

## GENERAL SYNOD

### DRAFT LEGISLATIVE REFORM (CHURCH OF ENGLAND PENSIONS) ORDER 2021

#### EXPLANATORY NOTES

The draft Legislative Reform (Church of England Pensions) Order 2021 makes amendments to provide for the reconstitution of the Church of England Pensions Board and to limit the term of office for which members of the Board may serve, and makes transitional provision for the new arrangements. It removes the requirement for the Board's auditor to report to the General Synod, and replaces the requirement for the Board to present a report to Synod on its funds and trusts with a requirement to lay a copy of its annual report. It also removes the requirement for each diocese to have a widows and dependants committee.

#### Legislative Reform Orders

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.

#### Consultation

2. On 1 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 of England Pensions Measure 2018 ("the 2018 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. 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 was sent (by email) to all members of the General Synod, and also to over 40,000 members of the pension schemes and over 700 employers participating in the schemes. It was also made available to the general public at the official website of the Church of England ([www.churchofengland.org](http://www.churchofengland.org)).

4. 272 responses were received during the consultation period. These responses can be broken down as follows:

General Synod

- House of Bishops 6
- House of Clergy 11
- House of Laity 13

Dioceses 12

Pension Scheme Members 227

Others (including existing trustees of the Pensions Board) 3

**Total 272**

There is some crossover which has not been recorded in the figures, in that the members of the House of Bishops and House of Clergy are also members of the Clergy Pension Scheme. For the purposes of the table, where an individual is a member of the General Synod, this was recorded above all other categories. Two submissions were made out of time, including one from a Synod member, and were not taken into account.

## **Background**

5. The Church of England Pensions Board (“the Board”) provides retirement services to those who work or minister for the Church of England. This includes the administration of pension provisions to over 40,000 individuals working in more than 700 Church of England related employers, and the provision of retirement housing to over 2,500 retired clergy households.
6. The 2018 Measure sets out, amongst other things, the way that the Board is governed. It was a consolidation measure which drew together all the legislation which has affected the Board since its establishment in 1926.
7. The 2018 Measure also sets out the charitable objectives of the Board and includes the provisions surrounding the Clergy Funded Pension Scheme. Those matters are not affected by the draft Order.
8. The objective of these changes is to update the governance of the Pensions Board to bring it into line with accepted standards of good governance and to remove legislative burdens which generate unnecessary complexity or cost.
9. The Pension Schemes Act 2017 introduced a definition of “master trusts” into pensions legislation. These schemes are required to be authorised by the Pensions Regulator and are subject to supervision. The trustees of a “master trust” are required to be fit and proper persons who meet “the standard of honesty, integrity and knowledge appropriate to their role.” Whilst the Board does not currently operate any master trust schemes, the proposals introduce measures which ensure that it would be compliant with the requirements, should it need to be so in the future.

## Proposal One – Structure and Constitution of the Board

10. **The Board should be reduced to twelve trustees** from its current twenty members.
11. Part 1 of Schedule 1 to the 2018 Measure sets out the membership of the Board, which comprises 20 trustees drawn from a variety of constituencies. Eight of the trustees are appointments by the Archbishops of Canterbury and York or by the Church Commissioners, with the remaining twelve trustees elected by members of the Houses of Bishops, Clergy and Laity of the General Synod, and by members and employers of the pension schemes for lay workers.
12. A large Board brings complexity and expense to an organisation. By comparison, in the charity sector the average size of a trustee Board is 5 to 9 trustees, with larger charities often having between six and ten trustees<sup>1</sup>; only 8% of boards of pension trustees have more than twelve members.<sup>2</sup>
13. **The members of the Board should consist of –**
  - **Chair, appointed by the Archbishops of Canterbury and York, with the approval of the General Synod** (no proposed change)
  - **Two member-nominated trustees<sup>3</sup> (MNTs) elected by the members of the Church of England Funded Pension Scheme and the Church of England Pensions Scheme, with at least one of them being a member of the House of Clergy** (currently four clergy members plus one member in episcopal orders, elected by the General Synod’s House of Clergy and House of Bishops respectively)
  - **One MNT elected by the members of the Church Workers Pensions Fund** (currently two members)
  - **One MNT elected by the members of the Church Administrators Pensions Fund** (no change)
  - **One person elected by the employers in the Church Administrators Pension Fund and/or the Church Workers Pension Fund** (currently two members)
  - **One person appointed by the Archbishops of Canterbury and York after consultation with the Dioceses and the Church Commissioners** (this is a proxy for the “clergy employers”, currently there are two people appointed)
  - **Five people appointed by the Archbishops of Canterbury and York** for their professional expertise eg, housing, corporate finance, fund management, which may not be filled through other routes (currently there is one appointment by the Archbishops, four following consultation with the Chair of the Appointments Committee and the Chair of the House of Laity, and two elected members of the House of Laity). One of the appointments is

---

<sup>1</sup> *Taken on Trust – The awareness and effectiveness of charity trustees in England and Wales, 2017*

<sup>2</sup> PwC Trustee Pay Survey 2018

<sup>3</sup> S. 241(1) Pensions Act 2004

after consultation with the Chair of the House of Laity and the Chair of the Church of England Appointments Committee; and another is after consultation with the Prolocutors of the Provinces of Canterbury and York and the Chair of the Church of England Appointments Committee.

14. Pensions legislation requires at least one-third of trustees of an occupational trust scheme to be MNTs. Although Church bodies are exempt from this provision as they are governed by Church legislation<sup>4</sup>, the 2018 Measure is consistent with it as 8 of 20 trustees are MNTs, and this proposal would also be consistent, as four of the twelve trustees would be MNTs.
15. The proposal would remove the distinction of whether the clergy scheme MNT is a bishop, priest or deacon; currently the General Synod's House of Bishops elects one MNT in addition to the four elected by the House of Clergy.
16. The proposal would widen the way clergy pension scheme MNTs are elected. The General Synod's House of Clergy currently acts as a proxy for all clergy not in episcopal orders, and whilst any clergy member can stand, not all the active and pensioner members can elect them. This disenfranchises the pensioner members of the scheme as, under the Church Representation Rules, they are less likely to be represented on Deanery Synods to the same extent as active clergy, and consequently have less of a voice in who is elected to the General Synod's House of Clergy. The proposal would put all clergy scheme members on an equal footing in electing their MNTs. It is not thought that greater enfranchisement will be costly since it is hoped that in the future elections held under General Synod Standing Orders will be conducted electronically.
17. The proposals in the consultation paper were changed in light of the responses received in two ways:
  - a. The requirement that at least one of the two MNTs elected by the members of the Church of England Funded Pension Scheme and the Church of England Pensions Scheme be a member of the House of Clergy retains the link to the General Synod; and
  - b. the consultation requirements for five of the six appointments made by the Archbishops of Canterbury and York were added. This is intended to ensure a more formal consultation for these appointments, strengthening the links between the General Synod and the Pensions Board.
18. **The quorum of the Board is four; and the quorum must include at least one MNT.** This reflects the proposed smaller size of the Board – the current quorum is six and must include two MNTs.
19. The new paragraphs 1(1)-(7), (11) and (12) in Schedule 1 to the 2018 Measure (inserted by Article 2(1) and (2) of the draft Order) give effect to the proposals as

---

<sup>4</sup> Regulation 2(o) The Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 2006 (SI 2006/714).

to number of trustees and how they are appointed or elected. Article 2(3) of the draft Order gives effect to the proposals as to the quorum.

## **Proposal Two – demonstrating suitability**

- 20. Nominated candidates for election to the Board will be required to demonstrate their experience and potential contribution to the work of the Board, and only those who are suitably qualified would be offered to the electorate.**
21. Amongst the various elements which help ensure the effectiveness of a Board, having the right people with the appropriate skills and experience is fundamental. The proposed pre-qualification of candidates will assist in ensuring the effectiveness of the Board and is recommended by the Pensions Regulator<sup>5</sup>. It would also ensure that the Board, should it need to comply in the future, would be master trust (see para 9 above) compliant on this point.
22. When there is a vacancy on the Board, a statement of the skills and experience that are needed from a new trustee will be drawn up, based on the skills and experience gaps within the existing Board at the time. It will set a baseline to ensure that candidates are suitably qualified and are fully appraised of what the role is, and what the Board does and does not do. It will not limit the number of people who can stand for election.
23. Elections to the Board are held in accordance with the provisions of the Standing Orders of the General Synod (see paragraph 10 of Schedule 1 to the 2018 Measure). The relevant provisions of the Standing Orders of the General Synod are SO 131-135O. The consultation paper proposed that provision should be made to the effect that:
- a) when there is a vacancy, two members of the Board, appointed by the chair, will prepare a statement of the skills and experience required from an applicant;
  - b) persons who wish to be nominated must supply a written application setting out how they meet the required skills and experience;
  - c) the two members of the Board will assess all applications against the statement of skills and experience, and decide who is suitable for nomination;
  - d) only persons who have been judged to be suitable may be put forward for nomination.
24. After considering the consultation responses, that has been changed so that the preparation of the statement of skills and experience, and the assessment of nominations, will be done by two members of the Board together with the chair of the Appointments Committee of the Church of England, or a person nominated by the chair.

---

<sup>5</sup> *Scheme governance: best practice examples*, The Pensions Regulator's website

25. In the case of an appointed trustee, the same statement of skills and experience will be produced, and candidates assessed against it, but no legislative amendment is required for this.
26. The new paragraphs 1(8)-(10) and (12) in Schedule 1 to the 2018 Measure (inserted by Article 2(1) of the draft Order) give effect to these proposals.

### **Proposal Three - terms of office**

27. **The Chair of the Board should hold office for a term of such duration as the General Synod decides, but the term and that of each member of the Board will be up to five years, with no member serving more than ten years.**
28. The current term is a fixed six-year term, except for the Chair, where the Synod can decide a shorter term. There is currently no maximum term that members can serve.
29. Limiting the length of time that any member can serve is an accepted way of bringing a fresh perspective to any board. New board members bring their skills, experience and abilities to the table. New perspectives can also bring in the best practices that encourage diversity of background, age, gender, ethnicity and other demographics. Societal and economic changes mean that the appropriate skill set for members changes over time; term limits ensure that boards can adapt to those changing needs.
30. Rotating the membership of a board also has other advantages including preventing it becoming stale and slow to grasp innovation and new ideas. Term limits can also give members who no longer wish to serve a graceful way to step down. It does though have the disadvantage that there is some loss of corporate knowledge when a long-serving member departs.
31. A maximum of ten years will enable members to not only gain the skills needed to provide effective governance, but also gain experience of the three triennial actuarial valuations for which the Board is responsible.
32. Article 3 of the draft Order gives effect to this proposal.

### **Proposal Four - Clergy (Widows and Dependants) Pension Fund**

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

exists, all of section 38 is now redundant, as is the reference to the scheme in section 1(1).

35. Article 4 of the draft Order gives effect to this proposal.

### **Proposal Five – reporting requirements**

36. The requirements that the auditor “must report to the General Synod on the audited accounts” (section 50(2)(b)) and that the Board “must each year present a report to the General Synod...” (section 50(3)) should be deleted, and replaced with a requirement for the Board each year to lay before the General Synod a copy of the annual report prepared for it under section 162 of the Charities Act 2011 for the preceding financial year.

37. Section 50 of the 2018 Measure provides -

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

38. As a result of the consultation, it is now proposed to replace the requirement with a requirement that the Board lay a copy of the annual report which has been prepared for it under the Charities Act 2011. The effect of this proposal is to remove an administrative burden on the Board and on the General Synod, who have never (to our knowledge) held a debate on the Board’s accounts, and replace it with a very minor burden, to lay a copy of a report which is prepared in any event for the purposes of the Charities Act 2011. The Board’s annual report and accounts will continue to be published on the Charity Commission website and the Church of England website. Publication on the Church of England website fulfils the requirements to make certain information available to members of pension schemes within seven months of the end of the financial year.

39. As with some other Church of England-related bodies, the Chair of the Pensions Board is an ex officio member of the Synod and takes questions on a regular basis at groups of sessions. The Board has agreed to report regularly to the Synod through a GS Misc paper or by some other means in place of the statutory formal requirement. The removal of the statutory requirement does not preclude a request to the Business Committee for a debate if members were concerned about the Board’s accounts.

40. Article 5 of the draft Order gives effect to this proposal.

### **Proposal Six – Diocesan widows and dependants committee**

**41. The 2018 Measure requires (at section 51) that each diocese should have a diocesan widows and dependants committee appointed by the diocesan board of finance. This should be deleted.**

42. Except for this section, the 2018 Measure is concerned about the operation and governance of the Board. This section places an administrative burden on the dioceses to have a statutory committee to “watch over the interests of any surviving spouse or civil partner or any child or dependant” of a deceased member of the clergy, deaconess or licensed lay worker. The Board has no control over the existence or function of these committees and has no role in relation to them. The exact nature of carrying out these duties should not be laid down in statute but should match the individual requirements of each diocese.

43. Deletion of the section would not affect the current diocesan committees functioning, but it would remove the statutory requirement to have them.

44. Article 6 of the draft Order gives effect to this proposal.

### **The draft Order**

#### *Article 1 – Citation, commencement, extent and interpretation*

45. Article 1 provides for the citation, commencement and interpretation of the Order. Article 1(2) should be read together with the transitional provisions in Article 7. The combined effect is that the current Board will serve until the end of 30 June 2021, and before then the persons who are to be members of the new Board will be elected or appointed, to commence serving on 1 July 2021. Persons who are currently members of the Board will be eligible to become members of the Board in its new form, provided they have the necessary qualifications. Each member’s term of office serving on the Board in its new form is to begin on 1 July 2021. Any time that a person has already served as a member of the Board will count towards the ten-year maximum provided for under Article 3.

#### *Article 2 – Church of England Pensions Board: membership*

46. Article 2(1) makes provision for the membership of the Board. It replaces paragraph 1 of Schedule 1 to the 2018 Measure, some elements of which are re-enacted unchanged for convenience (so that all of paragraph 1 is replaced at once).

47. The provision in the new paragraph 1(2) (appointment of the chair) re-enacts the existing paragraph 1(2). The provision in the new paragraphs 1(3)-(7) gives effect to proposal one. The provision in new paragraphs 1(8) - (10) gives effect to proposal two. The provision in new paragraph 1(11) re-enacts the current

paragraph 1(10), with the addition of “with such modifications as are necessary” in case such are necessary, particularly as a result of the new paragraphs 1(9) and (10). The first clause of the new paragraph 1(12) re-enacts the current paragraph 1(11), and the second clause is added as it is consequential on the new paragraph 1(8) - (10).

48. The provision in Article 2(2) is consequential, reflecting the reduced number of pension scheme representatives in the new paragraph 1(3). The provision in Article 2(3) reduces the quorum in accordance with proposal one.

49. Article 2 would remove or reduce burdens as defined by section 1 of the Legislative Reform Measure by simplifying the complexity and structure of the way the Board is governed, which is an obstacle to efficiency. It also introduces elements of best practice in governance.

#### *Article 3 – Church of England Pensions Board: members’ term of office*

50. Article 3 gives effect to proposal three, ensuring that the term of office of each member will be five years, but subject to an overall limit of ten years.

51. Article 3 would remove or reduce burdens as defined by section 1 of the Legislative Reform Measure in that it removes an obstacle to efficiency; the limitation of the length of time that any member can serve is an accepted way of bringing a fresh perspective to the Board and thereby increases efficiency.

#### *Article 4 – Clergy (Widows and Dependants) Pension Fund: abolition*

52. Article 4(1) and (2)(a) give effect to proposal four, removing spent provisions relating to the Clergy (Widows and Dependants) Pension Fund. Article 4(2)(b) and (c) remove related spent references.

53. Article 4 would remove or reduce burdens as defined by section 1 of the Legislative Reform Measure by removing the administrative burden of having a spent provision remaining technically in force, which is likely to lead to confusion.

#### *Article 5 – Audit and annual report*

54. Article 5 gives effect to proposal five, removing the provision which requires the auditor of the Pensions Board to report to the General Synod on the audited accounts and replacing it with a requirement for the Board to lay the accounts which it has already produced for the purposes of the Charities Act 2011.

55. Article 5 would remove or reduce burdens as defined by section 1 of the Legislative Reform Measure by removing the administrative burden of providing this report, which is an unnecessary duplication of effort because the information is easily available elsewhere.

*Article 6 – Diocesan widows and dependants committee*

56. Article 6 gives effect to proposal six, removing the requirement that each diocese should have a diocesan widows and dependants committee appointed by the diocesan board of finance.

57. Article 6 would remove or reduce burdens as defined by section 1 of the Legislative Reform Measure on the dioceses in that they would be relieved of the statutory requirement to have a committee which may not match the individual requirements of each diocese.

*Article 7 – Transitional provision*

58. Article 7 makes transitional provision which is explained under Article 1 above.

The Legal Office  
Church House  
Westminster  
March 2021