

**GENERAL SYNOD**

**DRAFT LEGISLATIVE REFORM (CHURCH COMMISSIONERS) ORDER 2021**

**REPORT OF THE SCRUTINY COMMITTEE**

**Chair:** The Right Worshipful Peter Collier QC, Vicar General of the Province of York

**Members elected by General Synod:** Carl Fender  
Debrah McIsaac  
Clive Scowen

**Members appointed by the Appointments Committee:** Carolyn Graham  
Tim Hind  
Geoffrey Tattersall QC

**Members appointed by the Archbishops' Council:** Rev. Canon Simon Butler  
Julie Dziegiel

*References in this report to “the Committee” are references to the Scrutiny Committee.*

*All decisions taken by the Committee were unanimous except where indicated. Where decisions were not unanimous, the division is recorded in which case a reference to a decision of the Committee means the decision of the majority.*

*A reference to an article is to an article of the draft Order unless otherwise indicated.*

*This report should be read alongside the Church Commissioners Measure 1947 and the draft Legislative Reform (Church Commissioners) Order 2021 as amended by the Scrutiny Committee.*

*This report should also be read alongside the explanatory document which accompanied the draft Order as originally laid before the General Synod (GS 2194X).*

**Background**

1. The Legislative Reform Measure 2018 (“the 2018 Measure”) enables the Archbishops’ Council (“the Council”), with the approval of the General Synod, to make orders removing or reducing burdens that result from ecclesiastical legislation (known as “Legislative Reform Orders”).
2. On 13 July 2020, the Council issued a consultative 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 detail of the proposals is set out

fully in an explanatory document (GS 2194X) which accompanied the draft Order. The draft Order would give effect to six proposals.

3. The Council, acting through its Legislative Reform Committee, has made one amendment to clarify the intention behind the proposals:
  - (1) In **article 3**, which amends section 6 of the 1947 Measure (Assets Committee and Audit and Risk Committee), the Council agreed to insert a new subsection (1D) to clarify that time served by a person as a non-Commissioner member of a committee would not reduce their eligibility subsequently to serve a full ten years as a Commissioner.
4. The Council, acting through its Legislative Reform Committee, has considered the numerous responses to the consultation. Following consultation, the Council further clarified two points which did not require any amendment:
  - (1) In relation to **article 2**, which amends paragraph 2 of Schedule 1 to the 1947 Measure (constitution of the Commissioners), *ex officio* members would remain members of the Board for as long a period of time as they held the office which conferred *ex officio* membership. The Council clarified that the term of office for Commissioners (except those appointed *ex officio*), and non-Commissioner members, should be a maximum of five years.
  - (2) In relation to **article 4**, which amends paragraph 4 of Schedule 1 to the 1947 Measure (constitution of the Commissioners) the Council clarified that the draft Order would only remove the disqualification from salaried diocesan officials; employees of the National Church Institutions would remain disqualified.
5. On 27 October 2020, the Clerk to the General Synod laid before the Synod the draft Legislative Reform (Church Commissioners) Order 2021 along with the draft Legislative Reform (Church of England Pensions) Order 2021. Both draft Orders automatically stand referred to the Scrutiny Committee.
6. This is the second report of the Scrutiny Committee constituted in accordance with SOs 69A and 69B. The Scrutiny Committee met on one occasion remotely on 6 January 2021 via zoom and completed its remaining business by correspondence pursuant to SO 69F(2).
7. In light of a conflict of interest arising from the fact that the Dean of the Arches and Auditor serves on the Board of Governors of the Church Commissioners, the Vicar General of the Province of York chaired the meeting of the Committee pursuant to SO 69B(3)(b). The Dean was present for part of the Committee's deliberations but did not contribute to the debate or vote.
8. The Committee decided to consider the draft Legislative Reform (Church Commissioners) Order 2021 first.

## **Written submissions**

9. The Committee received submissions from the following (all of whom are members of General Synod):
  - (1) Sam Margrave
  - (2) Stephen Hofmeyr QC
  - (3) Esther Prior
  - (4) The Rev. Canon Stephen Trott
  - (5) Canon Peter Bruinvels
  - (6) The Rev. Paul Benfield
10. As members of General Synod, all those who made representations were by way of SO 69E(3) entitled to attend the meeting of the Committee and to speak to their representations. In advance of the meeting, Mr Margrave, Canon Bruinvels and Mr Benfield had given notice of their desire to attend the Committee meeting and to speak to their representations. In the event, Mr Margrave was unable to attend the meeting, but he provided further written submissions on the morning of the meeting which were circulated to the Committee and to which members had regard.
11. In addition, with the consent of the Chair and the Committee, Matt Chamberlain, Senior Administrative and Governance Officer for the Church Commissioners, attended throughout the representations and the Committee's subsequent consideration. Gareth Mostyn, the Chief Executive of the Church Commissioners, attended for part of the meeting.
12. As a preliminary matter, the Committee considered whether it would be appropriate for representors to remain present during the Committee's deliberations on their representations. Members noted provisions in the Standing Orders with respect to the conduct of Revision Committees and the conventional practice in those committees (in which the members of such committees consider whether representors should be allowed to remain on a case by case basis) and they considered that similar provisions should, by analogy, apply to the conduct of the Scrutiny Committee. Members of the Committee emphasized their view that, unless compelling circumstances required it, the legislative process should be open and transparent. Accordingly, the Committee allowed representors to remain present, provided that they did not attempt to play any part in the proceedings when their allotted time had elapsed.

## **Oral submissions**

13. The Committee heard from Canon Bruinvels and Mr Benfield. The Chair indicated that they might speak to their written representations for up to ten minutes.
14. Canon Bruinvels declared his interest as a serving member of the Board of the Church Commissioners. He emphasized the arguments which he had advanced in his written submissions. Canon Bruinvels contended that the proposals amounted to major

constitutional change which should, he argued, be the subject of a Measure and subject to the scrutiny of Parliament rather than a legislative reform order, in other words that the use of the 2018 Measure was inappropriate and *ultra vires*.

15. In particular, in relation to the provisions set out in article 2 (term lengths), Canon Bruinvels emphasized that there should be no restriction on the ability of General Synod to elect individuals of its choice.
16. Canon Bruinvels confirmed that he favoured five-year terms but he noted the fact that the proposed restriction on the number of terms for which a person may be elected a Commissioner did not apply to the archbishops, the Church Estates Commissioners, or senior officers which approach he criticised as selective. He emphasized the importance of corporate memory and challenged what he characterised as a reallocation of the balance of power away from governors. He suggested that restrictions on the term lengths of the Church Estates Commissioners should be specified in the draft Order.
17. In relation to the proposals set out in article 3 (membership of the Assets and Audit and Risk Committees) Canon Bruinvels said that he was aware of no demand for an increase in membership and identified concerns that the proposal might water down the voice of elected members. He suggested that article 3 be amended to preserve the present position.
18. Turning to the proposals set out in article 4 (removal of disqualification of salaried officials in diocese), Canon Bruinvels indicated that he was concerned that this would give rise to risks of conflicts of interest, which would prevent Board members from speaking freely, adding that such individuals might have an “axe to grind”. As an example of such a potential conflict, he referred to the Commissioners’ financial support for dioceses through strategic development funding.
19. In relation to article 5 (requirement for membership of Church of England), Canon Bruinvels voiced his concern that the proposal was out of kilter with the missional aims of the Church of England. He added that he thought that the proposal would weaken the ability of the Board of Governors to focus on the needs and mission of the Church, giving the traditions of churchmanship as an example.
20. Canon Bruinvels said that he was concerned about the scope of article 6 (remote meetings and correspondence procedure). He said that he was concerned that the changes would lead to virtual meetings being the default position. He added that in his view virtual conferencing is not reliable, referring to the voting during the November 2020 group of sessions of the General Synod. He proposed that the article should be amended to limit the use of remote procedures to “exceptional circumstances”, and to require the offer of a “blended” meeting, where most members were present in person and those who could not attend in person would attend remotely.

21. Canon Bruinvels indicated that he fully supported the provisions of article 7 (Lambeth Palace Library: expansion of the Church Commissioners' charitable objects).
22. In questions to Canon Bruinvels, members of the Committee suggested that at least some provisions in the draft Order would be suitable for a Legislative Reform Order, giving article 7 as an example. Canon Bruinvels responded, however, that he considered that each provision of the draft Order formed part of a single policy. Members of the Committee noted that article 3 would permit the additional proposed members of the Assets Committee to be drawn from the membership of the General Synod to meet Canon Bruinvels's concern that members of those elected by General Synod would necessarily become diluted. Members also suggested that the draft Order would permit – but not require - the “blended” model for meetings which Canon Bruinvels identified.
23. When asked by the Committee to give examples of instances where he had harnessed corporate memory to prevent mistakes, Canon Bruinvels identified two examples (one relating to his awareness of previous financial support for the Lambeth Conference, the other knowledge of a major pastoral scheme). Against that, a member of the Committee replied that the answer to the challenge of retaining corporate memory is a good secretariat. The point was also made in questions that Canon Bruinvels's examples did not prevent an error being made, but corrected a belief that something had not been done before.
24. Turning to the position of diocesan officials, members asked why their position was different from other members of the Board who may have conflicts of interest, noting that such declarations were routine in other bodies such as the Archbishops' Council. The Committee noted that under parallel proposals in connection with the Church of England Pensions Board member nominated trustees would all have an interest to declare.
25. With reference to the requirement for membership of the Church of England, the Committee pressed the question whether a person needed to be a member of the Church of England (however such status should be understood) in order to understand questions about its mission, churchmanship, and history. The Committee highlighted the benefits of diversity to good decision making. Canon Bruinvels gave details of his background and emphasized his commitment to diversity.
26. The Committee then heard from Mr Benfield.
27. Mr Benfield reminded the Committee of the preconditions specified in s. 2(1)(f) and (g) of the 2018 Measure, i.e. that a Legislative Reform Order should not prevent a person from exercising or continuing to exercise a right or freedom which that person could reasonably expect to continue to exercise or to continue to exercise; and that the provision is not of constitutional significance. He was concerned that the draft Order may not satisfy those preconditions.

28. Mr Benfield indicated that in his view the provisions of article 2 would prevent the exercise of the rights of members of General Synod to elect members to serve as Church Commissioners. In support of his contention that the proposals were constitutionally significant, Mr Benfield pointed to the links between the Commissioners (and their predecessors Queen Anne's Bounty and the Ecclesiastical Commissioners) and the State.
29. Mr Benfield argued that the legislative reform process was not intended to be used to facilitate what he characterised as the reconstitution of a major board and, therefore, that these proposals should be introduced by draft Measure. He pointed out that following the process set out in the 2018 Measure<sup>1</sup> there was a risk that the General Synod might refer the draft Order back to the Committee thereby leading to a more protracted process.
30. In questions to Mr Benfield members of the Committee explored Mr Benfield's arguments that the proposals were constitutionally significant. Members of the Committee noted that there is no proposal to interfere with the rights of the six officers of State who are *ex officio* Church Commissioners or the accountability of the Commissioners to Parliament. Members of the Committee also noted that the consultation documents were laid before Parliament but no member of either House had challenged the proposals. Mr Benfield, however, cautioned against making an assumption that Parliament was content.
31. Following the conclusion of Mr Benfield's submissions, the Chair summarised the points advanced in other written submissions.

### **Consideration**

32. The Committee noted that, in accordance with SO 69F(2) and section 6(3) of the 2018 Measure, it must assess:
  - (1) The extent to which the draft Order would remove or reduce burdens as defined by section 1 of the 2018 Measure;
  - (2) The extent to which the conditions under section 2 of the 2018 Measure (so far as relevant) are satisfied;
  - (3) Whether the draft Order includes provision of a kind prohibited by section 3 of the 2018 Measure;
  - (4) The extent to which the consultation required by section 4 of the 2018 Measure has been undertaken; and
  - (5) Whether it is appropriate for the provision contained in the draft Order to be made by way of Legislative Reform Order rather than by Measure.

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<sup>1</sup> See section 7(1).

33. The Committee took account of the submission made by Canon Bruinvels that all proposals in the draft Order should be considered as part of a single policy (which argument, if accepted, would mean that the Committee may need to conclude that the draft Order did not meet the necessary preconditions if any one proposal did not meet the required threshold). Taking into account the above factors and all of the representations which it had received, the Committee identified the proposal to introduce a ten-year term limit (which comprises part of article 2) as the most contentious element of the draft Order.
34. Arising from its consideration of that proposal, the Committee identified several preliminary questions relating to the vires of the proposals which had potential significance to the Committee's consideration of the Order as a whole, and in connection with which the Chair considered that it would be expedient for the Committee to come to a provisional view, namely:
- (1) The interpretation of "burden" in section 1 of the 2018 Measure; and
  - (2) Whether it is appropriate for the provision contained in the draft Order to be made by Legislative Reform Order rather than by Measure.

#### Burden

35. Some members of the Committee queried whether some elements of the draft Order properly amounted to burdens within the meaning of the 2018 Measure. For example, one member argued that the proposal to introduce term limits may amount to a benefit, in terms of the ratification of a more contemporary mode of governance, which may be desirable and meritorious, but which may not necessarily amount to a "burden".
36. With the permission of the Chair, the Committee heard from Matt Chamberlain and Gareth Mostyn. Mr Chamberlain explained that in consultation a large majority of consultees agreed with the proposals in connection with term limits as consistent with widely recognised best practice. Mr Mostyn explained that the Commissioners' policy objective was to strengthen corporate governance across the Church Commissioners, not to water down General Synod's role.
37. Canon Butler explained the thinking of the Legislative Reform Committee that a burden did arise from having less than ideal governance arrangements, which is what the proposals had in view. Better functioning governance arrangements would remove administrative burdens and an obstacle to efficiency.

#### Use of a Legislative Reform Order

38. The Committee noted the submissions made that it was not appropriate to make the changes proposed in the draft Order by Legislative Reform Order. Some members

were concerned that the changes were, in reality, major changes to the constitution of a body which is accountable to Parliament and in connection with which, therefore, Parliament had a legitimate expectation of consultation. A member suggested that at least some of the proposals were uncontroversial, for example the regularisation of term lengths, which he suggested were the sort of changes which Legislative Reform Orders were designed to achieve.

39. Canon Butler explained the thinking of the Legislative Reform Committee. There was, he said, a legitimate question as to whether the reforms proposed in the draft Order are as radical and far-reaching as has been claimed. He reminded the Committee that it was never the intention that the 2018 Measure could not address matters which related to potentially controversial matters, such as governance. In that regard, the Deputy Official Solicitor drew the Committee's attention to some examples of possible subject matter for Legislative Reform Orders which had been identified by the Legislative Committee during the passage of the 2018 Measure. These included changes to the constitution of the boards of Diocesan Boards of Finance as an example<sup>2</sup>.
40. The Committee noted that the 2018 Measure did make provision for the abolition, conferral, transfer, or delegation of functions, and for the creation of any body or office, which might be said to have governance matters in view. Moreover, Legislative Counsel drew the Committee's attention to the fact that the 2018 Measure excepts some elements of the Church Commissioners' functions from the scope of orders<sup>3</sup> (relating to the purposes for which the Commissioners might make payments from their general funds) but no provision was made which precluded changes to their governance.
41. To meet the concern raised about consultation of Parliament, one member emphasized that the draft Order had followed the procedure set out in the 2018 Measure, which had been laid before Parliament, and no concerns had been raised.
42. The Committee had regard to the power set out in section 1 of the 2018 Measure and the preconditions set out in section 2. Taking into account its discussion the Committee indicated by a margin of five to four that the proposal in connection with term limits could, in principle, fall within the scope of the 2018 Measure both in connection to the requirement for the provision to remove or reduce burdens and in connection with the use of a Legislative Reform Measure, so long as on further consideration those provisions met the necessary conditions set out in the 2018 Measure. Accordingly, the Committee agreed to consider the provisions of the draft order article by article in accordance with SO 69F(3).

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<sup>2</sup> See <https://www.Parliament.uk/globalassets/documents/joint-committees/ecclesiastical/2017-19/legislative-reform-measure-ce.pdf> (see Schedule 3 in particular).

<sup>3</sup> See 2018 Measure, section 3(3).



43. This report sets out the Committee’s consideration of the representations made in connection with each article and its response. It then sets out the Committee’s assessment of the draft Order taking into account the factors set out in SO 69F(2).

*Article 1*

44. This article sets out standard provision in respect of commencement and interpretation.

45. Legislative Counsel spoke to an amendment which would insert, after paragraph (3)-

*“(4) This Order has effect in the Isle of Man without exceptions, adaptations or modifications.”*

46. A member queried whether the General Synod is competent to legislate for matters concerning the Isle of Man. Legislative Counsel confirmed that he was satisfied that General Synod had the power to make the amendment. By way of s. 11(3) of the 2018 Measure, the Measure’s provisions extend to the Isle of Man. The drafting of the amendment reflects the wording of s. 9(2) of the 2018 Measure, and Legislative Counsel confirmed that he had discussed the wording with legislative counsel in the Isle of Man. Legislative Counsel confirmed that it is matter for the Channel Islands to decide whether the draft Order would extend to them.

47. The Chair moved the amendment and the Committee agreed to the amendment.

48. No representations were received in connection with this article. Subject to the amendment set out above, the Committee was satisfied that the requirements of SO 69F(2) are met for the reasons set out in paragraph 108 below. The Committee approved the article as a whole subject to the above amendment.

*Article 2*

49. This article gives effect to proposals one and two. **Article 2(1)** amends paragraph 2 of Schedule 1 to the 1947 Measure to provide for:

(1) the regularisation of the terms of Commissioner and non-Commissioner members to five years; and

(2) an overall term limit of ten years (except for *ex-officio* Commissioners)

50. The Committee had regard to submissions made by Canon Trott and Canon Bruinvels.

51. The Committee noted the policy objective which article 2 has in view and the clarification provided by Mr Mostyn and Mr Chamberlain.

52. The Committee noted that there was no objection to the regularisation of term lengths at five years, other than in connection with casual vacancies.
53. On the particular question about consultation requirements, a member of the Committee voiced his concerns that the consultation documents should have more clearly articulated how the proposals came within the scope of the 2018 Measure. The Committee also took into account Mr Margrave's observations about the operation of the consultation procedure in light of Covid-19, but noted that the steps required under the Measure had been complied with, with 38 responses to consultation. There was no evidence before the Committee which suggested that the requirements of the 2018 Measure were not followed.
54. The Committee was satisfied, though not unanimously, that this provision of the draft Order (other than the question of an overall term limit) meets the requirements of SO69F(2). The Committee divided (six members were satisfied, one member was unsatisfied, and two members abstained). However, on the particular question whether the requirements of SO69F(2)(d) are met in connection with consultation, the Committee divided with six members satisfied, two unsatisfied, and one abstention.
55. Turning to the proposal in connection with an overall term limit, the Committee recalled its earlier discussion and noted and considered the submissions made by Canon Bruinvels, Canon Trott, and Mr Margrave.
56. Taking into account the rights of members of the General Synod and of those members who may wish to stand for re-election, the Committee considered whether the proposal strikes a fair balance between the public interest, the interest of the Church of England as a whole, and the interests of those who may be affected. They also considered whether the provision was a proportionate means of achieving the policy aim.
57. The Committee noted the arguments which had been raised about institutional memory and the submission advanced that this proposal would interfere with the right or freedom of a member of General Synod to stand for election or to elect a candidate of their choice, but they noted that the precondition in section 2(1)(f) of the 2018 Measure required the Committee to consider whether a person could reasonably expect to have a right to serve as a Commissioner without limit which requires an objective view. To meet the submissions made by Canon Bruinvels and others, a member cautioned that the Commissioners' governance arrangements are not intended to balance churchmanship. To meet Mr Margrave's concern about the reduction in the size of the Board, and the number of voices in the room, members noted that the proposal would not reduce the size of the Board.
58. In turn, this was linked to the question whether the provision was proportionate to the policy objective, and members noted that the prohibition on service after ten years, or two terms, was not absolute. A member of Synod would be required to take a break for five years, but would then be eligible to stand for re-election.

59. Some members argued that this would be a proportionate way of achieving well-recognised good governance aims, reflecting the restrictions on service which apply elsewhere in the Church and in the third sector generally (for example in the membership of the Archbishops' Council<sup>4</sup> and in the Cathedrals Measure) and was a step which would encourage fresh views, but one member voiced concern that there was a cost arising from the imposition of a fetter on the right of members of the General Synod to choose their preferred candidates and from the impact on corporate memory. One member pointed out that approximately 70% of respondents to consultation agreed with the proposal.
60. The Committee divided on the question whether this provision of the draft Order meets the requirements of SO69F(2) as set out in paragraph 108, with five members satisfied that the requirements are met and four members of the view that they are not. On the particular question under SO69F(2)(d) (consultation), the Committee divided with six members satisfied that the preconditions are met, two unsatisfied, and one abstention.
61. Having taken the view of the Committee, the Chair proposed an amendment to article 2 to the extent that the proposals in relation to the ten-year fixed term would not stand part of the draft Order. The Committee divided four members in favour of the amendment and five against. Accordingly, the motion failed.
62. **Article 2(2)** amends Schedule 4 to the 1947 Measure to provide that a person elected to fill a casual vacancy (whether among the elected or nominated Commissioners) is to hold office for up to a five-year term.
63. **Article 2(3)** makes consequential provision such that the changes introduced would only apply to an election or nomination after the commencement of the Order.
64. Discussion focused on whether this was a proportionate means of achieving the policy objective. Mr Chamberlain explained that the policy objective was to remove the burden which might arise where a person is appointed and can only serve the residue of a term, thereby potentially wasting the time invested by both the Commissioners and the person in question in induction, amount to an obstacle to efficiency and an administrative inconvenience. Mr Chamberlain suggested that in the context of the management of casual vacancies in his view effective and efficient induction had a higher value than churchmanship.
65. A member made the point that it was questionable whether this proposal would promote greater efficiency. He cautioned that it is important to take into account the impact on the electoral process and suggested that the gains would be marginal and he

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<sup>4</sup> See the National Institutions Measure 1998, Schedule 1, Part 1, paragraph 6. An elected member of the Council shall not be eligible for re-election or reappointment as such if they have served as a member for a period amounting in the aggregate to ten years unless an interval of five years has elapsed since they last ceased to be a member.

noted that the working of the Single Transferable Vote (“STV”) provides a way to fill casual vacancies and preserves a democratic balance. He added that STV could deliver diversity across Synod’s membership. Members noted a concern, taking into account Mr Margrave’s submission, that the proposal might increase costs of running elections but the Committee did not have before it evidence to decide the point.

66. Against that, it was pointed out that any such cost would be mitigated by the introduction of electronic voting. Some members also argued that the proposal mitigated the argument advanced about the loss of corporate memory (enabling more members to serve a longer term would to an extent improve business continuity).
67. Mr Scowen moved an amendment which would remove this provision from the draft Order so far as it related to elected Commissioners, thereby maintaining the present position. The amendment fell, with three members in favour, five against, and one abstention.
68. The Committee divided on the question whether this provision of the draft Order meets the requirements of SO69F(2) as set out in paragraph 108, with seven members satisfied that the requirements are met and one member unsatisfied, with one abstention. On the particular question under SO69F(2)(d) (consultation), the Committee divided with six members satisfied that the preconditions are met, two unsatisfied, and one abstention.
69. The Committee approved the article as a whole without amendment. The Committee divided with five members in favour and four against.

### *Article 3*

70. **Article 3** gives effect to proposal 3. **Article 3(1)** amends section 6 of the 1947 Measure (Assets Committee and Audit and Risk Committee), and provides that the maximum number of lay Commissioners on the Assets Committee shall be increased from six to eight. **Article 3(2)** makes provision which makes provision for a five-year term for members of the Audit and Risk Committee.
71. **Article 3(3)** makes provision for a ten-year term limit for committee members to reflect the provisions of article 2 of the draft Order. It also makes provision which clarifies that time served by a person who is a non-Commissioner member of the Audit and Risk Committee shall not run against them for the purpose of the ten-year term limit if they become a Commissioner.
72. **Article 3(4)** makes provision in connection with casual vacancies to reflect the provision of article 2 of the draft Order.
73. **Article 3(5)** provides that the changes in article 3 only apply in the case of an appointment which is made after the commencement of the Order.

74. The Committee noted and considered the submissions which it had received, in particular those of Canon Bruinvels.
75. To meet Canon Bruinvels's observations about this article, Canon Butler confirmed that it was not the aim of the Legislative Reform Committee to issue any sort of rebuke to those who serve on the Assets Committee.
76. Members noted that there is nothing which suggests that the Assets Committee needs additional help. To that point, Mr Chamberlain explained that the Commissioners sought a permissive power, taking into account the increasingly diversified nature of investments and markets. The Commissioners would, he said, face a burden if they were unable to undertake their responsibilities as effectively and efficiently as possible in fast-moving markets (in other words that the present provision would remove an administrative inconvenience).
77. The Committee considered whether its approach to the ten-year term limit proposed in article 3 should be consistent with its approach to article 2. In that regard, a member noted that his objection against this provision was not quite as strong because the members in question would not be elected by General Synod. Some members also argued that the proposal would improve corporate memory, echoing the arguments made in connection with article 2.
78. The Committee divided on the question whether this provision of the draft Order meets the requirements of SO69F(2) as set out in paragraph 108, with seven members of the view satisfied that the requirements are met and two members unsatisfied. In connection with the particular proposal in connection with a ten-year term limit, the Committee divided with seven members satisfied that the preconditions are met, with one member unsatisfied, and one abstention.
79. The Committee approved the article as a whole without amendment. The Committee divided with six members in favour, two against and one abstention.

*Article 4*

80. **Article 4** amends paragraph 4 of Schedule 1 to the 1947 Measure (constitution of the Commissioners), to remove the disqualification on a salaried diocesan official from serving as a Commissioner.
81. The Committee noted and considered the submissions received, particularly those of Canon Trott and Canon Bruinvels.
82. Members noted that the objective of this proposal was to increase efficiency (and thereby remove an obstacle to efficiency) by making available a wider pool of candidates.

83. A member suggested that this provision came out of a problem during the last election of members of General Synod to the Church Commissioners to fill casual vacancies in which some disqualified people stood for election.
84. The main concern arising from representations related to the increased risk of conflicts of interest. Members queried, however, why the position of salaried diocesan officials should be different from other Commissioners where such a conflict might arise, such as bishops and deans.
85. The Committee was satisfied that the requirements of SO 69F(2) are met for the reasons set out in paragraph 108 below.
86. The Committee approved the article as a whole without amendment.

*Article 5*

87. **Article 5(1)** amends paragraph 6 of Schedule 1 to the 1947 Measure (constitution of the Commissioners) by substituting a requirement that Commissioners should either be members of the Church of England or of a Church which subscribes to the doctrine of the Holy Trinity, and should support the charitable objects of the Commissioners.
88. **Article 5(2)** would insert a rider which provides that a majority of the members of the Board and a majority of the members of each committee must be members of the Church of England.
89. Members noted that the policy objective of the proposal was the reduction of administrative burdens arising from improvement in the Board's diversity profile and enhanced decision making. The proposal would widen the pool of those available for appointment, particularly among BAME communities.
90. Members noted that it is well accepted that diversity improves the quality of decision making and, thereby, leads to more efficient governance. Board members spoke to their experience in this regard, citing as examples the recruitment of Salvationists to the board of the Clergy Support Trust and work with the Baptist Church. Members also noted that all parts of the Church are encouraged to work more ecumenically, noting that the Ecumenical Relations Measure 2018 was intended to facilitate more flexibility in that regard.
91. Members noted and considered submissions received, in particular from Canon Trott and Canon Bruinvels. They considered that it would be possible for someone who is not a member of the Church of England, however that should be understood, to develop an understanding of the Church of England's law, constitution, doctrine, ethos or history. For that reason, they did not accede to Canon Trott's suggestion that the 1947 Measure should be amended to require Commissioners to be communicant members of the Church of England.

92. The Committee was satisfied that the requirements of SO 69F(2) are met for the reasons set out in paragraph 108 below.

93. The Committee approved the article as a whole without amendment.

*Article 6*

94. **Article 6** amends Schedule 4 to the 1947 Measure (general procedural provisions). **Article 6(1)** would insert a new paragraph 8 which would permit meetings of the Commissioners in general meeting, or the Board or a committee to be held remotely and virtually.

95. **Article 6(2)** makes provision for the extension of the existing correspondence procedure to all meetings of the Commissioners, including general meetings.

96. **Article 6(3)** makes consequential provisions in connection with interpretation.

97. The Committee noted that the policy aim of these provisions is the removal of administrative inconveniences which have become apparent during the Covid-19 pandemic, whereby decisions cannot be taken in remote meetings and must be confirmed using the correspondence procedure.

98. Members noted and considered submissions received, in particular from Canon Trott and Canon Bruinvels.

99. Members considered that the provisions were permissive and would allow for the use of a blended approach to meetings along the lines which Canon Bruinvels had suggested. Members considered that it would not be appropriate for the 1947 Measure to be directive about the format of meetings which procedural matters should be left to the Board. Members felt that trying to restrict the circumstances in which meetings could be held remotely would erode the permissive nature of the provisions and might give rise to further burdens and complexities.

100. Members also noted the fact that many members of Boards and committees are not based in the South East and the proposals might better facilitate their attendance and, thereby, remove a burden.

101. The Committee was satisfied that the requirements of SO 69F(2) are met for the reasons set out in paragraph 108 below.

102. The Committee approved the article as a whole without amendment.

*Article 7*

103. Article 7 would insert a new section 13A into the 1947 Measure to provide that the Commissioners' charitable objects should include the provision of access to the facilities of Lambeth Palace Library for all of the National Church Institutions.

104. Members noted that the policy objective of the provision was the removal of an administrative burden which would arise from the requirement for National Church Institutions to devote resources to alternative archival and storage facilities.
105. No submissions (other than in support) were received.
106. The Committee was satisfied that the requirements of SO 69F(2) are met for the reasons set out in paragraph 108 below.
107. The Committee approved the article as a whole without amendment.

*New Article 8*

108. The Committee considered a further amendment at the proposal of Legislative Counsel which would insert new article 8 after article 7-

***“Correction of minor drafting error***

*8. In section 10 of the 1947 Measure (finance), in subsection (6) (use of general fund), after “39(6)” insert “of the Church of England Pensions Measure 2018”.*

109. This amendment would correct a minor error in the Church of England Pensions Measure 2018. Paragraph 1 of Schedule 3 to that Measure makes a consequential amendment to section 10 of the Church Commissioners Measure 1947. The words “of the Church of England Pensions Measure 2018” should have been included after “sections 31(4) and 39(6)” in the amendment. Although the legislative intent is clear beyond doubt, this amendment clarifies the legislation and, thereby, removes a burden.
110. The Committee approved the insertion of the new article as a whole without amendment.

**Assessment of the draft Order under SO 69F(2)**

111. Having considered each article, and the representations made, the Committee’s assessment of the requirements of SO 69F(2) in connection with all of the provisions in the draft Order is as follows (the Committee divided on a number of the provisions as set out below):

(1) The Committee is satisfied by a majority that the provisions of the draft Order would reduce the burdens to the extent identified and explained in consultation (in connection with **article 2 (other than the term limit and casual vacancy provisions)**): six satisfied, one unsatisfied, two abstentions. In connection with **article 2 (term limit provision)**: five satisfied, four unsatisfied. In connection with **article 2 (casual vacancy)**: seven satisfied, one unsatisfied, one abstention. In connection with **article 3 (other than the term limit)**, seven satisfied, two unsatisfied. In connection with **article 3 (term limit)**: seven satisfied, one unsatisfied, one abstention). In particular, the majority (five to four) of members



were satisfied that provision for a fixed electoral term removes the burden of having less effective governance arrangements than can be achieved;

- (2) The Committee is satisfied that each of the provisions require legislative means;
- (3) The Committee is satisfied by a majority (see above in connection with articles 2 and 3) that each of the provisions are proportionate to the policy objective to be secured, namely the removal of burdens, including administrative inconvenience and obstacles to efficiency;
- (4) The Committee is satisfied by a majority (see above in connection with articles 2 and 3) that the provisions, taken as a whole, strike a fair balance between the public interest, the Church of England as a whole and the interests of any person who might adversely be affected by the provisions;
- (5) The Committee is satisfied by a majority (see above in connection with articles 2 and 3) that the proposals do not remove any necessary protection;
- (6) The Committee is satisfied that the provisions do not prevent a person from receiving or continuing to receive a financial benefit to which they are entitled or could reasonably expect to become entitled;
- (7) The Committee is satisfied by a majority (see above in connection with articles 2 and 3) that the provisions do not prevent a person from exercising or continuing to exercise a right or freedom which that person could *reasonably* expect to exercise or continue to exercise (emphasis added). In particular, the Committee was satisfied by a majority that no member of Synod could reasonably expect that they would be able to stand for election to a particular board or to elect a person to a particular board indefinitely;
- (8) The Committee is satisfied by a majority (see above in connection with articles 2 and 3) that the provisions are not of constitutional significance. In particular, the provisions do not impact on the constitutional rights of any office holder, or the relationship between the Church and State;
- (9) The Committee is satisfied that the provisions do not include a provision of a kind prohibited by section 3 of the 2018 Measure;
- (10) The Committee is satisfied by a majority (six satisfied, two unsatisfied, one abstention) that the consultation required under section 4 of the 2018 Measure has taken place. The Committee reminded themselves who had been consulted and are satisfied that consultation responses have been taken into account. The Committee is satisfied that no further consultation is required; and
- (11) The Commission considers by a majority (see above in connection with articles 2 and 3) that it is appropriate for the provisions contained within the draft Order to be made by Legislative Reform Order rather than by Measure.

112. It follows from the above that the Committee is satisfied (by majority in connection with articles 2 and 3) that the provisions of the draft Order, and the amendments which they have made, are within the scope of the 2018 Measure.

### **Additional matters**

#### Theological considerations

113. The Committee notes Mr Margrave's submission about theological considerations. Members noted that the Committee is not expressly required to have regard to theological considerations.
114. Whilst they accepted that theological considerations might underscore the rationale for a Legislative Reform Order in certain cases, they did not think that this was such a case given that the provisions of the draft Order are essentially secular in nature, relating to questions of administrative and governance good practice.

#### Standing Orders

115. The Committee encouraged the Archbishops' Council and the Standing Orders Committee to keep the Scrutiny Committee's Standing Orders under review particularly the procedure to be followed where the Committee is asked to consider more than one Order each making a diverse range of provision. The Council is asked to consider whether multiple draft Orders could be considered by separate Scrutiny Committees in parallel.
116. A list of the amendments to the draft Order which the Committee has made is set out at **Annex A**.
117. A list of the representations made which raise points of substance is set out at **Annex B**.

**Peter Collier QC**

Chair of the Scrutiny Committee

March 2021

## ANNEX A: Amendments made by the Scrutiny Committee

Amendment made	Intended effect
<p>Article 1, after paragraph 3:</p> <p><i>“(4) This Order has effect in the Isle of Man without exceptions, adaptations or modifications.”</i></p>	<p>A drafting amendment with the intent to apply the provisions of the draft Order to the Isle of Man, consistent with the provisions of section 92(2) and section 11 of the 2018 Measure.</p>
<p>Insertion of new Article 8, after Article 7:</p> <p><b>“Correction of minor drafting error</b></p> <p><i>8. In section 10 of the 1947 Measure (finance), in subsection (6) (use of general fund), after “39(6)” insert “of the Church of England Pensions Measure 2018”.</i>”</p>	<p>This is a drafting correction to section 10 of the Church Commissioners Measure 1947. The words “of the Church of England Pensions Measure 2018” should have been included after “sections 31(4) and 39(6)” in the amendment made by that Measure.</p>

## ANNEX B: Representations

### Representations received

The Committee has received representations from:

- (1) Sam Margrave
- (2) Stephen Hofmeyr QC
- (3) Esther Prior
- (4) The Rev. Canon Stephen Trott
- (5) Peter Bruinvels
- (6) The Rev. Paul Benfield

Article	Substance (in summary)
General	<p><b>Sam Margrave (member of General Synod)</b></p> <ul style="list-style-type: none"><li>- General Synod was promised that no controversial decisions or governance changes would be made while members could not meet physically. There is no proper scrutiny. The Church should look to improve its governance structures. There should be a proper Synod debate.</li><li>- This is a misuse of the 2018 Measure for purposes never envisioned. The 2018 Measure should not be used to re-organise governance structures. This is not an administrative inconvenience. These are constitutional changes and remove protection from the lay membership which is laid down in law.</li><li>- Consultation cannot be reliable because it has taken place during a pandemic and there should be a longer process of consultation. The number of responses (38) is very poor because there was not enough effort to explain the changes or to engage General Synod. These proposals amount to a “power grab” which centralises power in the archbishops or NCIs.</li><li>- It is important to ensure that there are significant numbers of General Synod on relevant bodies because the voices of the laity and clergy are important, with a suggestion that the number on the relevant bodies should be increased. General Synod should elect all positions except officers. There should be no patronage in an accountable and transparent church. These changes will limit the voices in decision making and will change the nature of boards, impede their accountability and denigrate their governance.</li></ul>

- We should have election cycles and be committed to democracy. It will cost more to run separate elections and change results due to the use of the single transferable vote. This could result in confusion about terms of office and election cycles.
- Institutional memory and experience is important.
- These proposals will erode confidence that boards, especially the Commissioners, represent the whole nation. They will also erode confidence about the robustness of challenge.
- Commissioners should be members of the Church of England and attend a Church of England church.
- Were theological considerations part of the rationale for the proposals?

**Stephen Hofmeyr QC (member of General Synod)**

- These proposals are not uncontroversial and involve some important questions of principle. For example, the elected input is being reduced which may be viewed as a centralising measure. A Legislative Reform Order is not the right vehicle for the changes.

**Esther Prior (member of General Synod)**

- Query whether a Legislative Reform Order is the right vehicle for most of these provisions. They might reduce elected input and restrict who may be elected.

**Peter Bruinvels (member of General Synod, Church Commissioner)**

- It is inappropriate and a direct slight to Parliament if any of the provisions of the draft Order were to be considered as part of a Legislative Reform Order.

**Paul Benfield**

- Query whether a Legislative Reform Order is a suitable vehicle for such “fundamental” changes. When LROs were approved by General Synod the impression was given that they would be used for relatively minor matters of administration such as updating rules for various bodies to take account of electronic communication and the possibility of meetings being held by video conferencing. It was not envisaged that they would be used for the “major re-constitution” of an important board.

	<ul style="list-style-type: none"> <li>- The proposed changes are not uncontroversial and would be better made by Measure. Under the LRO procedure General Synod cannot amend the draft Order which risks being rejected, as a result of which the process may not be faster than the progress of a Measure.</li> <li>- The draft Order has constitutional significance and should be considered by the Ecclesiastical Committee.</li> </ul>
1	No submissions received.
2	<p><b>Canon Trott (member of General Synod, Church Commissioner)</b></p> <ul style="list-style-type: none"> <li>- Election for a five-year term is appropriate but there should be no limit on the number of terms which an elected Commissioner may serve. There is a fundamental principle of freedom of election at stake.</li> <li>- It is not good practice to limit terms. Doing so affects the balance of power towards officers and <i>ex-officio</i> members such that new and inexperienced trustees may be unable to challenge and hold the executive to account. Such a practice would erode invaluable corporate memory.</li> </ul> <p><b>Peter Bruinvels</b></p> <ul style="list-style-type: none"> <li>- In favour of a five-year term.</li> <li>- Corporate memory and continuity is important to keep the executive aware and in check. Long-service has proved an asset. This factor is particularly important at present as all three Church Estates Commissioners are relatively new in office.</li> <li>- The proposals are inconsistent because the Church Estates Commissioners, archbishops and officers don't have any express fixed term of appointment.</li> <li>- It is not good practice to limit trustee terms and would substantially affect the balance of power within the Board in favour of permanent staff and <i>ex-officio</i> members. Further, accelerating turnover removes valuable corporate memory and people who can recall reasons for decisions, mistakes made, and risks taken for the future.</li> <li>- Restriction on the field and choice of candidates is undemocratic. Parliament would see the proposals as a gross interference in the democratic process.</li> </ul>
3	

	<p><b>Peter Bruinvels</b></p> <ul style="list-style-type: none"> <li>- Not aware of any demand to increase the size of the Assets Committee membership. Meetings are always quorate. The proposal is insulting to current members of the committee.</li> <li>- An increase in the number of appointed lay (as opposed to elected) Commissioners could further undermine accountability. General Synod’s voice would be weakened if “place men and women” were appointed. They are not necessary, or required.</li> </ul>
4	<p><b>Canon Trott</b></p> <ul style="list-style-type: none"> <li>- The present disqualification is reasonable and appropriate. The problems following the last general election arose because of the repeated failure of the General Synod office to manage the election efficiently.</li> <li>- It is not appropriate for salaried officials to hold elected office in a body in which they have an interest by virtue of their employment. It would be inconsistent for decision making to be influenced by those employed by bodies, such as diocesan boards of finance, who are dependent on funding from the Church Commissioners.</li> </ul> <p><b>Peter Bruinvels</b></p> <ul style="list-style-type: none"> <li>- Those who hold paid employment within dioceses have particular issues to raise and champion. They will be conflicted because they depend on funding from the Commissioners and their voice will be muted. At meetings of the Mission, Pastoral and Church Property Committee archdeacons often need to declare interest and absent themselves, as do members of clergy when the Board discusses remuneration. The Board needs full members who can speak freely and without the definite and certain risks of being conflicted, particularly as diocesan budgets are tighter post-Covid 19.</li> </ul>
5	<p><b>Canon Trott</b></p> <ul style="list-style-type: none"> <li>- As presently constituted, the Board frequently demonstrates a lack of understanding of the complexities of the law, constitution, doctrine, and ethos of the Church of England.</li> <li>- The Commissioners are a <i>sui generis</i> body and it is important that all members should be practising members of the Church of England with a demonstrable commitment to the worshipping community of the Church. All candidates should be required to sign a declaration that they are communicant members of the Church of England.</li> <li>- If the pool of candidates is too small the current methods of recruitment should be changed.</li> </ul>

	<p><b>Peter Bruinvels</b></p> <ul style="list-style-type: none"> <li>- This provision is out of kilter with the aims and mission of the Church of England and the Church Commissioners.</li> <li>- Opening up membership to those who are not members of the Church of England will greatly weaken the ability of the Board to focus specifically on the needs and mission of the Church of England. Such people will find it difficult to understand the history, relations with Parliament, cultures and basic traditions including churchmanship.</li> <li>- The Commissioners may need to change the way that they advertise and recruit.</li> </ul>
6	<p><b>Canon Trott</b></p> <ul style="list-style-type: none"> <li>- The importance of face-to-face meetings cannot be exaggerated. No provision should be made permanently for emergency alternatives such as Zoom which will quickly become normal practice.</li> </ul> <p><b>Peter Bruinvels</b></p> <ul style="list-style-type: none"> <li>- The importance of face-to-face meetings cannot be exaggerated. No provision should be made permanently for emergency alternatives such as Zoom which will quickly become normal practice.</li> <li>- Remote conferencing is not entirely secure and can be unreliable, for example during the November 2020 group of sessions of General Synod.</li> <li>- The draft Order should make provision for a “blended” proposal which reflects the approach taken by General Synod. A proviso should be added that remote meetings should only be used “in exceptional circumstances”.</li> </ul>
7	Both Canon Trott and Peter Bruinvels are supportive of this proposal.



