

THE ARCHBISHOPS' COUNCIL

DRAFT LEGISLATIVE REFORM (CHURCH COMMISSIONERS) ORDER

EXPLANATORY DOCUMENT

Laid before the General Synod
pursuant to section 5 of the Legislative Reform Measure 2018

The draft Legislative Reform (Church Commissioners) Order has been prepared by the Archbishops' Council following a consultation on proposals that was carried out from 13 July to 31 August 2020. Having considered the responses to the consultation, the majority of which were in favour of the proposals, the Council considers that it would be appropriate to proceed with the making of an order. The Archbishops' Council has accordingly laid the draft Legislative Reform (Church Commissioners) Order before the General Synod, together with this explanatory document, under section 5 of the Legislative Reform Measure 2018.

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Background

1. The Legislative Reform Measure 2018 enables the Archbishops' Council ("the Council"), with the approval of the General Synod and subject to Parliamentary oversight, to make orders (known as "Legislative Reform Orders") removing or reducing burdens that result from ecclesiastical legislation. 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. On 13 July 2020 the Council issued a consultation document on proposals for a Legislative Reform Order to remove or reduce burdens of a procedural nature that arise from the Church Commissioners Measure 1947 ("the 1947 Measure"). The consultation period ended on 31 August 2020. The Archbishops' Council – acting through its Legislative Reform Committee – has considered the responses to the consultation.
3. In the light of the responses to the consultation, the Council considers that it is appropriate to proceed with the making of an order under the Legislative Reform Measure. As required by section 5 of that Measure, the Council has laid a draft of the Legislative Reform (Church Commissioners) Order ("the draft Order") before the General Synod together with this explanatory document.

The Consultation

4. The Archbishops' Council carried out the consultation on proposals for the draft Order in accordance with section 4 of the Legislative Reform Measure. The consultation document is reproduced at **Annex A**. The consultation document was sent (by email) to all members of the General Synod, Church Commissioners and non-Commissioner committee members. It was also made available to the public via www.churchofengland.org.
5. There were 38 responses and they are listed at **Annex B**.

Proposal One

6. Proposal One related to the regularization of term lengths for Church Commissioners (both elected and nominated) and non-Commissioner committee members. Under the current provisions of the 1947 Measure, elected Commissioners serve five year terms, and nominated Commissioners may be appointed for such period as the person making the nomination determines, but members of the Assets Committee and Audit & Risk Committee may serve terms of three years only. In practice this results in Commissioners nominated with the expectation of service on those committees being offered coterminous, i.e. three year, terms as Commissioners. It is therefore proposed that the term of office for

Commissioners (both elected and nominated) and non-Commissioner committee members should be a maximum of five years. The consultation also noted the inefficiency of persons who filled a casual vacancy holding office only for the remainder of their predecessor's term. The proposal therefore allowed for such persons to serve a full five year term, enabling them to learn the role.

7. The majority of respondents supported this proposal. There were eleven respondents who said they did not agree that term lengths should be five years, although some of these appear to have confused this proposal with Proposal Two (relating to overall term limits) since they cited loss of corporate memory as a reason for not supporting it. Other respondents disagreed with the proposal either because they felt that five years was too short as a term of office (not long enough to get 'up to speed') or they felt there was a disconnect with the ex officio Commissioners who do not have fixed terms of office.
8. It was also pointed out that the consultation document referred to maximum terms of five years "in all cases", which was inaccurate since the proposal would not apply to ex officio Commissioners, and that the consultation document did not make sufficiently clear that the proposals for five year terms and an overall ten year tenure limit (Proposal Two) were two separate proposals. The Church Commissioners agreed with both of these challenges and agree that Proposals One and Two are intended to be separate, and that ex officio members would remain members for as long a period of time as they held the office which conferred ex officio membership. They did not however agree that there was any reason to think it would take members more than five years to learn the role.
9. Having considered the responses to the consultation and the Church Commissioners' further comments, the Legislative Reform Committee agreed that Proposal One should proceed to provide that the term of office for Commissioners (except those who are Commissioners ex officio) and non-Commissioner members should be a maximum of five years.

Proposal Two

10. Proposal two was for the introduction of an overall limit of ten years for both Commissioners and non-Commissioner Committee members in accordance with recognised best practice. As part of this proposal, the consultees were also asked whether persons who had served the maximum ten years and thus become ineligible for re-election or re-appointment should become eligible again after a period of five years had elapsed, and whether it should be possible to extend the term of office of a nominated person no more than one year if the Board agreed that there were compelling reasons to do so.
11. In response, the majority (c.70%) agreed with the proposal. A number of respondents expressed concern about continuity (ie corporate memory), the democratic process (i.e. denying the will of Synod to elect Commissioners) and the executive/non-executive 'power balance'. One respondent suggested that if term limits were introduced, there should be a limit of three terms rather than two.

12. A Board of 27 members each serving for up to ten years, supported by well-established committees and a dedicated staff team, should not suffer a corporate memory problem. Moreover, it is widely accepted best practice to blend continuity and experience with new perspectives. Officials are answerable to trustees and the Legislative Reform Committee noted that this proposal would appear only to tip the balance of power towards officials in the event of wholesale trustee turnover. This is not a realistic possibility given how these appointments and elections work, and good succession planning, which guards against such an eventuality, would be helped rather than hindered by this proposal. The Church Commissioners also stressed to the Committee that this proposal did not seek to diminish General Synod's ability and right to elect Church Commissioners; it merely sought to ensure that the rules by which it did so represented best practice.
13. In response to one consultee's question about the likelihood of Church Estates Commissioners (who serve at the pleasure of the Crown or the Archbishop of Canterbury and would not be affected by the proposed Order) serving for more than ten years, the Church Commissioners clarified that the expectation of ten years' maximum service would be set out during recruitment and the current First and Third Church Estates Commissioners had also indicated the intention to self-impose this.
14. Having considered the consultation responses and the Church Commissioners' further comments, the Legislative Reform Committee agreed that Proposal Two should proceed as proposed. However, I must draw attention to a further point which arose subsequently, during the drafting of the Order: although the consultation document was clear that the proposal was for a ten year service limit for Commissioners and a ten year service limit for non-Commissioner committee members, it did not address the possibility of a non-Commissioner Committee member becoming a Commissioner at a later date, and the Order needs to make this clear. People may be appointed as non-Commissioner members who are seen as potential future Commissioners, and serving as non-Commissioner members gives them the chance to demonstrate their abilities and apply to be a Commissioner in due course. Providing such a 'pipeline' to promising candidates is also part of the Commissioners' wider ambition to achieve greater diversity, and the Commissioners have clarified that it was not the intention for time served as a non-Commissioner committee member to reduce an individual's eligibility to serve subsequently as a Commissioner; so the ten year 'clock' should re-set upon their appointment as a Commissioner.
15. While providing for this eventuality produces the theoretical possibility of an individual serving twenty years in total, at odds with the overall aim of the proposal, it is highly unlikely to happen. In practice, a non-Commissioner committee member who has the potential to be a Commissioner is likely to be recognised as such within the first two or three years, and encouraged to apply to become a Commissioner should they wish to do so.
16. Therefore, the draft Order provides that Commissioners may serve for ten years and must then have a five-year break before becoming eligible again; people who are non-Commissioner committee members may only serve in that capacity for ten years, and must then have a five-year break before becoming eligible again; but someone who is a non-Commissioner committee member would be able to become a Commissioner and serve for a full ten

years in that different capacity and, while they do so, still be a member of either of these Committees.

Proposal Three

17. Proposal three was that the maximum number of lay Commissioners on the Assets Committee be increased from six to eight, making it possible for more of the nominated Commissioners to be recruited for the purposes of appointment to the Assets Committee. The purpose of this, given the small size of this Committee and the increasingly diversified nature of the Church Commissioners' portfolio, would be to enable a greater breadth and depth of experience to be added to the Committee. It is not simply about increasing the number of Committee members; rather it recognises that no member of such a committee can be expert in every aspect of the complex markets.
18. In response, the majority agreed with the proposal. Seven respondents disagreed, either stating that increasing the number of appointed members could undermine accountability or in some way 'water down' the Committee's elected membership. One respondent suggested that the proposal undervalued the contribution of the Committee's existing members and another asked why an increase in the Committee's size could not be achieved by adding more elected members.
19. The Church Commissioners reiterated that they deeply value the various experience and gifts of all members of this Committee, which has performed exceptionally well for a number of years. The proposal is about maintaining this performance in a complex and fast-changing environment through a permissive power to add additional expertise when it is required.
20. All Commissioners – elected, appointed and ex officio – are and will continue to be accountable for their work on the Board or the various committees, and the Church Commissioners as a whole will remain accountable to General Synod, to Parliament and to the Charity Commission.
21. Having considered the responses and the Church Commissioners' further remarks, the Legislative Reform Committee agreed that proposal three should proceed.

Proposal Four

22. Proposal four is that the current disqualification of salaried officials of any diocesan body be removed. Given the far higher number of clergy occupying diocesan roles than there were when the disqualification was set (the rule is unchanged since the Measure was passed in 1947), this limits the pool of available candidates and in any case appears unnecessary on current charitable best practice.
23. Again, a majority of respondents supported the proposal. However, fourteen opposed it on the grounds that paid staff being decision makers represented a conflict of interest, or that the proposal could lead to "further centralisation".
24. With the Church Commissioners, General Synod or any other similar organisation conflicts of interest always exist - relevant knowledge, representation and hands-on experience all carry the possibility of a conflict, but these can be managed. In the Church Commissioners' case, the Board must contain several bishops, deans and other clergy and it may from time to

time contain DBF chairs or DBF members, also. In various ways they are the Commissioners' direct or indirect beneficiaries and thus have actual or potential conflicts of interest from time to time. However, they are all subject to a clear policy for the registration and declaration of their interests and the management of conflicts, and this would be equally applicable to diocesan officials.

25. As they would most likely be among the Commissioners elected by the House of Clergy or House of Laity, given the specialisms of the appointed members, diocesan officials are likely to constitute a small minority in practice.
26. It is also worth noting that the Church Commissioners' relationship with diocesan bodies in relation to the distribution of funds has changed over time. The disqualification of diocesan officials made more sense in the past, when the Commissioners directly funded dioceses. But today the Commissioners funds dioceses indirectly, via the Archbishops' Council and through specific 'streams' such as Strategic Development Funding or Lower Income Communities Funding, agreed in partnership with the Archbishops' Council and others.
27. On the point about whether this proposal represents over-centralisation, it should be remembered that, while diocesan officials would become eligible to serve as Commissioners, the electing/ appointing bodies would retain the ability to regulate their number (as is already the case in respect of non-Commissioner roles where the disqualification does not exist).
28. The Commissioners did wish to make one change to the proposal, recognising an error in the consultation document. The 1947 Measure currently refers to salaried central and diocesan officials, but the intention is to remove the disqualification of salaried diocesan officials only. Employees of the National Church Institutions will remain disqualified.
29. Having considered the responses the Legislative Reform Committee agreed that proposal four, as clarified above, should proceed.

Proposal five

30. Proposal Five was for the limited relaxation of the requirement under the 1947 Measure for all lay Commissioners to be members of the Church of England. The proposal is that they should instead 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. The Church Commissioners make this proposal having encountered during recruitment campaigns high calibre potential candidates with a clear passion for the Commissioners' work and mission who could not apply because they belonged to another denomination. In certain specialized roles, the pool of suitable candidates is small; moreover, in several cases the people ruled out by the requirement in the 1947 Measure were BAME candidates. Existing legislation is therefore demonstrably impeding the Church Commissioners' efforts to improve their diversity profile and this proposal seeks to remove this impediment, subject to there continuing to be a majority of Anglicans on the Board and every Committee.
31. Again a majority of respondents (c.71%) supported this proposal. Eleven did not, of whom six gave no reason. Those who did give a reason either suggested that non-Anglicans could not have sufficient understanding of the

- needs, culture and traditions of the Church to fulfil the role of Church Commissioner or, in one submission, that it was inappropriate to entrust stewardship of its assets to someone who owes allegiance to another denomination.
32. The Commissioners in response reiterated that this proposal is only for a permissive power. They stress that where, during the rigorous recruitment process, knowledge of and commitment to the Church of England is not demonstrated, no appointment will be made. Several of the appointments in question are made by the Archbishops and, as one would expect, they insist on rigorous recruitment processes which focus heavily on candidates' church commitment as well as their professional competencies and the Commissioners stress that the recruitment processes supporting appointments by the Crown or the Board are no less attentive to this.
 33. The Commissioners also underlined the fact that the Board would after the proposed Order came into effect continue to contain a substantial majority of Anglicans, given the number of elected members. In fact the proposal represents a very limited amount of flexibility to include a minority of non-Anglicans among, in practice, the appointed lay members. They reiterated the point made in the consultation paper, that this proposal is not addressing a theoretical issue but is based on actual experience of people with great professional skill and commitment to the Church's mission being precluded from applying. Their position is that making it possible to appoint such persons – provided they satisfy all the criteria – would not diminish the Commissioners' attentiveness to the needs of the Church of England; rather it would help make them more diverse, broaden their perspective and enhance their decision-making.
 34. Some respondents, and the Legislative Reform Committee itself, debated different formulations for the type of non-Anglican that would in future be eligible to serve. People have suggested that this might be defined as persons who are communicant in a church in communion with the Church of England, or on an electoral roll, or a member of a church affiliated to Churches Together in Britain and Ireland, or a member of a church to which the Ecumenical Relations Measure applies, and there are no doubt many other formulations available for debate. Some of these definitions would exclude the black majority churches, an outcome the Commissioners were particularly opposed to. Having consulted with the Legislative Reform Committee, the staff of the Legal Office and the Council for Christian Unity they considered that the proposal should not be changed, considering that it achieves the right degree of flexibility. The Legislative Reform Committee, noting that there is no perfect formulation, considered this one acceptable, and to have the advantage of being simple to administer, so it will not create a new administrative burden. Whether a candidate is a member of the Church of England or another church, they will in every case be subject to a rigorous recruitment process which will include whether they have a genuine faith and commitment.
 35. Those who supported the proposal to relax this rule also supported the accompanying caveat, that there should be a majority of Anglicans on the Board and every Committee. One respondent suggested that there might be a specific limit (e.g. 10% or 20%) of non-Anglicans but the Commissioners explained why this would be unworkable for the smallest committee, could

cause problems with the other committees in the event that their overall size changed over time, and was unnecessary in relation to the Board whose composition meant it would realistically be unlikely to be more than 10% non-Anglicans in any case.

36. In the light of the responses to the consultation and the Commissioners' further remarks, the Legislative Reform Committee agreed that proposal five should proceed, and 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.

Proposal Six

37. Proposal six was that the 1947 Measure be amended to enable Board and Committee meetings to be conducted by electronic means, and that the current provision for the Board and Committees to conduct business by correspondence should be extended to general meetings.
38. This proposal got almost universal support. The Commissioners noted some respondents' concern that remote meetings might become the norm and reiterated that there was no such intention, and offered reassurance about the security measures in place for meetings conducted by videoconference (including password protection of papers accessed via a secure portal and direct links/ password protection to safeguard Zoom calls).
39. The 1947 Measure currently creates significant administrative burdens in an event such as Covid-19 by requiring the Board to hold informal discussions by electronic means and then confirming all its decisions using a correspondence procedure. In the case of General meetings, even this option is not available and the Legislative Reform Committee agreed that the proposal should proceed, re-worded to make clear that the expression "meetings by electronic means" means that there will be a virtual place where at least a quorum can be seen and heard (i.e. not an email exchange). Therefore it is now proposed that it should be possible to conduct meetings by electronic means whereby at least a quorum of members are present by electronic means, including by telephone conference, video conference, live webcast or live interactive streaming. It is also proposed 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 Seven

40. Proposal seven was 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.
41. All respondents agreed with this proposal and no points of interest were raised. The Legislative Reform Committee agreed that it should proceed as proposed.

The draft Order

Article 1

42. Article 1 provides for the citation, commencement and interpretation of the Order. All provisions of the Order will come into force on the day after that on which it is laid in Parliament. If the Order is approved by the General Synod at the Group of Sessions which is scheduled to take place on 27 February – 3 March 2021, it is likely that the Order will come into force by mid-March 2021.

Article 2

43. Article 2(1) makes changes to Schedule 1 of the 1947 Measure (Constitution of Commissioners), substituting a new paragraph 2 into it.
44. The new paragraph 2(1) gives effect to proposal one (five year term) for elected Commissioners. The new paragraph 2(2) gives effect to proposal one for nominated Commissioners.
45. The new paragraph 2(3) gives effect to proposal two for elected and nominated Commissioners, giving both a maximum ten-year term followed by a five-year period before they can again be elected or appointed as a Commissioner.
46. The new paragraph 2(4) gives effect to the point in proposal two that it should be possible to extend the term of nominated Commissioners by up to a year if the Board agrees that there are exceptional circumstances that justify the continuation. The new paragraph 2(5) ensures that if a term is so extended, it is with the agreement of the person who originally nominated that Commissioner.
47. Article 2(2) makes changes to Schedule 4, amending paragraph 4 (term to be served by person filling casual vacancy) so that instead of serving only the remainder of the term of the person who has left, the new Commissioner holds office for five years (if elected) or up to five years (if nominated). This gives effect to the point in proposal one that it is inefficient for persons who filled a casual vacancy to hold office only for the remainder of their predecessor's term.
48. Article 2(3) provides that article 2 applies only in the case of an election which takes place, or a nomination which is made, after the Order commences. The next election will be in late 2023. The effect is that a person who is currently serving but has served a continuous period of more than ten years will not be able to stand for election or be nominated again until the five year period is past, and a person who is currently serving but has served a continuous period of more than five but less than ten years can be re-elected or re-appointed, but their term of office will end at the ten year point.
49. Article 2 would reduce administrative burdens by regularising terms of office, thus facilitating the Church Commissioners' succession planning, creating a more efficient timetable for recruitment activity, and allowing new members more time to learn the role and develop their contribution before the relevant market is tested again. It would remove the administrative burden of running new elections and investing in new induction processes for people elected or appointed to fill a casual vacancy for a much reduced term.

Article 3

50. Article 3(1)-(3) make changes to section 6 of the 1947 Measure.
51. Article 3(1) replaces section 6(1)(a) of the 1947 Measure, giving effect to proposal one (five year term) for elected and appointed members of the Assets Committee. It also gives effect to proposal three, increasing the maximum number of lay Commissioners to 8.
52. Article 3(2) replaces section 6(1)(b) of the 1947 Measure, giving effect to proposal one for members of the Assets and Risk Committee.
53. Article 3(3) inserts new provisions into section 6:
 - a) the new section (1A) gives effect to proposal two for appointed members of the Assets Committee (which is all of them, except the First Church Estates Commissioner) and for members of the Audit and Risk Committee, giving them a maximum ten-year term followed by a five-year period before they can again be appointed as a member of either Committee;
 - b) the new section (1B) gives effect, for those members who were last appointed by the Board, to the point in proposal two that it should be possible to extend the term of members of the Committee by up to a year if the Board agrees that there are exceptional circumstances that justify the continuation;
 - c) the new section (1C) does the same for members last appointed by the Archbishop of Canterbury, for whom the approval of the Archbishop to the extension is required;
 - d) the new section (1D) makes the provision explained in paragraphs 14 to 16 above, namely that someone who has been a non-Commissioner committee member would be able to become a Commissioner and serve for a full ten years in that different capacity and, while they do so, still be a member of either of these Committees.
54. Article 3(4) inserts a new provision into Schedule 4 (as amended by Article 2(2)), (term to be served by person filling casual vacancy) so that instead of serving only the remainder of the term of the person who has left, the new committee member holds office for up to five years. This gives effect to the point in proposal one that it is inefficient for persons who filled a casual vacancy to hold office only for the remainder of their predecessor's term.
55. Article 3(5) provides that article 3 applies only in the case of an appointment which is made, after the Order commences. The effect is that a person who is currently serving but has served a continuous period of more than ten years will not be able to be re-appointed until the five year period is past, and a person who is currently serving but has served a continuous period of more than five but less than ten years can be re-appointed, but their term of office will end at the ten year point.
56. Article 3 would reduce administrative burdens by enhancing the Board and Committees' decision-making. It would do so by limiting overall terms of office in accordance with recognised best practice, thus blending experience with fresh perspective, and in the specific case of the Assets Committee, it would

enable the appointment of additional specialist members to supplement existing trustee- and staff-level expertise as required by the prevailing economic conditions. In certain circumstances the ability to extend by up to one year a Commissioner's term would allow the Church Commissioners to have in place particularly relevant expertise, e.g. for the conclusion of a time-critical project.

Article 4

57. Article 4 amends paragraph 4 of Schedule 1 of the 1947 Measure. It gives effect to proposal four, removing the disqualification of salaried members of a diocesan body. Article 4 would reduce administrative burdens by removing a disqualification which is no longer necessary or justified and thus widening the pool of qualified people who may be appointed or elected.

Article 5

58. Article 5 gives effect to proposal five. Article 5(1) substitutes paragraph 6 of Schedule 1 with a new provision requiring Commissioners to declare their membership of the Church of England of a Church which subscribes to the doctrine of the Holy Trinity, and their support for the charitable objects of the Commissioners. Article 5(2) inserts a new provision into section 7 of the 1947 Measure (procedure) requiring a majority of the members of the Board, and of each committee, to be members of the Church of England.

59. Article 5 would reduce administrative burdens by helping improve the Board's diversity profile and enhancing its decision making. It would do so by widening the pool of qualified people available for appointment, in particular those from ethnic minorities.

Article 6

60. Article 6 gives effect to proposal 6.

61. Article 6(1) inserts a new provision into schedule 4 of the 1947 Measure, enabling Board and Committee meetings to be conducted by electronic means. It is modelled on the provisions which have been proposed for the special standing orders to be made under section 1 of the General Synod (Remote Meetings) (Temporary Standing Orders) Measure 2020. Article 6(3) inserts a new provision into section 18 of the 1947 Measure (Interpretation) so that references in the Measure to a meeting of the Commissioners, the Board or a committee, including a reference to the place at which such a meeting is held or a reference to being present at a meeting, is interpreted in accordance with the new provision.

62. Article 6(2) amends paragraph 5A(1) of Schedule 4 so that the current provision for the Board and Committees to conduct business by correspondence is extended to general meetings.

63. Article 6(1) would completely remove administrative burdens that have been particularly onerous during Covid-19, as meetings have been held by electronic means but cannot legally make decisions, meaning agreements reached must be confirmed subsequently using the correspondence procedure. Article 6(2) would remove the administrative burden that has

come to light during COVID-19, as the correspondence procedure cannot be used in relation to general meetings of the Commissioners.

Article 7

64. Article 7 gives effect to proposal seven. It inserts a new section 13A into the Measure to expand the charitable objects of the Commissioners to including providing the National Church Institutions with access to the archiving and document storage facilities at Lambeth Palace Library. Article 7 would remove a significant administrative burden by enabling the Commissioners to provide the National Church Institutions access to the archiving and storage facilities at Lambeth Palace Library, thus avoiding the need to devote resources to alternative facilities.

Preconditions

65. The Council is satisfied that the conditions in section 2 of the Legislative Reform Measure are (so far as relevant) satisfied for the following reasons.
66. The policy objective of each of the proposals contained in the consultation (as modified) could not be satisfactorily secured by non-legislative means because they relate to matters which are either currently the subject of statutory provision in the 2018 Measure which is incompatible with the proposals, or which require the making of new provision in the 2018 Measure to give effect to them.
67. Each of the substantive provisions of the draft Order is directly related to the policy objective to which it gives effect and goes no further than is necessary to give effect to it. Accordingly the Council considers that the effect of each of the provisions is proportionate to the policy objective to be secured by it.
68. The changes are procedural, and the Council does not consider that any person is adversely affected by them. The Council accordingly considers that each provision of the draft Order satisfies the requirement that it strike a fair balance between the public interest, the interest of the Church of England as a whole and the interests of any person who is adversely affected by it.
69. The provisions of the draft Order do not concern the removal of any protection, do not affect financial benefits and do not prevent the exercise of any right or freedom.
70. As the provisions of the draft Order are concerned only with procedural matters, and do not affect the relationship of the Church with the Sovereign or the state, the Council does not consider that they are of constitutional significance.

Simon Butler

Chair of the Legislative Reform Committee

on behalf of the Archbishops' Council

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 Bishops & 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^[21] 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).

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

18 June 2020

^[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.

Annex B**Full list of respondents:**

Name	Diocese	Role
Isabel Adcock	Chelmsford	General Synod member
Sir Tony Baldry	Oxford	General Synod member
Paul Boyd-Lee	Salisbury	General Synod member
Peter Bruinvels	Guildford	Church Commissioner and General Synod Member
Simon Cawdell	Hereford	General Synod member
Nikolaj Christensen		
Philip Derbyshire		
Ian Dobbie	Rochester	General Synod member
Sonya Doragh	Liverpool	General Synod member
Andrew Dotchin	St Eds & Ips	General Synod member
John Dunnett	Chelmsford	General Synod member
Morag Ellis	Dean of the Arches	Church Commissioner and General Synod Member
Tim Fleming	St Albans	General Synod member
David Froude	Bristol	General Synod member
Chris Gill	Lichfield	General Synod member
Caroline Herbert	Norwich	General Synod member
Joyce Hill	Leeds	General Synod member
Beverley Hollins	Peterborough	General Synod member
Carl Hughes	Southwark	General Synod member
David Ison	London	General Synod member
Joyce Jones	Leeds	General Synod member
Rosemary Lyon	Blackburn	General Synod member
Ian MacDowell	Chichester	General Synod member
Annika Mathews		General Synod member
Luke Miller	London	General Synod member
Nick Moir	Ely	General Synod member
David Oglethorpe		
Gavin Oldham	Oxford	Church Commissioner and General Synod Member
Val Plumb	Oxford	General Synod member
Eve Poole		Church Commissioner
Betty Renshaw	Chester	Church Commissioner and General Synod Member
Simon Rowbory		
John Salter	Guildford	General Synod member
Clive Scowen	London	General Synod member
Bishop Alan Smith	St Albans	General Synod member
Geoffrey Tattersall	Manchester	General Synod member
Stephen Trott	Peterborough	General Synod member
Bishop David Walker	Manchester	Church Commissioner and General Synod Member