

THE ARCHBISHOPS' COUNCIL

**CONSULTATION ON A LEGISLATIVE REFORM ORDER
TO AMEND
THE CHURCH OF ENGLAND PENSIONS MEASURE 2018**

Presented to Parliament pursuant to section 4(4) of
the Legislative Reform Measure 2018

Laid before the House of Commons by the Clerk of the House and
before the House of Lords by the Clerk of the House

ARCHBISHOPS' COUNCIL

LEGISLATIVE REFORM COMMITTEE

CONSULTATION ON A LEGISLATIVE REFORM ORDER

TO AMEND THE CHURCH OF ENGLAND PENSIONS MEASURE 2018

The Legislative Reform Committee of the Archbishops' Council is undertaking this consultation, under section 4 of the Legislative Reform Measure 2018, on proposals for a Legislative Reform Order to remove or reduce burdens of an administrative nature and which are obstacles to efficiency that arise from the Church of England Pensions Measure 2018.

Responses to this consultation are invited by 31 August 2020. Responses by email are preferred and should be sent to consultation@churchofengland.org. Responses may also be sent by post to Jenny Jacobs, Central Secretariat, Church House, Great Smith Street, London SW1P 4JZ.

Legislative Reform Orders

1. The Legislative Reform Measure 2018¹ enables the Archbishops' Council, with the approval of the General Synod and subject to Parliamentary oversight, to make orders removing or reducing burdens that result from ecclesiastical legislation ('Legislative Reform Orders'). In this context, 'burden' means a financial cost, an administrative inconvenience or an obstacle to efficiency. The power to make orders and other related provision is set out in section 1 of the Legislative Reform Measure.
2. Section 2 of the Legislative Reform Measure sets out pre-conditions for the inclusion of provision in a Legislative Reform Order. The Archbishops' Council may include provision in a Legislative Reform Order only if it considers—
 - (a) that the policy objective intended to be secured by that provision of the order could not be satisfactorily secured by non-legislative means,
 - (b) that the effect of that provision is proportionate to the policy objective to be secured by it,
 - (c) that the provision, taken as a whole, strikes a fair balance between the public interest, the interest of the Church of England as a whole and the interests of any person adversely affected by the provision,
 - (d) that the provision does not remove any necessary protection,
 - (e) that the provision does not prevent a person from receiving or continuing to receive a financial benefit to which the person is entitled or could reasonably expect to become entitled,

¹ The Measure is available online at <http://www.legislation.gov.uk/ukcm/2018/5>.

- (f) that the provision does not prevent a person from exercising or continuing to exercise a right or freedom which that person could reasonably expect to exercise or to continue to exercise, and
 - (g) that the provision is not of constitutional significance.
3. Section 3 of the Legislative Reform Measure sets out certain exceptions to the power to make Legislative Reform Orders. A Legislative Reform Order cannot amend or repeal specified Acts of Parliament and Church Measures which are concerned with the constitutional position of the Church of England or its worship or doctrine. A Legislative Reform Order cannot make provision to alter the purposes for which the Church Commissioners' general fund is available.
 4. Section 4 of the Legislative Reform Measure provides that if the Archbishops' Council proposes to make a Legislative Reform Order it must consult—
 - (a) the members of the General Synod,
 - (b) persons who have or exercise functions to which the proposals relate,
 - (c) persons who do not come within paragraph (b) but whose interests would nonetheless be substantially affected by the proposals, and
 - (d) such other persons as the Council considers appropriate.
 5. The Council may, where it considers it appropriate to do so, consult with organisations which appear to represent persons who come within paragraph (b) or (c).
 6. Before beginning the consultation process the Council must lay the consultation documents before both Houses of Parliament.
 7. If, following a consultation, the Archbishops' Council decides to proceed with the making of a Legislative Reform Order it must lay a draft of the Order before the General Synod together with an explanatory document. The draft Order is then considered by the General Synod's Scrutiny Committee (which can make amendments to the draft Order). The Scrutiny Committee provides the Synod with a report on the draft Order.
 8. When the General Synod has received the report of the Scrutiny Committee, the Synod decides whether to approve the draft Order, reject the draft Order or refer the draft Order back to the Scrutiny Committee. Only if the Synod approves the draft Order can the Archbishops' Council proceed to make the Order. If an Order is made it has to be laid before both Houses of Parliament and can be annulled by either House.

Legislative Reform Committee

9. The Legislative Reform Committee is a committee of the Archbishops' Council. Its remit was expanded in December 2019, and includes exercising the functions of the Archbishops' Council under any Measure in relation to the making of subordinate legislation. The Legislative Reform Committee comprises eight members, and may co-opt not more than four persons to be additional members.

Removal of burdens resulting from the Church of England Pensions Measure 2018

10. The Legislative Reform Committee is undertaking this consultation on proposals for a Legislative Reform Order to remove or reduce burdens of an administrative nature and which are obstacles to efficiency that arise from the Church of England Pensions Measure 2018. **There are no proposals which relate to membership of the pension schemes or benefits payable under them.**
11. The Church of England Pensions Board (“the Board”) provides retirement services to those who have worked or ministered for the Church of England. This includes the administration of pension provisions to over 40,000 individuals working in more than 700 Church of England related employers, and the provision of retirement housing to over 2,500 retired clergy households.
12. The Church of England Pensions Measure 2018 (“the Measure”) sets out, amongst other things, the way that the Board is governed. It was a consolidation measure which drew together all the legislation which has affected the Board since its establishment in 1926.
13. The Measure also sets out the charitable objectives of the Board and includes the provisions surrounding the Clergy Funded Pension Scheme. These items are not affected by the proposals set out below.
14. The objective of these changes is to update the governance of the Pensions Board to reflect good practice for a pension fund and to remove legislative burdens which generate unnecessary complexity or cost. A note from the Chair of the Board is included as Appendix One.
15. The Pension Schemes Act 2017 introduced a definition of “master trusts” into pensions legislation. These schemes are required to be authorised by the Pensions Regulator and are subject to supervision. The trustees of a “master trust” are required to be fit and proper persons who meet “*the standard of honesty, integrity and knowledge appropriate to their role.*” Whilst the Board does not currently operate any master trust schemes, the proposals introduce measures which ensure that it would be compliant with the requirements, should it need to be so in the future.
16. The Board recognises that there is a need to simplify what is a very complex and unwieldy structure in order to improve effectiveness, reduce costs and bring it in line with the accepted standards of good governance. It is not comfortable to note that as a responsible investor the Church of England would vote against any corporates with the current structure and composition of the Pensions Board.
17. Part 1 of Schedule 1 of the Measure sets out the membership of the Board, which comprises 20 trustees drawn from a variety of constituencies. Eight of the trustees are appointments by the Archbishops of Canterbury and York or by the Church Commissioners, with the remaining twelve trustees elected by members of the Houses of Bishops, Clergy and Laity of the General Synod, and by members and employers of the pension schemes for lay workers.

18. A large Board brings complexity and expense to an organisation. By comparison, in the charity sector the average size of a trustee Board is 5 to 9 trustees, with larger charities often having between six and ten trustees²; only 8% of boards of pension trustees have more than twelve members³.
19. The proposed reduction in the size of the Board is included in the proposals. Pensions legislation requires at least one-third of trustees of an occupational trust scheme to be member-nominated trustees⁴ (MNT). Although church bodies are exempt from this provision as they are governed by church legislation⁵, the Measure is consistent with it as 8 of 20 trustees are MNTs, and in our proposal one-third of the trustees would be elected by pension scheme members.
20. We propose to remove the distinction of whether the clergy scheme MNT is a bishop, priest or deacon; currently the General Synod's House of Bishops elect one MNT in addition to the four elected by the House of Clergy. The proposals do not include this delineation.
21. We are also proposing a widening of the way clergy pension scheme MNTs are elected. The General Synod's House of Clergy currently acts as a proxy for all clergy not in episcopal orders, and whilst any clergy member can stand, not all the active and pensioner members can elect them. This disenfranchises the pensioner members of the scheme as, under the Church Representation Rules, they are less likely to be represented on Deanery Synods to the same extent as active clergy, and consequently have less of a voice in who is elected to the General Synod's House of Clergy. The proposal would put all clergy scheme members on an equal footing in electing their MNTs. It is not thought that greater enfranchisement will be costly since it is hoped that in the future elections held under General Synod Standing Orders will be conducted electronically.
22. Nevertheless, it is important to retain a link to the General Synod. We propose that at least one clergy MNT should also be a Synod member.
23. The proposals also include best practice in governance as recommended by the Charity Governance Code and the Pensions Regulator. These include the maximum amount of time a trustee can serve on the Board, and a provision for shortlisting of candidates standing for election.
24. Amongst the various elements which help ensure the effectiveness of a Board, having the right people with the appropriate skills and experience is fundamental. The proposed pre-qualification of candidates will assist in ensuring the effectiveness of the Board and is recommended by the Pensions Regulator⁶. It would also ensure that the

² *Taken on Trust – The awareness and effectiveness of charity trustees in England and Wales, 2017*

³ *PwC Trustee Pay Survey 2018*

⁴ s. 241(1) Pensions Act 2004

⁵ Regulation 2(o) The Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 2006 (SI 2006/714).

⁶ *Scheme governance: best practice examples*, The Pensions Regulator's website

Board, should it need to comply in the future, would be Master Trust compliant with “fit and proper” trustees.

25. Another important element is diversity, which is key to avoiding “group think”, to stimulating innovation and improvement, and to honouring the values and mission of the Church. This goes well beyond the requirements of equality legislation. The Board monitors all aspects of diversity and seeks to redress any imbalance just as it would a skills gap.
26. A smaller board should result in modest direct cost saving to the pension schemes in relation to meeting costs and administration of governance. It is estimated that this will be at least £10,000 per annum. More importantly it will contribute to the wider strategic drive for simplification and self-sufficiency, freeing up vital staff resources to work on new initiatives and evidencing the Chair and CEO’s commitment to best practice in all aspects of the Board’s work. The current complexity inhibits a culture of “fit for purpose” and these reforms will be welcomed by staff as a key step to improving their workplace and changing the culture.
27. The Church of England Pensions Measure 2018 consolidated all the legislation affecting the Board from 1961 to 2018. However, a small number of provisions have subsequently become redundant, or the need to remove them has become evident in the light of more recent experience. These include the removal of defunct references to a closed pension scheme and for certain audit provisions, as well as removing a statutory requirement for dioceses to have a Widows and Dependents Committee.

The Proposals

Proposal 1 – A newly reconstituted Pensions Board

28. **The Board should be reduced to twelve trustees** from its current twenty members.
29. **The members of the Board should consist of –**
 - **Chair, appointed by the Archbishops of Canterbury and York, with the approval of the General Synod** (no proposed change)
 - **Two MNTs elected by the members of the Church of England Funded Pension Scheme and the Church of England Pensions Scheme** (currently four clergy members plus one member in episcopal orders, elected by the General Synod’s House of Clergy and House of Bishops respectively)
 - **One MNT elected by the members of the Church Workers Pensions Fund** (currently two members)
 - **One MNT elected by the members of the Church Administrators Pensions Fund** (no change)
 - **One person elected by the employers in the Church Administrators Pension Fund and/or the Church Workers Pension Fund** (currently two members)

- **One person appointed by the Archbishops of Canterbury and York after consultation with the Dioceses and the Church Commissioners** (this is a proxy for the “clergy employers”, currently there are two people appointed)
- **Five people appointed by the Archbishops of Canterbury and York** for their professional expertise eg, housing, corporate finance, fund management, which may not be filled through other routes (currently there is one appointment by the Archbishops, four following consultation with the Chair of the Appointments Committee and the Chair of the House of Laity, and two elected members of the House of Laity).

30. **The quorum of the Board is four; and the quorum must include at least one MNT.** This reflects the proposed smaller size of the Board – the current quorum is six and must include two MNTs.

Questions on Proposal 1

31. Do you agree with the proposed way that the Board should be reconstituted?
32. Do you agree that active and pensioner members of the clergy pension schemes should elect their MNTs rather than the General Synod’s House of Clergy?
33. Do you agree it would be desirable for at least one of the two clergy MNTs to be a member of Synod?
34. Do you agree that it is not necessary to reserve one MNT position for a member of the College of Bishops?

Proposal 2 – pre-selection of candidates

35. **Nominated candidates for election to the Board will be required to demonstrate their experience and potential contribution to the work of the Board, and only those who are suitably qualified would be offered to the electorate.**
36. The Board is not subject to the Pensions Master Trust legislative requirements, one of which is to demonstrate that the trustees were assessed as “fit and proper”. The pre-selection of candidates for election to the Board would ensure that the Board would comply if necessary, in the future.
37. When there is a vacancy on the Board, a statement of the skills and experience that are needed from a new trustee will be drawn up, based on the skills and experience gaps within the existing Board at the time. It is to set a baseline to ensure that candidates are suitably qualified and are fully appraised of what the role is, and what the Board does and does not do. It is not intended to limit the number of people who can stand for election.
38. Elections to the Board are held in accordance with the provisions of the Standing Orders of the General Synod (see para 10 of Schedule 1 to the Measure). The relevant

provisions of the Standing Orders of the General Synod are SO 131-135. In order to give effect to this proposal, we intend to make provision in Schedule 1 of the Measure to the effect that:

- a. when there is a vacancy, two members of the Board, appointed by the chair, will prepare a statement of the skills and experience required from an applicant;
- b. Persons who wish to be nominated must supply a written application setting out how they meet the required skills and experience;
- c. The two members of the Board will assess all applications against the statement of skills and experience, and decide who is suitable for nomination;
- d. Only persons who have been judged to be suitable may be put forward for nomination.

39. In the case of an appointed trustee, the same statement of skills and experience will be produced, and candidates assessed against it, but no legislative amendment is required for this.

Question on proposal 2

40. Do you agree that the Board should use a pre-selection process to ensure that it has an appropriate mix of skills and expertise to provide effective oversight to deliver a range of retirement services to those who have served for or ministered within the Church of England?

Proposal 3 – term limits

41. The Chair of the Board should hold office for a term of such duration as the General Synod decides, but the term and that of each member of the Board will be up to five years, with no member serving more than ten years.

42. The current term is a fixed six-year term, except for the Chair, where the Synod can decide a shorter term. There is currently no maximum term that members can serve.

43. Limiting the length of time that any member can serve is an accepted way of bringing a fresh perspective to any board. New board members bring their skills, experience and abilities to the table. New perspectives can also bring in the best practices that encourage diversity of background, age, gender, ethnicity and other demographics. Societal and economic changes mean that the appropriate skill set for members change over time; term limits ensure that boards can adapt to those changing needs.

44. Rotating the membership of a board also has other advantages including preventing it becoming stale and slow to grasp innovation and new ideas. Term limits can also give members who no longer wish to serve a graceful way to step down. It does though have the disadvantage that there is some loss of corporate knowledge when a long-serving member departs.

45. It is proposed that the maximum term for serving on the Pensions Board should be ten years; this being two full length terms. Any organization needs to set the term limits appropriate to them and their circumstances. A maximum of ten years will enable members

to not only gain the skills needed to provide effective governance, but also gain experience of the three triennial actuarial valuations for which the Board is responsible.

Question on proposal 3

46. Do you agree that members should serve a term of no more than five years, with no member serving more than a total of ten years?

Proposal 4 – Clergy (Widows and Dependants) Pension Fund

47. **References to the Clergy (Widows and Dependants) Pension Fund in sections 1(1) and 38 of the Measure should be deleted.** The Board was given the power under the Pensions (Pre-Consolidation) Measure 2018, which was subsequently included in the Church of England Pensions Measure 2018, section 38(5), to transfer the Clergy (Widows and Dependants) Pension Fund to the Church of England Funded Pension Scheme. This power was exercised in December 2018. The decision was taken that this was the best outcome for the beneficiaries of the scheme and best safeguarded their future benefits. Since the scheme no longer exists, all of section 38 is now redundant, as is the reference to the scheme in section 1(1).

Question on proposal 4

48. Are you content that these provisions are redundant and can now be removed?

Proposal 5 – Audit

49. **The requirements that the auditor “must report to the General Synod on the audited accounts” (s50(2)(b)) and that the Board “must each year present a report to the General Synod...” (s50(3)) should be deleted.**

50. Section 50 of the 2018 Act requires -

50 Audit

- (1) The Board must from time to time appoint an auditor to audit—*
- (a) the accounts of each fund it administers;*
 - (b) the accounts of each trust it administers;*
 - (c) the accounts of the money it receives from the Church Commissioners.*
- (2) An auditor appointed under subsection (1)—*
- (a) must audit the accounts in question annually, and*
 - (b) must report to the General Synod on the audited accounts.*
- (3) The Board must each year present a report to the General Synod on the funds, trusts and other money referred to in subsection (1).*

51. The effect of this proposal is to remove an administrative burden on the Board and on the General Synod, who have never (to our knowledge) held a debate on the Board’s accounts. It is therefore proposed that the requirement in s. 50(2)(b) be deleted. The Board’s annual report and accounts will continue to be published on the Charity Commission website and the Church of England website. Publication on the Church of

England website fulfils the requirements to make certain information available to members of pension schemes within seven months of the end of the financial year.

Question on proposal 5

52. Do you agree that this administrative burden should be removed from Church legislation, on the proviso that the Pensions Board continues to communicate with the General Synod on its operations regularly?

Proposal 6 – Diocesan Widows and Dependants Committees

53. **The Pensions Measure requires (at section 51) that each diocese should have a diocesan widows and dependants committee appointed by the diocesan board of finance. This should be deleted.** It is one of the peculiar quirks of the Measure that, except for this section, the Measure is concerned about the operation and governance of the Board. This section places an administrative burden on the dioceses to have a statutory committee to “watch over the interests of any surviving spouse or civil partner or any child or dependant” of a deceased member of the clergy, deaconess or licensed lay worker. The Board has no control over the existence or function of these committees and has no role in relation to them. The exact nature of carrying out these duties should not be laid down in statute but should match the individual requirements of each diocese.
54. Deletion of the section would not affect the current diocesan committees functioning, but it would remove the statutory requirement to have them. The Remuneration and Conditions of Service Committee already produces guidance covering similar ground which can be updated more readily than provisions in legislation.

Questions on proposal 6

55. Do you agree that this administrative burden should be removed from Church legislation?

Transitional arrangements

56. Transitional arrangements are required for proposals 1, 2 and 3. It is proposed that the Legislative Reform Order will contain provision to the effect that there will be an appointed day on which the appointments of all existing Board members will end and the newly constituted Board will be created. Prior to that appointed day, elections will be held and appointments made using the new pre-selection process. Existing Board members may stand for election or apply to be appointed, subject to the new limit of ten years total service.
57. No transitional arrangements are required for proposals 4, 5 and 6.

Consultees and responses

58. The Legislative Reform Committee considers that the following should be consulted under section 4(1) of the Legislative Reform Measure:

- a. all members of the General Synod
- b. the members of the Pensions Board
- c. the Church Commissioners
- d. diocesan secretaries
- e. employers participating in the pension schemes
- f. members of the pension schemes

59. The consultation has, in accordance with section 4(4) of the Legislative Reform Measure, been laid before both Houses of Parliament and we would welcome responses to the consultation from members of either House.

60. In addition to the above, we would welcome responses to this consultation from anyone else with an interest in the operation of the Church of England Pensions Measure 2018.

61. Responses to this consultation are invited by 31 August 2020. Responses by email are preferred and should be sent to consultation@churchofengland.org. Responses may also be sent by post to Jenny Jacobs, Central Secretariat, Church House, Great Smith Street, London SW1P 4JZ (telephone 020 7898 1363).

Legislative Reform Committee
Archbishops' Council
Church House
London SW1P 4JZ

23 June 2020



The trustees of the Church of England Pensions Board thoroughly welcome the proposals set out in this consultation to simplify our governance.

We believe that amending the way in which we are governed will lead to a better service for our customers, reduce our costs and provide better value for our members and the Church. We are grateful, therefore, to the Archbishops' Council and its Legislative Reform Committee for consulting on proposals to achieve this.

We recognise that there is a need to simplify what is a very complex and unwieldy structure in order to improve effectiveness and bring it in line with the accepted standards of good governance. It is not comfortable to note that as a responsible investor the Church of England would vote against any corporates with the current structure and composition of the Pensions Board.

The proposals aim to deliver a more professional Board. They also ensure that member representation on the Board not only remains but is enhanced, through broadening the way that members of the clergy pension schemes elect their member-nominated trustees.

We commend these proposals and look forward to seeing the outcome of the consultation.

A handwritten signature in black ink, appearing to read 'Clive Mather'. The signature is written in a cursive style and is positioned above a horizontal line.

Clive Mather
Chair, The Church of England Pensions Board