

GENERAL SYNOD
DRAFT CATHEDRALS MEASURE
REPORT OF THE STEERING COMMITTEE OF MEMBERS IN CHARGE

- Chair:** Canon Robert Hammond (*Chelmsford*)
- Members:** Dr Eve Poole (*ex officio*) (vice-chair)
- The Rt Revd Vivienne Faull (*Bishop of Bristol*)
- The Very Revd Andrew Nunn (*Dean of Southwark*) (Revision Committee Chair)
- The Ven Joanne Kelly-Moore (*Canterbury*)
- The Revd Canon Paul Cartwright (*Leeds*)
- The Rt Worshipful Canon Peter Collier QC (*ex officio*)
- Mrs Julie Dziegiel (*Oxford*)

Previous stages

1. The draft Cathedrals Measure (GS 2136) received first consideration at the July 2019 group of sessions.
2. At the February 2020 group of sessions the Synod took note of the report of the Revision Committee (GS 2136Y). The Synod completed the Revision Stage for the Measure which then stood committed to the Steering Committee in respect of its final drafting.

The Steering Committee's consideration of the draft Measure in respect of its Final Drafting

3. The Steering Committee has met twice since the February 2020 group of sessions.
4. The Committee now returns the draft Measure (GS 2136B) for Final Drafting and Final Approval.
5. Under Standing Order 61, on the Final Drafting Stage the Steering Committee may propose 'drafting amendments' or 'special amendments' or both. These two categories of amendments are defined in SO 61(6) as follows:

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

"special amendment" means an amendment, other than a drafting amendment, considered necessary or desirable by the Steering Committee and which does not reopen an issue which has been decided by the Synod or any Revision Committee in relation to the Measure.
6. The Steering Committee proposes the Special Amendments to the Measure that are set out in Part A of this report, together with an explanation for them.
7. The Steering Committee has also agreed the drafting amendments to the Measure shown in bold type in GS 2136B. The drafting amendments are explained in Part B of this report.
8. The Charity Commission has been consulted on the proposed special amendments and drafting amendments and any points raised have been addressed.

Overview

The Steering Committee has considered a number of special and drafting amendments that need to be made to the draft Measure following its completion of the Revision stage. The special amendments are mostly technical in nature and the special and drafting amendments have been agreed with the Charity Commission.

In particular, the delay in returning the Measure to Synod has enabled consideration to be given to repeals and to resolving discrete anomalies, which this Report sets out in detail. Broadly, they concern:

- (i) ensuring that the changes required by the draft Measure do not inadvertently incur pension liabilities for those cathedrals which do not use church pension funds;
- (ii) providing for the Church Commissioners to produce guidance for bishops on conducting a visitation; and
- (iii) discrete provisions for Ripon, Newcastle and Southwark cathedrals.

The Steering Committee also proposes an amendment to ensure that the delay in the draft Measure being returned to Synod does not result in cathedrals having a shorter window in which to adopt new Constitution and Statutes and register with the Charity Commission. The Steering Committee has secured an extension to the long-stop date for registration with the Charity Commission which should give cathedrals more time, not less, which is important given the financial and other impact of Covid-19 on cathedrals.

Part A: Special Amendments

1. Special Amendments – Existing body corporate of the cathedral to continue as the Chapter

- 1.1 Special amendment 1 to clause 2 provides that, instead of the existing corporate body of the cathedral ceasing to exist, so that all its employees and assets need to be transferred to a new corporate entity (i.e. the Chapter), the existing corporate body will continue to exist but two of its three constituent parts (i.e. the Council and the College of Canons) will no longer be part of that body corporate. The continuing corporate body will only comprise the Chapter.
- 1.2 This special amendment is considered necessary because the draft Measure currently provides for the existing body corporate of a cathedral to cease to exist and all its assets, liabilities etc to be transferred to the Chapter, as the new corporate entity. Under secular pensions law¹, this process would normally trigger a pension scheme debt liability, known as a “section 75 debt”, that can be considerable. Although the Church of England’s Clergy and Church Workers’ Pension Schemes both include specific provisions which enable steps to be taken in this situation to avoid any section 75 debt being triggered, it has been brought to the Committee’s attention that some cathedrals do not use the Church Workers Pension Scheme. Therefore, the proposed special amendments are necessary to avoid incurring a section 75 debt for those cathedrals which do not use the Church Workers Pension Scheme.
- 1.3 Specialist pensions advice was sought by the Church of England Pension Board which confirmed that the proposed alterations to the draft Measure make it clear that the current body corporate will continue in existence. As the current body corporate will continue to employ the current active members of the various pension schemes, no

¹ S.75 Pensions Act 1995

debts will arise under section 75 in relation to the operation of the draft Measure if these special amendments are approved by Synod.

- 1.4 A helpful consequence of this change is that it will simplify the implementation process of the draft Measure for cathedrals, as there will be no need to transfer any employees (i.e. no TUPE² process), contracts, properties etc from the existing body corporate to a new body corporate.
- 1.5 A number of consequential special amendments are therefore needed to reflect the continuation of the existing body corporate:
 - 1.5.1 special amendment 2 to clause 2;
 - 1.5.2 special amendments 3 and 21 leave out Schedule 2, which principally relates to transfers from the existing to the new body corporate;
 - 1.5.3 special amendments 4 to clause 3 and 22 to Schedule 3 clarify that neither the College of Canons nor its members form part of the body corporate of the cathedral.
 - 1.5.4 special amendments 6 – 10 amend clause 20 to reflect the fact that the legal title to property etc will not be transferred by the draft Measure;
 - 1.5.5 special amendment 20 provides for the small number of provisions from Schedule 2 which are still necessary to be included in the draft Measure, suitably revised, at new paragraph 8 of Schedule 1.

Special Amendments 1 - 4, 6 – 10 and 20 - 22

1. Clause 2, page 1, line 13, leave out subsection (2) and insert—
 - (2) For each cathedral, the body corporate established by virtue of section 9(1)(a) of the Cathedrals Measure 1999 is to continue to exist and is to consist only of the Chapter.”
2. Clause 2, page 1, line 14, leave out “In consequence of that,”.
3. Clause 2, page 1, line 23, leave out subsection (6).
4. Clause 3, page 1, line 28, after “Canons” insert “(but, by virtue of section 2(2), neither that body nor its members form part of the body corporate for the cathedral)”.
6. Clause 20, page 12, line 23, leave out subsection (1).
7. Clause 20, page 12, line 27, before “Neither” insert “In the case of each cathedral,”.
8. Clause 20, page 12, line 33, leave out subsections (4) and (5) and insert—
 - (4) If the Chapter of a cathedral ceases to exist, the trusteeship of the cathedral church building and of any outstanding inventory object is transferred to the diocesan board of finance; it cannot otherwise be transferred from the Chapter.
 - (5) If the trusteeship referred to in subsection (4) has already been transferred under that subsection, the diocesan board of finance or any subsequent transferee may not transfer the trusteeship without having obtained the consent of the bishop of the diocese.”
9. Clause 20, page 12, line 40, leave out from “trust” to end of line 2 on page 13 and insert “the trusts on which they were held immediately before the transfer took place (and for no other purpose)”.

² Transfer of Undertakings (Protection of Employment) Regulations.

10. Clause **20**, page **13**, line **6**, leave out “under section 24” and insert “for the purposes of section 24(1)(a)”.
20. Schedule **1**, page **34**, line **19**, at end insert—
“Transfer of Council’s trusteeships etc.
 - 8 (1) The trusts of any charity the property of which was, immediately before the commencement of section 2(3), vested in or under the management or control of the Council for a cathedral, whether with or without other persons, are to have effect with the replacement of the Council by the Chapter in its capacity as the body corporate for the cathedral.
 - (2) The trusts of any charity the property of which was, immediately before the commencement of section 2(3), vested in or under the management or control of one or more members of the Council for a cathedral in their capacity as such, whether with or without other persons, are to have effect with the replacement of each member concerned by a member of the Chapter whom it has appointed for the purpose.
 - (3) Any power to make an appointment or to give consent which was conferred on the Council for a cathedral by an instrument or other document made before the commencement of section 2(3) is transferred to the Chapter for it to exercise in its capacity as the body corporate for the cathedral.
 - (4) Any power to make an appointment or to give consent which was conferred on the Chair of the Council for a cathedral in his or her capacity as such by an instrument or other document made before the commencement of section 2(3) is transferred to the Dean as Chair of the Chapter for him or her to exercise in that capacity.”
21. Leave out Schedule **2**.
22. Schedule **3**, page **36**, line **15**, after “Canons” insert “(but, by virtue of section 2(2), neither that body nor its members form part of the body corporate for the cathedral)”.

2. Special Amendment – Visitation

The Charity Commission and the Church Commissioners have now agreed the Heads of Terms of a Memorandum of Understanding (**MoU**) which will provide how their respective regulatory powers will be exercised in relation to cathedrals. Special amendment 5 will enable the Church Commissioners to agree how the bishop will exercise his or her Visitation powers in discussion with the Charity Commission, through statutory guidance to which the bishop would be required to have due regard. This is necessary as the MoU will be entered into by the Church Commissioners and not the bishops.

Special Amendment 5

5. Clause **10**, page **7**, line **5**, at end insert—
“(5A) The bishop must, in the exercise of functions as Visitor, have due regard to any guidance issued by the Church Commissioners in relation to the Visitor’s functions.”

3. Special Amendment – Endowment

Special amendment 11 provides that the power of investment cannot be used to invest endowment monies (capital) in improving non-endowment properties.

Special Amendment 11

11. Clause **24**, page **14**, line **43**, at end insert—

“(2A) The Chapter may not exercise the power under subsection (1)(d) to use money forming part of the endowment for the improvement or development of property which does not itself form part of the endowment.”

4. Special Amendment – Longstop date for registration

- 4.1 The Steering Committee was concerned that the delay to Final Approval and the Parliamentary stages of the legislative process due to COVID-19, as well as the financial crisis resulting from COVID-19, would make it difficult for all cathedrals to be ready to register with the Charity Commission by 31 March 2023. Therefore, it has been agreed with the Charity Commission that the long-stop date should be extended.
- 4.2 The Steering Committee considered two options for extending the longstop date. The first was to move the longstop date back by 12 months (i.e. from 31 March 2023 to 31 March 2024). The second was to provide for the longstop date to be three years after the date on which the Cathedrals Measure receives Royal Assent. The Steering Committee considered that the second option was preferable in case there should be any further unexpected delay to Royal Assent due to the virus. This approach is reflected in special amendment 13.

Special Amendment 13

13. Clause **46**, page **27**, line **9**, leave out “31 March 2023” and insert “three years after the date on which this Measure is passed³”.

5. Special Amendments – Ripon Cathedral

- 5.1 For historical reasons, Ripon was not a parish church cathedral for the purposes of the Cathedrals Measure 1963 (the “**1963 Measure**”), but it is a cathedral which has a parish. As a result, Ripon is the only cathedral which has both a Chapter and a PCC (which is itself a registered charity). This historical anomaly is administratively onerous and costly and raises complex governance issues. Therefore, special amendments 12 and 16 are proposed to put Ripon in the same legal position as parish church cathedrals for these purposes so that Ripon’s Chapter also operates as the parish’s PCC.
- 5.2 These special amendments are supported by the Chapter of Ripon Cathedral and by the PCC of the relevant parish.
- 5.3 Special amendment 19 provides that the special amendments relating to Ripon Cathedral will come into force on the date Ripon adopts its new constitution and statutes.

Special Amendments 12, 16 and 19

12. Clause **45**, page **26**, line **29**, at end insert—

“(6) The Cathedral Church of St Peter and St Wilfrid, commonly known as Ripon Cathedral and one of the cathedrals of the diocese of Leeds, does not come within subsection (2) but is nonetheless to be treated for the purposes of this Measure as being a parish church.”

³ section 5 of the Interpretation Measure 1925 provides that a reference to “being passed” means receiving Royal Assent.

16. After Clause **48**, insert the following New Clause—

“48A Special provision for Ripon Cathedral

- (1) This section applies to the Cathedral Church of St Peter and St Wilfrid, commonly known as Ripon Cathedral and one of the cathedrals of the diocese of Leeds.
- (2) The functions of the PCC of the parish for which the Cathedral is the parish church are transferred to the Chapter of the Cathedral.
- (3) On the transfer under subsection (2), all relevant property of the PCC is transferred to the Chapter of the Cathedral without any instrument or other formality being required; and for this purpose, the “relevant property” of the PCC is—
 - (a) the property held by the PCC,
 - (b) the property vested in the diocesan authority under section 6(2) of the Parochial Church Councils (Powers) Measure 1956 or vested in that authority as custodian trustee on behalf of the PCC, or
 - (c) any other property held on trust for the PCC.
- (4) A bequest or other gift which is expressed as a gift to the PCC, and which takes effect on or after the day on which this section comes into force, takes effect as a gift to the Chapter of the Cathedral.
- (5) “PCC” means parochial church council.”

19. Clause **52**, page **29**, line **24**, at end insert—

“(3A) Accordingly, sections 45(6) and 48A come into force on the day on which the provisions referred to in subsection (3) come into force in accordance with that subsection in relation to the Cathedral Church of St Peter and St Wilfrid, commonly known as Ripon Cathedral and one of the cathedrals of the diocese of Leeds.”

6. Special Amendments – Newcastle Chapter Endowment Fund

6.1 Special amendment 23 repeals the reference to the Newcastle Cathedral Endowment Fund in section 40 of the 1963 Measure. This is because it is one of the funds listed in Schedule 3 which will be transferred from the Commissioners to a cathedral by the draft Measure.

6.2 In addition, due to the changes agreed in order to resolve the pension issue, there will no longer be a transfer from the existing cathedral corporation to a new Chapter corporate entity. This means that there is no reason to delay the transfer of the funds listed in Schedule 3 to the date on which the new constitution and statutes come into force for that cathedral. Therefore, special amendments 14, 15, 17 and 18 provide for section 40 of the 1963 Measure to be repealed on Royal Assent and for clause 47, which provides for the transfer of all the funds in Schedule 3, to come into force on Royal Assent too.

Special Amendments 14, 15, 17, 18, 23

14. Clause **47**, page **27**, line **34**, leave out “transfer date” and insert “date on which this section comes into force”.
15. Clause **47**, page **27**, line **36**, leave out subsection (2).
17. Clause **52**, page **29**, line **8**, leave out “and 48” and insert “to 48”.

18. Clause **52**, page **29**, line **13**, at end insert—
“(h) paragraphs 6, 6A and 8(1), (2) and (4) of Schedule 5 (amendments to Cathedrals Measure 1963) and section 49(1) so far as it gives effect to those paragraphs.”
23. Schedule **5**, page **38**, line **22**, at end insert—
“6A Section 40 (Newcastle Chapter Endowment Fund) is repealed.”

7. Special Amendments – Southwark Cathedral

- 7.1 It appears that the legal title to the cathedral was not vested in the Chapter under the process provided for in section 44 of the 1963 Measure. Therefore, it was still vested in the Rectory Trustees when the trusts of the Rectory Trustees charity were brought to an end recently. However, as the Rectory Trustees were unaware that they still held the legal title to the cathedral, there was no deed of transfer of the cathedral itself to the Chapter. Special amendment 24 resolves the anomaly by declaring that the legal title is vested in the Chapter (which is the beneficial owner) and therefore ensures that the transfer anticipated by the 1963 Measure is finally given effect.
- 7.2 Special amendment 18 provides for that declaration to come into force on Royal Assent day so that the anomaly is resolved without further delay.
- 7.3 It is also noted that section 5 of the Southwark Cathedral Measure 1937, which is mentioned in section 44 of the 1963 Measure, sets out specific consents required when certain powers are exercised in relation to the Chapter House (and adjoining land). Therefore, the draft Measure needs to amend the 1963 Measure to update the reference to consents etc required to the relevant provisions in the draft Measure.
- 7.4 These special amendments are supported by the Chapter of Southwark Cathedral.

Special Amendments 18, 24

18. Clause **52**, page **29**, line **13**, at end insert—
“(h) paragraphs 6, 6A and 8(1), (2) and (4) of Schedule 5 (amendments to Cathedrals Measure 1963) and section 49(1) so far as it gives effect to those paragraphs.”
24. Schedule **5**, page **38**, line **31**, leave out paragraph 8 and insert—
“8 (1) Section 44 (Southwark) is amended as set out in sub-paragraphs (2) and (3).
(2) Subsection (1) ceases to have effect.
(3) In subsection (2), for “section twenty of this Measure on the capitular body of the said cathedral church” substitute “sections 21 and 22 of the Cathedrals Measure 202- (acquisition and disposal of land) on the Chapter of the cathedral church of Southwark”.
(4) In consequence of the repeal made by sub-paragraph (2), it is hereby declared that the cathedral church building of the diocese of Southwark is vested in the Chapter of the cathedral.”

Part B: Explanation of the Drafting Amendments

1. A drafting amendment has been made to include wording in clause 10(5) to clarify when the requirement imposed by this clause applies.

Clause **10**, page **7**, line **3**, after “must” insert “, in exercising that function,”.

2. A number of drafting amendments have been made to clauses 15, 16, 17 and 18 to clarify that the Chapter may set out the functions of other committees and sub-committees and advisory bodies that it may set up from time to time, in Terms of Reference. Such Terms of Reference will not only need to reflect the provisions in the draft Measure and the cathedral’s Constitution and Statutes in relation to the administration of that committee, sub-committee or advisory body, but will also be able to include other relevant administrative matters. This will enable Chapters to be more flexible as Terms of Reference can be amended as and when required by the Chapter, rather than them being included in the Statutes which require a formal and more time-consuming statutory process to amend them.

Clause **15**, page **10**, line **22**, at end insert—

“(8) The Chapter may set terms of reference for the Committee; and the terms of reference may include provision which supplements the provision made by the constitution or statutes.”

Clause **16**, page **11**, line **14**, at end insert—

“(11) The terms of reference set by the Chapter for a Finance Committee or (if there is one) an Audit and Risk Committee may include provision which supplements the provision made by the constitution or statutes.”

Clause **17**, page **11**, line **30**, leave out “, functions”.

Clause **17**, page **11**, line **32**, at end insert—

“(6) The Chapter must set terms of reference for each committee or sub-committee established by virtue of subsection (1); and the terms of reference—
 (a) must include provision as to the functions of the committee or sub-committee;
 (b) may include provision which supplements the provision made by the constitution or statutes.”

Clause **18**, page **11**, line **40**, leave out “Each Chapter may establish” and insert “The constitution may include provision for the establishment of”.

Clause **18**, page **12**, line **3**, at end insert—

“(3A) The Chapter may set terms of reference for a body established under this section; and the terms of reference may include provision which supplements the provision made by the constitution or statutes.”

Clause **18**, page **12**, line **6**, leave out “(3)” and insert “(3A)”.

3. As the corporate body of the cathedral will only comprise the Chapter, drafting amendments have been made to clauses 20 and 30 to replace a reference to the cathedral with a reference to the Chapter, which is the correct reference in the context.

Clause **20**, page **12**, line **29**, leave out “cathedral” and insert “Chapter”.

Clause **30**, page **17**, line **28**, leave out “all cathedrals” and insert “the Chapter of every cathedral”.

4. Two drafting amendments have been made to include wording in clause 42 to clarify that the bishop must give notice in writing.

Clause **42**, page **23**, line **32**, after “must” insert “, by notice in writing,”.

Clause **42**, page **24**, line **6**, after “must” insert “, by notice in writing,”.

5. A drafting amendment has been made to clarify that clause 42(4) applies to suspensions as well as to disqualifications.

Clause **42**, page **24**, line **17**, after “disqualification” insert “or suspension”.

6. The drafting in clause 45(5) has been amended to clarify which church is being referred to, as the church in question is now known as Leeds Minster.

Clause **45**, page **26**, line **24**, leave out “the parish church of Saint Peter, Leeds” and insert “the Minister and Parish Church of Saint Peter-at-Leeds (commonly known as Leeds Minster)”.

7. The following drafting amendments have been made to paragraph 2(7) of Schedule 1 so that a reference to an actual communicant is defined in the same way as in the Church Representation Rules. In addition, in light of the drafting amendments made to paragraph 2(7) of Schedule 1, the Steering Committee considered that it will make the requirements easier to follow if the eligibility requirement in paragraph 1(8) of Schedule 1 that refers to paragraph 2(7) is moved to paragraph 2(8) and so the drafting amendments below have been made to that effect.

Schedule **1**, page **31**, line **26**, leave out sub-paragraph (8).

Schedule **1**, page **32**, line **21**, leave out “member”.

Schedule **1**, page **32**, line **22**, leave out from “of” to end of line 28.

Schedule **1**, page **32**, line **23**, at end insert—

“(7A) A majority of the non-executive members must be actual communicants who come within Rule 83(2)(a) of the Church Representation Rules (recipients of communion according to Church of England or Church in communion with it).”

8. A drafting amendment has been made to paragraph 6(4) of Schedule 1 to make it clear that a meeting of the Chapter can still be held if either or both of the chief officers are not present, for example if one or both is unwell, or if one is absent (e.g. for a bereavement).

Schedule **1**, page **34**, line **6**, leave out from “, except” to end of line **8** and insert “unless the Chapter considers that there are circumstances which justify excluding or excusing either or both of the chief officers from the whole or part of the meeting; and a chief officer, when attending the whole or part of a meeting of the Chapter,”.

9. A drafting amendment has been made to paragraph 2 of Schedule 5 to make it clear that the reference to the “Chapter of the cathedral” in section 13 of the Ecclesiastical Commissioners Act 1841 is a reference to the Chapter in its capacity as the body corporate for the cathedral.

Schedule **5**, page **38**, line **7**, after “the cathedral” insert “in its capacity as the body corporate for the cathedral”.

10. The following drafting amendments have been made to certain provisions which relate to repeals of and amendments to other legislation to ensure that, where necessary, provisions still apply to Christ Church, Oxford as appropriate:

Clause 51, page 28, line 37, after “Oxford” insert “, except in so far as Schedule 5 amends a provision which applies to that cathedral church”.

Schedule 5, page 39, line 14, leave out “chapter” and insert “canons”.

Schedule 5, page 40, line 11, leave out “chapter or the cathedral chapter” and insert “canons”.

11. The following drafting amendments have been made to certain provisions to update statutory references to those in the draft Measure.

Schedule 5, page 38, line 28, at end insert—

“() In that section, in subsection (6), after “the passing of the Cathedrals Measure 1999” insert “, or the passing of the Cathedrals Measure 202-”.

Schedule 5, page 39, line 7, at end insert—

“() In that subsection, for “sections 21 and 23 of the Cathedrals Measure 1963” substitute “section 24 of the Cathedrals Measure 202-”.

Schedule 5, page 39, line 34, leave out “within the meaning” and insert “; and the reference to a parish church cathedral is to be read with section 40(2)”.

Schedule 5, page 40, line 38, leave out “the definition of “the 1533 Act” and”.

Schedule 5, page 41, line 4, leave out “the words from “under section 5” to the end” and insert ““under section 5 of the 1999 Measure””.

Schedule 5, page 41, line 8, at end insert—

“() In sub-paragraph (4), for “under section 5 of the 1999 Measure” substitute “in accordance with section 3 of the Cathedrals Measure 202-”.

12. A new paragraph 20 for Schedule 5 amends section 41 of the Administration of Justice Act 1982 (transfer of funds to Official Custodian for Charities or corporate body of cathedral etc.) to provide that this provision will cease to apply to a cathedral once the charity provisions in the draft Measure come into force in relation to that cathedral.

Schedule 5, page 39, line 35, at end insert—

“Administration of Justice Act 1982

19A In section 41 of the Administration of Justice Act 1982 (transfer of funds to Official Custodian for Charities or corporate body of cathedral etc.), after subsection (3) insert—

“(4) The preceding provisions of this section cease to apply to the case of funds held in trust for a cathedral on the commencement in relation to that cathedral of the charity provisions within the meaning of section 52(6) of the Cathedrals Measure 202-.”

On behalf of the Steering Committee

Canon Robert Hammond, Chair

October 2020