyond the age of 70, that is no longer the case.
11. Chancellor David McClean had drawn attention to this issue. The Steering Committee proposed that it should be addressed by the replacement of the current provisions by new provisions having the effect that chancellors would retire at 70 (as at present), but that where the bishop considered that there were special circumstances (for example an impending vacancy in see or difficulty in

identifying a suitable successor in time), he would have power to continue a chancellor in office for a further period or periods not exceeding one year in total. (Such a position would correspond to that applying in relation to suffragans, archdeacons, deans etc under section 3(1)(b) of the Ecclesiastical Offices (Age Limit) Measure 1975.) Because the current provisions differ in their effect as between those appointments made before 31 March 1995 (retirement at 72) and those made on or after that date (retirement at 70), the Steering Committee additionally proposed that the new provisions (retirement at 70) should apply only in relation to appointments made on or after 31 March 1995. (The retirement age for chancellors appointed before 1 March 1993, but after 25 April 1976, is 75. Those appointed before 25 April 1976 hold office without limit of time.) The Dean of the Arches had been consulted about the proposals and supported them.

12. The Committee noted the implementation of the Employment Equality (Age) Regulations 2006 but did not consider that these had adverse implications for the Steering Committee's proposals. The Committee therefore agreed that for clause 5 in the previous draft of the draft Measure should be substituted the proposed new draft clause 5 put forward for consideration by the Steering Committee.

Clause 6 – Amendment of Endowments and Glebe Measure 1976

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

Clause 7 – Amendment of Pastoral Measure 1983

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

Clause 8 – Amendment of National Institutions Measure 1998

15. The Committee made no amendments to clause 8 and agreed that clause 8 should stand part of the draft Measure.

Clause 9 – Gifts to the Church of England

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

Clause 10 – Cathedrals

Sub-clause (1)

17. The Committee made no amendments to sub-clause (1), noting that it had the support of the Deans' Conference.

Sub-clause (2)

18. The unique status of Christ Church Cathedral, Oxford, as part of a joint ecclesiastical-academic foundation, means that the provisions of the Cathedrals Measure 1999 do not apply to it. The detailed provisions in the draft Measure had therefore been drafted in consultation with Christ Church to introduce changes in the spirit of those affecting all other cathedrals which took effect following the coming into force of the 1999 Measure. In particular, the draft Measure included provisions increasing the number of non-residentiary canons, for the appointment of lay canons (setting out amongst other matters the qualifications required of a lay canon), the formal process for appointing non-residentiary canons and the constitution and functions of a college of canons.

19. It had become clear in correspondence since the draft Measure received First Consideration that the provisions relating to Christ Church as drafted did not entirely reflect the policy intentions of the cathedral authorities. The Steering Committee accordingly proposed a series of minor amendments to the draft Measure to make clear precisely which body of persons within the joint cathedral/college foundation was to perform functions under the draft provisions, to prescribe more fully the qualification for appointment as a lay canon, and to give greater clarity to the process for consultation between the bishop and the cathedral authorities in the making of appointments and in the specifying of the terms upon which appointments are held. The Committee agreed that these amendments should be made.

New sub-clause (3)

20. Control over human remains in cathedral precincts, such as it has been exercisable at all, has up to now been left entirely to secular authorities, and in recent years the way in which the Government has interpreted and applied relevant secular controls has varied. Recently the Government Department responsible (the Ministry of Justice) had taken the view that where human remains were interred in land that was not immediately identifiable on the surface as a 'place of burial', it was not able to grant licences (and so to apply conditions to exhumations) under section 25 of the Burial Act 1857. Despite taking this view about the application of the licensing requirements of that section, the Ministry of Justice had nevertheless suggested that removal of human remains in such circumstances would not necessarily be lawful.

21. The position of the Ministry of Justice has since been revised, and it has said that the section 25 regime will now be applied to most cases of exhumation that are not covered by the faculty jurisdiction (which cathedrals are not). Despite this change of approach, the Cathedral and Church Buildings Division and the Cathedral Fabric Commission for England are of the view that proposals for works affecting human remains in cathedral precincts should be brought within ecclesiastical control. (Human remains in churches, churchyards and consecrated cemeteries are already subject to the faculty jurisdiction rather than secular control.)

22. The Steering Committee therefore proposed the insertion in the draft Measure of a new sub-clause 10(3), providing for the amendment of the Care of Cathedrals Measure 1990 so as to bring proposals for works which would materially affect human remains in cathedral precincts within the controls contained in that Measure. If the proposed new provisions were enacted, the intention would be to ask the Ministry of Justice to amend the secular legislation (by way of Legislative Reform Order), disapplying it in all cases where ecclesiastical controls applied, and thus avoiding 'dual control'. The Association of English Cathedrals had been consulted about the changes and was content with what was being proposed.

23. The Committee agreed to insert the new clause 10(3) and that clause 10, as amended, should stand part of the draft Measure.

New Clause 11 – Amendment of Commons Act 2006

24. The Church of England (Miscellaneous Provisions) Measure 2006 contained (in schedule 5) numerous amendments to various Acts of Parliament. These amendments substituted the relevant diocesan board of finance ('DBF') for the Church Commissioners as the body responsible for particular functions or as fulfilling particular roles under the enactments specified. One of those enactments was the Commons Registration Act 1965. Although the agreement of DEFRA had been obtained so that they were aware of the substitution of the relevant DBF for the Church Commissioners in the 1965 Act, when the Commons Act 2006 (which replaced the 1965 Act) was enacted by Parliament, the subsection that should have provided for the relevant DBF to act with respect to any land or rights belonging to a vacant benefice referred instead to the Church

Commissioners, in effect restoring the position to that obtaining before the changes brought about by the 2006 Measure.

25. The Steering Committee accordingly proposed the insertion of a new clause after clause 10, embodying various amendments to the Commons Act 2006 to substitute the relevant DBF for the Church Commissioners, in line with the various other changes made by the 2006 Measure. The Committee agreed to these amendments being made.

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

Clause 12 – Consequential amendments and repeals

27. The Steering Committee proposed various amendments to clause 12, consequential upon the amendments to schedule 1, paragraph 2 (dealing with the definitions of “connected person” and “qualified surveyor”) and to schedule 1, paragraph 3 (dealing with the appropriation of property held for the DBF) discussed below. The Committee agreed that these consequential amendments should be made.

28. The Committee agreed that clause 12, as amended, should stand part of the draft Measure.

Clause 13 – Citation, commencement and extent

29. As drafted, clause 13(3) and (4) applied the provisions of clause 9 of the draft Measure to the Isle of Man. However, representations received on behalf of the Attorney General of the Isle of Man and from the Archdeacon of the Isle of Man pointed out that the law relating to trusts and charities in the Isle of Man differs from that applying in England, and that difficulties (over taxation, for example) might result if a gift that was charitable under Manx law but not under English law were to vest in the Archbishops’ Council. Both the Attorney and the Archdeacon therefore submitted that clause 9 should be subject to ‘permissive extension’ to the Isle of Man, in other words that it should extend to the Island only if local legislation so provided, and that such extension should be subject to modifications prescribed in that local legislation. Furthermore, the Attorney General suggested that if ‘permissive extension’ were provided for in the Measure, the local legislative procedure might be used to substitute the Sodor & Man DBF for the Archbishops’ Council in relation to Manx gifts.

30. The Steering Committee took the view that it was difficult to see why a gift expressed to be “*to or for the benefit of ‘the Church of England’*” should take effect as a gift to a particular diocese, as it appeared was being proposed as a possibility on behalf of the Attorney General of the Isle of Man. Accepting that automatic extension of clause 9 to the Isle of Man was not appropriate for the reasons given by the Attorney General and the Archdeacon, it therefore proposed that clause 13(4) should be amended to remove the reference to clause 9, so that the latter would simply not apply to the Isle of Man, leaving any Manx gifts where the intended beneficiary was not adequately described to be governed by the general Manx law, as at present. The Committee agreed with this amendment.

31. The Committee agreed that clause 13, as amended, should stand part of the draft Measure.

Schedule 1 – Amendment of New Parishes Measure 1943

Paragraph 1

32. The Committee made no amendments to paragraph 1.

Paragraph 2

33. Paragraph 2(b) of schedule 1 to the draft Measure amends the New Parishes Measure 1943 so that the consent of the Church Commissioners is required to any purchase of buildings or land where a connected person or their trustee or nominee is a party to the transaction, “connected person” being defined for this purpose in the proposed new sub-clause 13(1B)(a) of the 1943 Measure. When the definition of connected person was first introduced in 2000 in relation to transactions under the Parsonages Measure 1938, the intention was that it should reflect the equivalent definition in the Charities Act 1993 (now re-enacted in the Charities Act 2006). That definition includes grandchildren of the principal connected persons, however this was not reflected in the amendment of the Parsonages Measure 1938 or in the amendment to the New Parishes Measure 1943 as drafted. Since it appeared that this omission was simply a drafting error, the Church Commissioners had asked that it should be corrected in the draft Measure.
34. The Church Commissioners had also asked that the registered patron should be included in the definition of “connected person”, together with (where the patron is a trust or corporate body) any member, officer, agent or employee of the patron and (where the patron is an individual) relatives of the patron within the specified categories. The Commissioners considered that it would be prudent to include patrons in view of their significant legal role in relation to the benefice. The Steering Committee accordingly proposed amendments to the draft Measure amending the definition of “connected person” in line with the Commissioners’ submissions.
35. Also in relation to paragraph 2(b) of schedule 1 to the draft Measure, Canon Peter Smith (St Edmundsbury & Ipswich) had submitted a proposed amendment to the definition of “qualified surveyor” in the new section 13(1B)(b) to be inserted into the New Parishes Measure 1943. In the new section 13(1B)(b) as drafted, “qualified surveyor” is defined as “a person registered under the Architects Act 1997 or a corporate member of the Chartered Institute of Building or of the Royal Institution of Chartered Surveyors or of the Incorporated Society of Valuers and Auctioneers ...”. Canon Smith made two points: first, that the Incorporated Society of Valuers and Auctioneers had merged with the Royal Institution of Chartered Surveyors, making it incorrect to refer to members of the former body; and second, that “qualified surveyor” was defined too loosely, and in particular that architects were not trained as valuers, and that the only professionals properly experienced in valuation were chartered surveyors.
36. Canon Smith had accordingly proposed that paragraph 2(b) of schedule 1 to the draft Measure should be amended so that “qualified surveyor” was defined in the new section 13(1B)(b) of the 1943 Measure as “a person who is a corporate member of the Royal Institution of Chartered Surveyors ...”. The Steering Committee’s view was that this amendment was desirable in principle, reflecting the policy of the Charity Commission as regards those from whom reports must be obtained in connection with disposals of charity land generally. Consultation with the Royal Institution of Chartered Surveyors, however, had revealed that the term “corporate member” was no longer current, and that the term “member” was more correct, and it was therefore proposed that Canon Smith’s amendment should be made, but subject to the omission of the word “corporate” from his proposed wording.
37. The Committee agreed to all the above proposed amendments to schedule 1, paragraph 2(b) of the draft Measure.

Paragraph 3

38. At present, there is power under the New Parishes Measure 1943 for land to be acquired by the Church Commissioners for the purposes of providing or improving the amenities of a house of residence for an ecclesiastical person other than an incumbent (for example, a curate or

archdeacon). The draft Ecclesiastical Offices (Terms of Service) Measure provides for that power to be repealed, because the parsonages board of a diocese will under that Measure be the relevant housing provider for such office holders and will have the authority to acquire land for that purpose. However, section 14 of the 1943 Measure contains a useful ancillary power which enables certain bodies – including charitable trustees, corporations, the Crown and government departments – to grant land for the purposes of the 1943 Measure, including by way of gift or at an undervalue, and the Steering Committee for the draft Ecclesiastical Offices (Terms of Service) Measure had requested that provision should be made for this ancillary power also to apply to grants made to a parsonages board for its purposes under that Measure.

39. Standing Counsel considered that this amendment should properly be made in the Miscellaneous Provisions Measure – in association with other amendments to the 1943 Measure – rather than in the Ecclesiastical Offices (Terms of Service) Measure itself, and the Steering Committee accordingly proposed an amendment to this effect. The Committee agreed that this amendment should be made.
40. Peter White, the Winchester Diocesan Registrar and Chairman of the Ecclesiastical Law Association ('the ELA'), had drawn attention to a conveyancing issue resulting from the amendments to section 14 of the 1943 Measure contained in paragraph 3 of schedule 1 to the draft Measure. Section 14 of the 1943 Measure as it stands enables the Church Commissioners to accept gifts or grants of land for sites of churches. An amendment in paragraph 3 of schedule 1 to the draft Measure would have the effect of substituting the DBF of the diocese concerned for the Commissioners. Under section 14 as amended, a church site could be acquired by the DBF either as corporate property or to be held on trust on behalf of a parochial church council and a new church built on the land. If it was decided subsequently that the church should become a parish church, which usually would be vested in the incumbent under section 16 of the 1943 Measure, since the DBF already owned the land it could not then convey or transfer the land to itself in order to give effect to the vesting provisions of section 16 of that Measure. The ELA therefore proposed that in these circumstances the DBF should make a declaration appropriating the church building to one of the uses specified in section 13 of the 1943 Measure, which would then vest in accordance with the provisions of section 16 of that Measure.
41. The Steering Committee proposed amendments giving effect to these proposals, and the Committee agreed that they should be made.
42. The Committee agreed that schedule 1, as amended, should stand part of the draft Measure.

Schedule 2 – Repeals

43. The amendment of section 76(1) of the Pastoral Measure 1983 contained in the amendment to clause 12 of the draft Measure (consequential upon the amendment of paragraph 3 of schedule 1 to the draft Measure) meant that it was no longer appropriate to repeal that section as originally intended. The Steering Committee accordingly proposed that this repeal should be omitted from schedule 2 to the draft Measure, and the Committee agreed.
44. The Committee agreed that schedule 2, as amended, should stand part of the draft Measure.

On behalf of the Committee
James Humphery (Chair)

5th June 2008

Appendix I**Summary of proposed amendments and the Committee's decisions**

(All amendments are Steering Committee amendments unless otherwise indicated.)

Clause or schedule of original draft Measure (GS 1683)	Summary of submission	Committee's decision
Clause 5	Replace existing provisions for retirement of diocesan chancellors so that retirement age is defined absolutely as 70 rather than in relation to provisions for secular judges, with discretion for bishops to continue chancellors in office for up to one further year (transitional provisions for chancellors appointed before 31 March 1995).	Accepted.
Clause 10	<p>Amend sub-clause (2) to reflect more accurately the policy intentions of the cathedral authorities at Christ Church, Oxford in relation to the appointment of non-residentiary canons and the constitution of a college of canons.</p> <p>Introduce new sub-clause (3) to bring works affecting human remains in cathedral precincts within the controls contained in the Care of Cathedrals Measure 1990.</p>	<p>Accepted.</p> <p>Accepted.</p>
New clause 11	Insert new clause to amend the Commons Act 2006 to substitute the relevant diocesan board of finance for the Church Commissioners as the relevant body to act with respect to any land or rights belonging to a vacant benefice, in line with other changes made by the 2006 Miscellaneous Provisions Measure.	Accepted.
Clause 11	Incorporate amendments to the Parsonages Measure 1938 and the Pastoral Measure 1983 consequential upon amendments made by paragraphs 2 and 3 of schedule 1 to the New Parishes Measure 1943.	Accepted.
Clause 12	Omit reference in sub-clause (4) to clause 9, thereby disapplying the provisions of the latter from the Isle of Man.	Accepted.
Schedule 1	Amend definition of "connected person" in paragraph 2(b) to bring into line with equivalent definition in Charities Act 2006 and to include registered patrons within its terms.	Accepted.

	<p>Tighten definition of “qualified surveyor” in paragraph 2(b) to read “a person who is a corporate member of the Royal Institution of Chartered Surveyors ...” (amendment proposed by Canon Peter Smith).</p> <p>Include in paragraph 3 amendment to New Parishes Measure 1943 to apply power under that Measure to enable certain bodies to grant land, including by way of gift or at an undervalue, for purposes of the draft Ecclesiastical Offices (Terms of Service) Measure.</p> <p>Amend paragraph 3 to avoid conveyancing issue resulting from amendments to section 14 of the New Parishes Measure 1943.</p>	<p>Accepted, subject to omission of the word “corporate” as no longer current.</p> <p>Accepted.</p> <p>Accepted.</p>
Schedule 2	Omit repeal of section 76(1) of Pastoral Measure 1983.	Accepted.

Appendix II**Destination table**

GS 1683 (as at First Consideration)	GS 1683A (as amended by the Revision Committee)
1-4	1-4
5	5(1)(a)
-	5(1)(b) and (c)
-	5(2)
6-9	6-9
10(1) and (2)	10(1) and (2)
-	10(3)
-	11
-	12(1)
11(1)	12(2)
-	12(3)
11(2)	12(4)
12	13

Schedule 1

1-2	1-2
3(a)-(c)	3(a)-(c)
-	3(d)
4-10	4-10

Schedule 2

Repeal 1	Repeal 1
Repeal 2	-
-	Repeal 2

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