

GENERAL SYNOD
DRAFT CHURCH OF ENGLAND (MISCELLANEOUS PROVISIONS) MEASURE
DRAFT AMENDING CANON NO. 41
REPORT OF THE STEERING COMMITTEE OF MEMBERS IN CHARGE

Chair: The Venerable Pete Spiers (Liverpool)

Members: Mr Carl Fender (Lincoln) (Chair of the Revision Committee)
Dr Mike Todd (Truro)
The Reverend Canon Bob White (Portsmouth)
The Reverend Canon Priscilla White (Birmingham)

1. The draft Church of England (Miscellaneous Provisions) Measure ('the draft Measure') and draft Amending Canon No. 41 ('the draft Canon') received First Consideration at the July 2018 group of sessions and were committed to a Revision Committee.
2. At the February 2019 group of sessions the Synod took note of the report of that Committee (GS 2104Y/2105Y). The Synod completed the Revision Stage for the draft Measure and draft Amending Canon which then stood committed to the Steering Committee in respect of their Final Drafting.
3. The Steering Committee has conducted its remaining business by correspondence under Standing Order 61(2) and (3). It now returns the draft Measure (GS 2104B) and the draft Canon (GS 2105B) to the Synod for Final Drafting and Final Approval.
4. Under Standing Order 61, on the Final Drafting Stage the Steering Committee may propose 'drafting amendments' or 'special amendments' or both. These two categories of amendments are defined in SO 61(6) as follows –

 "drafting amendment" means an amendment to clarify any remaining uncertainties of meaning or to improve the drafting, and

 "special amendment" means an amendment, other than a drafting amendment, considered necessary or desirable by the Steering Committee and which does not reopen an issue which has been decided by the Synod or any Revision Committee in relation to the Measure or Canon.
5. The Steering Committee has agreed the drafting amendments, shown in bold type in GS 2104B and GS 2105B, which have been identified on final scrutiny of the draft Measure and Canon. The amendments are explained in Annex A to this report.
6. The Steering Committee also proposes the Special Amendments to the draft Measure that are set out in Part 1 of Annex B. An explanation for the proposed Special Amendments can be found in Part 2 of Annex B.

On behalf of the Committee
Pete Spiers
Chair

June 2019

**EXPLANATION OF DRAFTING AMENDMENTS TO THE DRAFT MEASURE
(shown in bold in GS 2104B)**

Clause 4

1. The amendment to the new subsection (4A) inserted by clause 4(2) makes it clear that if a fees order makes provision for exemption from, or the reduction or remission of, court fees, the order must include provision requiring the diocesan board of finance to make up the shortfall in fees due to the ecclesiastical judge or legal officer.

Clause 14

2. The new subsection (1) removes redundant cross-references in sections 9 and 24 of the Mission and Pastoral Measure 2011.

**EXPLANATION OF DRAFTING AMENDMENTS TO THE DRAFT AMENDING CANON
(shown in bold in GS 2105B)**

Paragraph 3

3. The amendments to paragraph 3 remove obsolete references to provosts from Canons C 8 and C 21.

Paragraphs 7 to 9

4. Paragraphs 7 to 9 make further amendments to Canons which are amended by Amending Canon No. 41 so that various references in those Canons become gender neutral.

PART 1

PROPOSED SPECIAL AMENDMENT TO THE DRAFT MEASURE

Clause 6

Clause 6, page 6, line 26, at end insert—

“(3E) The reference in subsection (3D)(a) to a person’s spouse includes a reference to a spouse of the same sex as that person.”

Clause 6, page 6, line 42, at end insert—

“(8) The reference in subsection (7)(a) to a person’s spouse includes a reference to a spouse of the same sex as that person.”

Clause 6, page 7, line 4, at end insert—

“(16) The reference in subsection (15)(a) to a person’s spouse includes a reference to a spouse of the same sex as that person.”

Clause 6, page 7, line 12, at end insert—

“(6) The reference in subsection (5)(a) to a person’s spouse includes a reference to a spouse of the same sex as that person.”

New Clause

After clause 12 insert the following New Clause—

“Pensions

12A Pensions: minor amendments

(1) In section 11 of the Church of England Pensions Measure 2018 (liability of the Church Commissioners), at the end insert—

“(4) This section does not affect any liability of the Church Commissioners in their capacity as a responsible body within the meaning of section 10.”

(2) The Pensions (Pre-consolidation) Order 2018 (S.I. 2018/906) is revoked.”

PART 2

EXPLANATION OF SPECIAL AMENDMENTS

Clause 6

1. During the Revision Stage for the draft Measure, the question was raised of whether “spouse” in the definition of “relative” in various provisions being inserted by clause 6 included a spouse of the same sex. The answer was that it did not include a spouse of the same sex. Although the Marriage (Same Sex Couples) Act 2013 provides for the law generally to have the same effect in

relation to same sex couples as it has in relation to opposite sex couples, that provision does not apply to Measures or Canons or other ecclesiastical law.

2. The relevant provisions of clause 6 are concerned with providing a definition of “relative” for the purposes of various Measures that afford relatives a right of veto in respect of proposals to build on land that forms part of a disused burial ground. The relatives’ right of veto arises if a person’s remains have been buried in the land in question within the previous 50 years.
3. As the draft Measure stands, while a civil partner would count as a “relative” for this purpose, a spouse of the same sex would not. The special amendments for clause 6 provide that a spouse of the same sex is a relative for this purpose.
4. These amendments are brought forward as special amendments, with the result that they can be voted on by the Synod, because they involve a question of policy and do not merely clarify uncertainties of meaning or improve the drafting.

New clause

5. The new clause inserts a provision in section 11 of the Church of England Pensions Measure 2018. The inserted provision does not make a substantive change to the 2018 Measure but clarifies the relationship between section 11 and section 10 of that Measure.
6. Section 11 restates provision that was originally contained in the Pensions Measure 1997. That provision ended the Church Commissioners’ responsibility to meet the cost of pensions payable to clergy in respect of service carried out after 1997. The 1997 Measure established the Church of England Funded Pension Scheme (‘the funded scheme’) to cover service carried out from 1998 onwards. The funded scheme is funded through the payment of contributions for members of the scheme by “the responsible body”. In the case of parochial clergy, the diocesan board of finance is the responsible body. The Church Commissioners are the responsible body for bishops, deans, some residentiary canons, and for clergy employed by certain mission agencies. The Commissioners are therefore required to pay contributions into the funded scheme for scheme members within those categories. But, unlike the pre-1998 arrangements, the Commissioners are not liable for the payment of members’ pensions under the funded scheme. The payment of pensions of members of the funded scheme is the responsibility of the Church of England Pensions Board (“the Board”), with payments being made out of the funded scheme.
7. In recent correspondence with the Board, the Pensions Regulator has suggested that section 11 of the 2018 Measure which provides that the Church Commissioners are not liable to meet the cost of pensions appears to contradict section 10 which makes the Commissioners a responsible body for paying contributions into the funded scheme. Although the Legal Office does not consider that there is in fact a contradiction between these provisions (as they are concerned with different types of liability), the Board, with the agreement of the Commissioners, have asked for the interrelationship of the two sections to be clarified.
8. The new clause therefore amends section 11 of the 2018 to make it clear that although the Commissioners are not responsible for paying pensions in respect of service carried out after 1997, they are liable to make contributions into the fund out of which the Board must pay pensions in respect of such service.
9. The new clause also revokes the Pensions (Pre-consolidation) Order 2018. The provision it made is now contained in the Church of England Pensions Measure 2018.