

THE ARCHBISHOPS' COUNCIL

**CONSULTATION ON A LEGISLATIVE REFORM ORDER
TO AMEND
THE CHURCH COMMISSIONERS MEASURE 1947**

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 COMMISSIONERS MEASURE 1947

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 Commissioners Measure 1947.

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,
 - 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 Commissioners Measure 1947

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 Commissioners Measure 1947 (“the 1947 Measure”).

11. The Church Commissioners were constituted by the Church Commissioners Measure 1947, which united two older charities, Queen Anne’s Bounty and the Ecclesiastical Commissioners, into a new body corporate. The Church Commissioners provide financial assistance to support the cost of ministry in the Church of England, particularly where such assistance is most needed, in a manner deemed most conducive to the efficiency of the Church of England, and they also apply their fund for specific further purposes for which express statutory provision is made, which include paying for bishops’ ministry and some cathedral costs, administering the legal framework for pastoral reorganisation and closed church buildings, and paying clergy pensions for service prior to 1998.
12. The Church Commissioners hold investments, valued at £8.7bn at the end of 2019, including a wide range of asset classes including UK and overseas securities, commercial, residential and rural property and alternative strategies. The purposes of the fund are to meet the cost of clergy pensions earned in service before 1998 and to provide a sustainable level of support for parishes, bishops, cathedrals and other purposes of the Church of England.
13. The persons who constitute the Commissioners are set out in Schedule 1 to the 1947 Measure. They are:
 - a. Six holders of senior political office (Schedule 1 para 1(a));
 - b. The Archbishops of Canterbury and York (Schedule 1 para 2(b) line 1);
 - c. The Church Estates Commissioners (Schedule 1 para 2(b) line 2);
 - d. Thirteen elected Commissioners (Schedule 1 para 2(b) lines 3-6);
 - e. Nine nominated Commissioners (Schedule 1 para 2(b) line 7).
14. Except for those powers which are specifically required to be exercised at a general meeting of the Commissioners, the business of the Commissioners is transacted by the Board of Governors (see s. 3 of the 1947 Measure). The persons described in Schedule 1 para 2 together comprise the Board of Governors (see s. 5(1) of the 1947 Measure). The Board may refer any matter within their jurisdiction to:
 - a. the Assets Committee, or
 - b. the Audit and Risk Committee, or
 - c. any other committee which the Board may appoint (s. 5(4) of the 1947 Measure). There are currently two other committees, the Bishopsrics & Cathedrals Committee, and the Mission, Pastoral & Church Property Committee.
15. In practice, most of the Commissioners who are members of the Board of Governors are also members of one or more of the committees. The nominated Commissioners are selected for their professional skills and suitability to serve on one or more of the Committees.

16. The Assets Committee is comprised only of persons who are Commissioners (s. 6(1)(a) of the 1947 Measure). The Audit Committee must include at least two members who are not Commissioners (s. 6(1)(d)), and non-Commissioner members may also be included in any of the appointed committees (s. 5(4A) of the 1947 Measure). As with the nominated Commissioners, these non-Commissioner members are selected for their professional skills.

The Proposals

Proposal 1 – term lengths

- 17. It is proposed that a term of office for Commissioners and non-Commissioner members should be a maximum of five years in all cases (and subject to an overall term limit of ten years as set out in proposal 2).**
18. At present, the term of office for elected Commissioners is five years, and for nominated Commissioners it is such period as the person or persons making the nomination shall determine (see Schedule 1 para 2 of the 1947 Measure). Persons appointed to either the Assets Committee or the Audit and Risk committee are appointed for three years (s. 6(1)(a) and (d) of the 1947 Measure). There is no time limit on the period for which anyone (ie a Commissioner or a non-Commissioner) may be appointed to the other committees.
19. Although there is no limit on the time period for which nominated Commissioners may be appointed, in practice they are invariably nominated for the purpose of being appointed to serve on a committee, so they are appointed for the three year period for which it is possible to appoint them to that committee. It is proposed that all Commissioners and non-Commissioner committee members should serve up to a five-year term, and so the term for which members of the Assets and Audit & Risk Committees may be appointed should be changed from three to five years, and similarly that non-Commissioner members should also normally be appointed for up to five years. In order to have some flexibility to stagger terms of office, that five years should be a maximum rather than a fixed period.
20. At present, casual vacancies among elected or nominated Commissioners may be filled by the person or body by whom the Commissioner vacating office was elected or nominated, and casual vacancies among appointed (non-Commissioner) members may be filled by the person or body by whom the member vacating office as appointed (see Schedule 4 para 3 of the 1947 Measure) . However, persons who fill a casual vacancy hold office for the remainder of the term of their predecessor (see Schedule 4 para 4). This is inefficient, as the new elected or appointed member takes time to learn the role, and having done so should serve a full term. So it is proposed that the legislation should be changed to the effect that persons filling casual vacancies shall also serve a maximum five year term.

Question 1 – do you agree that the term of office for Commissioners and non-Commissioner members should be a maximum of five years in all cases (subject to an

overall term limit of ten years?)

Proposal 2 – term limits

It is proposed that:

- a. Commissioners and non-Commissioner committee members should serve a maximum of ten years;
- b. A person who has served two consecutive five year terms of office as an elected or appointed member should not be eligible for re-election or re-appointment for a period of five years, but a member who has for any reason served a shorter term should be able to serve a third term provided this does not breach the overall ten year service limit;
- c. It should be possible to extend the term of office of an appointed member who has served two consecutive terms of office by no more than one further year, if the Board by resolution gives its approval.

21. It is generally considered to be good practice to limit the terms of trustees to ensure regular refreshment of a Board or committee.^[1] In practice, in recent years appointed Commissioners have not served more than ten years, but there is no statutory limit on the number of terms they or an elected Commissioner may serve. The proposal is to make provision in the 1947 Measure to limit the total period of time that an appointed or elected Commissioner may serve to ten years, with the power for the Board to extend that term by no more than one further year, which would only be used if there was a specific turnover or succession difficulty or business critical reason.

22. The terms of the persons who are Commissioners *ex officio* (para 13 (a) and (b) above) would not be affected by these proposals and nor would the terms of the Estates Commissioners since they hold office at the pleasure of Her Majesty or the Archbishop. However, the Commissioners' intention is to make clear during the recruitment process for First and Third Commissioners that the normal expectation is for a ten-year maximum length of tenure.

Question 2 – do you agree that:

- a. Commissioners and non-Commissioner committee members should serve a maximum of ten years;
- b. A person who has served two consecutive five year terms of office as an elected or appointed member should not be eligible for re-election or re-appointment for a period of five years, but a member who has for any reason served a shorter term should be able to serve a third term provided this does not breach the overall ten-year service limit;
- c. It should be possible to extend the term of office of an appointed member who has served two consecutive terms of office by no more than one further year, if the Board by resolution gives its approval.

Proposal 3 – Asset Committee Membership

The maximum number of lay Commissioners on the Assets Committee shall be increased from six to eight.

23. The functions of the Assets Committee include acting on behalf of the Commissioners in all matters relating to the management of those assets the income of which is carried into the Commissioners' general fund, including to sell, purchase, exchange and let land, and to make, realise and change assets (see s. 6(3) of the 1947 Measure). The membership of the Assets Committee is set out in section 6(1)(a) of the 1947, and currently comprises:
- a. The First Church Estates Commissioner (who is a layperson);
 - b. Two Commissioners who are clerks in Holy Orders (at least one being a Commissioner elected by the House of Clergy of the General Synod); and
 - c. Not less than four nor more than six lay Commissioners appointed by the Archbishop of Canterbury (at least one being a Commissioner elected by the House of Laity of the General Synod) being persons who in the opinion of the Archbishop of Canterbury are well qualified to assist in the management of the assets of the Commissioners.
24. It is proposed to amend the last of those so that instead of a maximum of six appointed lay Commissioners there should be a maximum of eight.
25. The intention of this proposal is that more of the nominated Commissioners could be recruited for the purposes of appointment to the Assets Committee. Even with this increase, the Assets Committee is still reasonably small when one considers the amount of assets which it manages and the increasingly diversified nature of the portfolio and complexity of investment markets but it will enable a greater breadth and depth of experience to be present on the Committee, increasing its efficiency and effectiveness.

Question 3 – do you agree that the maximum number of appointed lay Commissioners on the Assets Committee shall be increased from six to eight?

Proposal 4 – Disqualification of Members of Central or Diocesan bodies

It is proposed that the disqualification of salaried officials of any central or diocesan body be removed.

26. Persons are disqualified from being Commissioners so long as they are a salaried official of any central or diocesan body (Schedule 1 para 4 of the 1947 Measure). It is unclear what the original justification for this was, but on current charitable best practice it is unnecessary. In recent years, the number of clergy holding diocesan posts has increased, so this requirement creates a practical problem as it reduces the pool of persons who might otherwise serve.
27. In late 2018 this requirement was inadvertently overlooked, and Synod elected two clergy members who were so disqualified; those candidates chose to retain their

Diocesan positions, so the election had to be re-run, and the Synod office introduced a process for checking for disqualifications. In answer to a Synod question at the time, the First Commissioner undertook to investigate the removal of this restriction, which was met with general approval among those members present.

Question 4 – do you agree that that the disqualification of salaried officials of any diocesan body be removed?

Proposal 5 – Requirement for Lay Commissioners to be Members of the Church of England

It is proposed that rather than requiring Lay Commissioners to be members of the Church of England, they should be required to confirm that they are either a member of the Church of England or of a church which subscribes to the doctrine of the Holy Trinity, and that that they support the charitable objects of the Commissioners.

It is also proposed that in all cases, a majority of those on any committee must be members of the Church of England.

28. Every lay Commissioner, other than a person who is a Commissioner in right of office, must before acting as Commissioner sign a written declaration of membership of the Church of England (Schedule 1 para 6 of the 1947 Measure).
29. There is no legal definition of who is a member of the Church of England, and no test of membership. It is effectively up to each person to decide if they wish to identify as a member. The pool of suitably qualified candidates is often small, and experience has shown that the practical effect of this requirement has been to reduce that pool yet further, including to exclude persons who are committed Christians but of another denomination. This has demonstrably hindered attempts to improve the diversity of the Board and its Committees.
30. It is therefore proposed that lay Commissioners be required to sign a two-fold declaration, that:
 - they are either a member of the Church of England, or a member of a church which subscribes to the doctrine of the Holy Trinity; and
 - that they support the charitable objects of the Church Commissioners.
31. It would be inappropriate for any committee to be controlled by persons who are not Anglican. This is most unlikely in any event, because it is highly likely that the large majority of appointed members who come through a competitive process which includes examination of their professional skills and commitment to the Commissioners' objects will be Anglican, and that persons elected by the House of Laity will be Anglican, but introducing this small amount of flexibility should ensure that candidates are genuinely committed to the organisation's goals while widening and diversifying the pool of appropriately qualified people. However, to guard against this possibility, it is proposed that provision be made to the effect that a majority on any committee must be members of the Church of England.

Question 5 – Do you agree that the current requirement that Lay Commissioners be members of the Church of England be changed to a requirement to confirm that they are either a member of the Church of England or of a church which subscribes to the doctrine of the Holy Trinity, and that they support the charitable objects of the Commissioners?

Question 6 – Do you agree that the majority on any committee must be members of the Church of England?

Proposal 6 – Remote Participation in meetings, and conducting business by correspondence

It is proposed that it should be possible to conduct Board and Committee meetings by electronic means, and that the current ability of the Board or a committee to conduct business by correspondence be extended to the Commissioners in general meeting.

32. Schedule 4 para 5 of the 1947 Measure provides that at any meeting of the Commissioners, the Board or a committee, every question shall be decided by a majority of the votes of members present and voting on that question. That would appear to preclude the taking of a vote in a meeting which is being conducted via video-conference.
33. Schedule 4 para 5A of the 1947 Measure provides that the business of the Board or any committee may be conducted either in writing or by electronic transmission. This provision was inserted into the 1947 Measure in 2014, and did not include the business of the Commissioners (ie their annual general meeting or any other general meeting, see s. 4 of the 1947 Measure).
34. The power to conduct business by correspondence is generally used when matters arise between Board or committee meetings or for especially urgent business. In the COVID-19 crisis, the Board and committees have been meeting by electronic means, but then have to use the correspondence procedure for any vote arising from the discussion, which is inconvenient and causes unnecessary delay. After the crisis, the Commissioners are keen to retain the current power to conduct business in correspondence between meetings, but also to avoid the need to confirm in correspondence decisions reached at scheduled meetings where some or all members have joined by telephone or video technology, thus improving efficiency.
35. The Commissioners have had to delay their AGM, scheduled for 25 June 2020, because of the COVID crisis. While it is most unlikely that they would wish to conduct their AGM electronically in anything other than the emergency circumstances such as COVID, the ability to do so should it be necessary would allow the efficient dealing with necessary business. General meetings may well be also be most efficiently conducted by electronic means, or by correspondence, depending on the topic and the urgency. So it is proposed to include meetings of the Commissioners in both these powers.

Question 7 – do you agree that it should be possible to conduct meetings by electronic means, and that the current ability of the Board or a committee to conduct business by correspondence should be extended to the Commissioners in general meeting?

Proposal 7 – amending the charitable objects of the Church Commissioners

It is proposed that the Church Commissioners should be given a new charitable object to allow the new Lambeth Palace Library to be used for the provision of archiving and document storage facilities to any of the National Church Institutions.

36. In 2004 the Church Commissioners conducted a Documentary Heritage Review, in which they considered the ways that the national Church organises and manages its libraries and archives. At the time there were three within London – Lambeth Palace Library, the Church of England Record Centre in Bermondsey, and the Cathedrals and Church buildings (CCB) Library in Church House, London. They were overseen by four committees/bodies, one of which (the Trustees of Lambeth Palace Library) was a registered charity with the object of supporting the library and a National Church Institution in its own right, which had had the management of Lambeth Palace Library delegated to it by the Church Commissioners. Separately there was a Friends of Lambeth Palace Library charity whose object was to support the library.
37. The Documentary Heritage Review recommended that there should be a single national library and archive for the National Church. Much progress has been made since that report. A new Lambeth Palace Library has been constructed, and is due to be completed in July 2020. The holdings of the old Lambeth Palace Library and the Church of England Record Centre will be transferred there, and merged into a single collection. The CCB library has been completely reviewed and separated into a small departmental working collection to support the work of the CCB division with the bulk of the collection to be transferred into the new Lambeth Palace Library. Where there were three, there is (or very soon will be) one.
38. Just as important as the construction of the new building has been the overhaul of the management and oversight of the collection. The previous multiple committees have been replaced by a single advisory body – the Archbishops’ Advisory Panel for Libraries and Archives - with management responsibility removed from the Trustees of Lambeth Palace Library and returned to the Church Commissioners.
39. As of mid-2020 the Trustees of Lambeth Palace Library and Executive committee of the Friends of Lambeth Palace Library have agreed^[2] in principle to merge into a single charity to support the Library and are currently planning the necessary steps needed to achieve a merger. So while they will have no part of the formal management, they will play a vital part in financially supporting the Library.
40. The Commissioners’ goal of a single national library and archive for the National Church is almost achieved. The creation of a single library and archive for the National Church does however mean that the Church Commissioners will now be

looking after the records and archives of different National Church Institutions. That creates a problem because there is no express provision allowing the use of the Commissioners' assets for the purposes of the other National Church Institutions. It is important that their charitable objects allow them to do this so as to avoid any unnecessary costs, administrative burden or tax implications in providing the other NCIs with archiving services.

Question 8 – Do you agree that the Church Commissioners should be given a new charitable object to allow the new Lambeth Palace Library to be used for the provision of archiving and document storage facilities to any of the National Church Institutions?

Consultees and responses

41. 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 Church Commissioners;
 - c. Non-Commissioner committee members.
42. This document 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.
43. In addition to the above, we would welcome responses to this consultation from anyone else with an interest in the operation of the Church Commissioners Measure 1947.
44. 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).

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^[1] For example, the Charity Commission Code states that, if a trustee has served for more than nine years, this should be subject to a particularly rigorous review, taking into account the need for progressive refreshing of the board, and should be explained in the trustees' annual report.

^[2] This is subject to confirmation by their members at their AGMs.