

GENERAL SYNOD

DRAFT GENERAL SYNOD (REMOTE MEETINGS) (TEMPORARY STANDING ORDERS) MEASURE

**Consideration by the Steering Committee of the initial draft of the Measure:
note from the Chief Legal Adviser**

1. On 12 August, following consultation with the Chair of the Steering Committee ('the Committee'), members of the General Synod were informed as follows by Synod Support:

We have received correspondence from some members who have suggestions for changes to the draft [General Synod (Remote Meetings) Measure], and in the hope of minimising amendments, the Steering Committee will consider those suggestions on an informal basis; suggestions received by 5.30pm on Friday 28 August will be put to them for consideration. Then a final draft (or confirmation that the draft of 30 July is unchanged) will be circulated to members on or before 9 September, after which any amendments will need to be submitted in the normal way, and by the previously advised deadline of 5.30pm on Friday 18 September. Please send any suggestions to amendments@churchofengland.org.

2. The Committee was grateful to members for the time taken by them to consider the initial draft of the Measure and to send comments and suggestions.
3. The Committee made some amendments to the original draft of the Measure in the light of the comments and suggestions received. These are shown as bold text in the **new print of the draft Measure for First Consideration (GS 2176)**. The **explanatory notes to the Measure (GS 2176X)** have been updated accordingly.
4. Members' attention is also drawn to the **draft special standing orders that are annexed to the explanatory notes**. While these are necessarily an illustrative draft at this stage, it is intended that they be put to the Six Officers of the Synod in a form which is substantially to the same effect as this draft.
5. The Committee's consideration of the suggestions and comments received from members is described in what follows. References to clauses are to the clauses of the original draft of the Measure (GS 2175).

Who should make the initial standing orders for remote meetings?

6. It was suggested to the Committee that standing orders for remote meetings should be made by the Standing Orders Committee, rather than the six Officers of the Synod (as provided for in clause 1(1) of the draft Measure). It was suggested that this was more naturally Standing Orders Committee business.
7. However, the Committee noted the following:
 - the Standing Orders Committee does not make standing orders for the General Synod, it only proposes, and reports on proposals for, standing orders; it is the Synod itself that normally makes standing orders;

- the six Officers of the General Synod (the Presidents, Prolocutors and the Chair and Vice-Chair of the House of Laity) represent the three Houses of the Synod and – in the case of the Houses of Clergy and Laity – are elected by the members of those Houses; the Constitution of the Synod already confers certain special powers on the six Officers, including the cancellation, on behalf of the Synod, of a group of sessions which the Synod has previously decided to hold; the power to make special standing orders for remote meetings might be regarded as being in a similar category;
 - when members of the Synod were consulted in May on a proposal to ask Parliament to legislate to enable the making of special standing orders for remote meetings of the Synod, 81% of respondents agreed that the standing orders should be made by the six Officers of the Synod (with 19% disagreeing).
8. For those reasons the Committee considered that the draft should continue to provide for the Six Officers to make the initial standing orders for remote meetings.
 9. It was suggested that provision should be made for the situation where one of the six offices is vacant.
 10. The Committee agreed that there was merit in providing for this possibility, by providing that where any of those offices is vacant, the power is exercisable by the holders of the offices which are currently filled.

Consultation with Business Committee and Standing Orders Committee

11. It was suggested that rather than requiring the six Officers to consult the Business Committee and the Standing Orders Committee before making standing orders for remote meetings (as provided for in clause 1(5)), the Measure should require them to obtain the agreement of those two committees.
12. The Committee considered that practical difficulties could arise were the Measure to impose such a requirement. It is likely that there will be a very short time – possibly only a matter of a few days – between the Measure being given Royal Assent in Parliament and the first day of the November group of sessions. The Committee noted that that was the reason for the requirement to consult “so far as practicable”.
13. The Committee also noted that it might not be possible for the three bodies concerned to reach agreement, with the result that no standing orders for remote meetings could be made; in which case the Synod would not even have the opportunity of deciding whether it wished to approve the special standing orders.
14. Another suggestion was that consultation with the Business Committee and the Standing Orders Committee should be mandatory (rather than that it take place “so far as practicable”) but that consultation with those committees carried out prior to the Measure coming into force should be treated as if it were carried out under the Measure.
15. The Committee considered that this would be a reasonable requirement and agreed that the draft should make provision accordingly.

Hybrid mode of doing business

16. A member pointed out that clause 1(1) would enable standing orders to provide for meetings of the General Synod to take place with some members attending in person and some participating remotely. She suggested that this may not have been intended and that the provision be amended to remove this possibility.
17. The possibility of some only of the Synod's members participating remotely while others participated by attending in person was intended. The Committee noted that it was not currently possible to say when it might be possible to hold a physical meeting of the Synod at which all its members could safely attend. It considered it would be wrong to exclude the possibility of hybrid arrangements whereby members who were vulnerable or subject to local lock-down could participate in the Synod's proceedings despite not being able to attend a physical meeting.

Business capable of being transacted at remote meetings

18. The draft Measure excludes the transaction of Article 7¹ and Article 8² business from remote meetings. See clause 1(4).
19. Suggestions were received that article 7 and/or article 8 business should not be excluded from remote meetings. The reasons advanced included:
 - the uncertainty as to the length of the coronavirus pandemic, and the possibility of it becoming necessary to deal with Article 7 and Article 8 business at a remote meeting;
 - the fact that this business requires references to other bodies, should not prevent the Synod from transacting its aspects of the business remotely.
20. The Committee noted that provision excluding Article 7 and Article 8 business was suggested by the Business Committee when they were initially consulted on the possibility of legislating for remote meetings, presumably on the basis that they did not wish matters relating to doctrine etc. being dealt with under emergency provisions for remote meetings.
21. The Committee was aware that a significant number of members had concerns about the Synod transacting business remotely. It took the view that it had to balance the concerns of members who would wish to see maximum flexibility as to the business that could be transacted at a remote meeting and the concerns of other members who do not favour the Synod's business being carried out in this way. Noting that the Synod could not proceed to Final Approval on 24 September if just 40 members were to object, and therefore that it was necessary to achieve the greatest possible

¹ Article 7 business is "provision touching doctrinal formulae or the services or ceremonies of the Church of England or the administration of the Sacraments or sacred rites thereof". It must be referred separately to the Convocations and the House of Laity if any of those bodies so requires. Article 7 business may be finally approved by the Synod only in a form approved by the House of Bishops.

² Article 8 business is "a Measure or Canon providing for permanent changes in the Services of Baptism or Holy Communion or in the Ordinal, or a scheme for a constitutional union or a permanent and substantial change of relationship between the Church of England and another Christian body being a body a substantial number of whose members reside in Great Britain". Such a Measure, Canon or scheme must be referred to diocesan synods and can proceed only if a majority of them vote in favour of it. Some Article 8 business additionally requires special majorities in the General Synod.

support from members for the Measure, the Committee decided not to remove the provisions excluding article 7 and article 8 business from remote meetings.

22. Another member suggested that business should not be capable of being taken at a remote meeting unless the six Officers of the Synod had certified that the business was so urgent that it must be dealt with in that way.
23. The Committee noted that the question of whether a group of sessions should be held remotely would be decided by the Business Committee under their general responsibility for matters relating to the “sessional arrangements” of the Synod (SO 125(6)(c)). It would also be for the Business Committee to determine what business was to be included in the agenda for a remote meeting (SO 4). The Committee considered that these were matters that should properly be left with the Business Committee.
24. Another member suggested that because the Measure was intended to allow the Synod to transact essential business, rather than to create another ordinary means of conducting business, only “business which touches on matters of safety (which might be safeguarding or H&S) or enables the church to fulfil its legal obligations” should be within the scope of remote meetings.
25. The Committee agreed that the Measure was intended to enable the making of temporary provision rather than as providing a new way of doing business as usual. But it considered that there were many reasons why particular items of business become urgent. While it was true that in some cases this was because there was a legal obligation to take certain steps by a particular time, e.g. approval of the Archbishops’ Council’s budget for the following year, there were other matters of considerable importance unrelated to safeguarding or legal obligations. These would include fulfilling commitments to the Government or other partner bodies such as the Charity Commission. They would also include business such as the setting of fees for the following year.
26. For those reasons the Committee decided not to alter the draft to specify classes of business that could be transacted remotely.

Timing of publication of special standing orders

27. It was suggested that provision should be added to the requirement in clause 1(6) for special standing orders to be published on the Church of England website so that publication must take place at least 10 days before the first meeting of the General Synod. This would enable members to consider them and decide whether to propose amendments to them.
28. The Committee considered that this provision should be added. It recognised that if it were added, further provision would be needed so that publication of the special standing orders before commencement of the Measure should be treated as if publication had taken place in accordance with the Measure. Otherwise there was a risk that the 10-day provision would be impossible to fulfil, given that there was likely to be a very short time between the Measure receiving Royal Assent and the November group of sessions.

29. The Committee considered that this was preferable to a related suggestion that the special standing orders must published and sent to members not later than 7 days after they are made. That would not of itself ensure that members had time to consider whether to propose amendments.
30. In response to a member's question, the Committee was advised that no special provision was needed to enable the special standing orders to be "sent" to members by email. If something is sent by email, it is sent.
31. A member asked if the reference in clause 1(6) to "each member of the Synod" included "the non-voting members". The Committee noted that the Synod does not have non-voting members. There are some non-members who are invited to attend meetings of the General Synod (e.g. the ecumenical representatives) but clause 1(6) would not apply to them. That would be consistent with the general position in relation to non-members: they are not entitled to receive papers but are sent them as a matter of courtesy.

Help with cost of computer equipment and accessibility

32. It was suggested that provision be inserted in the Measure to address the situation of members who do not have access to equipment that would enable them to participate fully in a remote meeting of the Synod.
33. The Committee considered that, consistently with the existing, non-statutory arrangements whereby members' expenses are defrayed by dioceses, dioceses should provide members who request it with help obtaining access to computer equipment. The Committee did not consider that this was a matter for the Measure.
34. It was also suggested that the Measure should impose a duty on dioceses to provide assistance to members with disabilities. Again, the Committee considered that the provision of such assistance should be addressed by individual dioceses as needed. The Committee considered that such assistance formed part of dioceses' general responsibility towards their members. It was not something that should be specifically legislated for in this Measure.
35. The Committee noted that the Business Committee had recently commissioned an accessibility audit of the Synod's arrangements and that under its aegis work to improve accessibility for members and others was ongoing.

Amendment of special standing orders

36. Some members made suggestions about how special standing orders could subsequently be amended.
37. The Committee considered that while it was right that the Six Officers should make the initial special standing orders on the basis that this was an emergency power, any subsequent amendments to the special standing orders should be made by the Synod itself, under the usual procedure for amending standing orders. (That involves the Standing Orders Committee making a report to the Synod containing motions for the amendment of the standing orders which are then voted on by the Synod or dealt with under the procedure for deemed approval.)

38. A suggestion was made that clause 2(1) and (2) should be amended to prevent the six Officers making standing orders for remote meetings that contained provision preventing the Synod from exercising its power to amend those standing orders.
39. The Committee was advised that it was unnecessary to alter the draft. Any provision contained in standing orders made by the six Officers must further, not frustrate, the statutory purpose for which the power to make those standing orders is conferred by the Measure. It would, under the general law, be unlawful for the six Officers to make standing orders which would have the effect of frustrating the exercise by the Synod of its right to decide whether to approve the standing orders for remote meetings or to approve them with amendment. No special provision was therefore needed to that effect.

Expiry, sunset and reviews

40. A number of members made suggestions with a view to limiting the period for which the Measure or standing orders made under it would operate.
41. The Committee did not consider that the draft Measure should contain a specific cut-off date, as suggested by one member. While the provision in the Coronavirus Act 2020 for remote meetings of local authorities apply only to meetings held before 7 May 2021, amending that date or making fresh provision would be a straightforward matter for Parliament. Were the Measure to include equivalent provision, it would be necessary to pass another Measure to amend the date or to make fresh provision for remote meetings.
42. The Committee did not consider that the Measure should impose a maximum limit on the length of time for which the Synod could extend the life of special standing orders beyond the initial period of 12 months. As the life of special standing orders can be extended only by resolution of the Synod, the length of the extension would be a decision for the Synod and the Committee considered that to be an adequate safeguard.
43. While the Committee agreed that it would be helpful if the operation of the Measure and the special standing orders were reviewed from time to time, it was not attracted to a suggestion that the Measure stipulate periodic reviews. It considered that this was something within the general responsibilities of the Business Committee which was best placed to determine how and when to carry out such reviews and that it would be undesirable for the Measure to impose a statutory review process.
44. The Committee was not attracted to suggestions that the Measure, rather than just the special standing orders made under it, should be subject to a sunset provision so that the Measure itself would expire after a specified period of time unless extended. The Committee considered that the provision already contained in the Measure under which special standing orders expire unless extended or revived by resolution of the Synod – and are therefore subject to the Synod's control – meant that additional sunset provision in respect of the Measure itself was neither necessary nor desirable.

Relationship with Constitution

45. It was suggested that the provision in clause 2 for standing orders made under the Measure to have effect in spite of any provision in the Constitution of the Synod or its Standing Orders with which they are inconsistent should be narrowed. This was on the basis that a provision overriding the Constitution should go no further than was strictly necessary and the member considered that this meant just articles 5 and 11.
46. The Committee had concerns about limiting the overriding provision to articles 5 and 11 of the Constitution. The Committee was advised that there were other provisions in the Constitution which arguably are also inconsistent with remote meetings (e.g. articles 3, 4, 7, 8, and 9). On the basis that there should be no doubt as to whether special standing orders had legal effect, and that it would be easy to miss a particular provision if specific provisions were listed in the Measure, the relevant provision of clause 2 should remain as it stood.

Time for questions

47. It was suggested that the Measure should require additional time to be made available for questions at a remote meeting of the Synod. The Committee noted that there was currently no requirement for any particular length of time to be allocated by the Business Committee for questions. It was therefore difficult to see how the Measure could require the provision of additional time.
48. The Committee considered that the length of time to be allowed for questions should continue to be a matter for the Business Committee. No doubt the Business Committee would take account of the particular characteristics of remote meetings when settling the agenda.

Other synodical bodies

49. It was suggested that further provision might be included in the Measure to provide for remote meetings of other synodical bodies (i.e. diocesan synods, deanery synods, parochial church councils).
50. The Committee was advised that additional statutory provision was not needed to enable other synodical bodies to transact their business remotely. The Chief Legal Adviser had written in June to diocesan registrars describing how it was open to bishops to exercise powers already conferred on them by the Church Representation Rules to provide for diocesan synods, deanery synods, parochial church councils and annual meetings etc. to conduct business remotely.

Short title

51. It was suggested that the short title should be amended to include "Coronavirus" (i.e. "General Synod (Coronavirus) (Remote Meetings) Measure") to indicate that the Measure was only being passed because of the current pandemic.
52. As there was nothing in the content of the Measure specifically linking the Measure to Coronavirus, the Committee considered that including a reference to Coronavirus in the short title would not be apt. However, on the basis that any provision made under the Measure was required to be temporary, the Committee considered that

that should be reflected in the short title and altered the draft accordingly. The short title is now “General Synod (Remote Meetings) (Temporary Standing Orders) Measure”.

Illustrative draft special standing orders (as annexed to original explanatory notes)

53. It was suggested that the special standing orders needed to make provision for voting at remote meetings.
54. The Committee was advised that that was not necessary, as voting at a remote meeting would be carried out in accordance with instructions issued by the Business Committee under SO 38(8) of the standing orders of the Synod.
55. It was also suggested that provision should be made in the special standing orders to enable members to indicate support for private members’ motions during a remote group of sessions.
56. The Committee was advised that that was also unnecessary. The Business Committee were already able to make provision under SO 6(4)(a) enabling members to add their names to lists by electronic means during a remote group of sessions.

Alexander McGregor
Chief Legal Adviser to the General Synod

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