

**GENERAL SYNOD**  
**DRAFT CHURCH OF ENGLAND (MISCELLANEOUS PROVISIONS) MEASURE**  
**AND AMENDING CANON NO. 43**

**Chair:** The Ven Nikki Groarke (Worcester)

**Ex officio members**

**(Steering Committee):** Mr Stephen Hofmeyr KC (Guildford) (Chair)  
The Ven Douglas Dettmer (the Archdeacon of Totnes)  
The Reverend Sandra McCalla (London)  
Dr Laura Oliver (Blackburn)

**Appointed members:** Mr Gavin Drake (Southwell & Notts)  
The Reverend Rachel Firth (Leeds)  
The Very Reverend Dr Mandy Ford (the Dean of Bristol)  
The Reverend Neil Patterson (Hereford)  
Mr Samuel Wilson (Chester)

*References in this report to “the Committee” are references to the Revision Committee. References to clauses of the Measure and paragraphs of the Amending Canon are, unless otherwise indicated, references to those clauses or paragraphs as numbered in the Measure or Canon as originally introduced. Where clause or paragraph numbers have changed, that is indicated. All Committee decisions were unanimous except where indicated.*

1. The draft Church of England (Miscellaneous Provisions) Measure (GS 2272), and Amending Canon No. 43 (GS 2273) received First Consideration at the July 2022 group of sessions. The draft Measure is the thirteenth in a series of Miscellaneous Provisions Measures on matters that do not merit separate, free-standing legislation. Draft Amending Canon No. 43 also deals with miscellaneous matters.
2. Explanations of each provision of the Measure and the Canon as introduced were contained in the Explanatory Notes (GS 2272X1 and GS 2273X1).
3. The Committee met on two occasions to consider the Measure and the Canon, and also Amending Canon 42, which is dealt with in a separate report (see GS 2269Y). The Committee completed its remaining business by correspondence under Standing Order 56(4). Every member of the Committee was present at the first meeting. At the second meeting, every member was present except the Reverend Sandra McCalla, who sent apologies.
4. The Committee received submissions before the deadline under Standing Order 55(1) from 19 members, two of whom are Committee members. Of the other 17 members, 9 exercised their right under Standing Order 55 to attend the Committee’s meetings to speak to their proposals (or to authorise another member to speak on their behalf). Another submission was received from the Legislative Reform Committee of the Archbishops’ Council, assisted by staff. The Committee received one submission out of time and declined to consider it, on the grounds that a number of the points raised were covered by submissions that had been made in time.

5. The Appendix contains a summary of the proposals considered by the Committee as well as the Committee's decision on each.

## **DRAFT CHURCH OF ENGLAND (MISCELLANEOUS PROVISIONS) MEASURE**

### **General comments**

6. **Mr Ian Johnston (Portsmouth)** suggested that the Measure would be easier to follow if members were provided with marked-up versions of the pieces of legislation as they are proposed to be amended. Marked-up versions of the key provisions as they would be amended appeared in the Explanatory Notes for the Measure (GS 2272X1).
7. **Mr Johnston** also said that some of the provisions contained in the Measure have been voted on by a previous Synod. That is not, however, the case.

### **Clause 1 Remote meetings: indefinite application of special standing orders**

#### *Subsection (1)*

8. **The Revd Paul Benfield (Blackburn), the Revd Dr Rob Munro (Chester), Mrs Rosemary Lyon (Blackburn) and Mr Stephen Hogg (Leeds)** each proposed the omission of subsection (1) so as to retain the prohibition on dealing with Article 7 or 8 business at a remote or hybrid meeting. Mr Benfield (also speaking for Mrs Lyon) argued that Article 7 or 8 business was so important that it should not be considered at a remote or hybrid meeting. He noted, by way of comparison, that on the discussion on women bishops in 2013/14 many informal conversations took place in person away from the Synod hall which, in his view, were crucial to achieving a resolution.
9. **Dr Munro** further proposed that, if the Committee were to reject the proposal to omit subsection (1), the following three options for taking Article 7 or 8 business at a hybrid meeting should be considered—
  - (1) Decisions would be taken only by those physically present in the hall.
  - (2) At least two-thirds of the members of each House must be physically present in the hall.
  - (3) At least half the members of each House must be physically present in the hall.
10. The Committee was advised that if subsection (1) were omitted then, even if only one member were to attend a Synod meeting remotely, the meeting would be hybrid, the General Synod (Remote Meetings) (Temporary Standing Orders) Measure 2020 (“the Remote Meetings Measure”) would apply and it would not be possible to consider Article 7 or 8 business.
11. The Steering Committee supported the retention of subsection (1) without amendment. It argued that, since the principle of hybrid meetings had now been established and such meetings were continuing after the pandemic, there was no longer a good reason for treating Article 7 or 8 business differently. Indeed, it was because of the importance of such business that it should be considered in an inclusive and not exclusive way.

12. The Committee noted that these proposals might stem at least in part from a wider lack of trust in Synodical processes among some members.
13. The Committee decided to retain subsection (1) of clause 1 without amendment by a majority of 8 to 1.

*Subsections (2) and (3)*

14. **Mr Benfield** proposed the omission of subsections (2) and (3) so as to ensure that the special standing orders could not continue in force indefinitely.
15. **Mr Sam Margrave (Coventry)** proposed “a sunset or review date and a full review”. The Committee was advised that it was not clear what would be gained from a sunset provision (the effect of which would be to provide that the Remote Meetings Measure would be repealed on a specified date). It would appear to place an unnecessary restraint on Synod and would, once the sunset had come into operation, prevent any member from participating remotely. As for a review, the operation of the special standing orders has been under constant review and technical improvements have been made for each group of sessions at which there has been remote attendance.
16. The Steering Committee supported the retention of subsections (2) and (3) without amendment. It took the view that the Remote Meetings Measure had enabled a new and helpful flexibility on which the Synod should continue to be able to rely even after the worst of the pandemic was over.
17. **Mr Gavin Drake** queried if, as an alternative to enabling the special standing orders to apply indefinitely, the main Standing Orders should themselves be amended to incorporate the substance of the special standing orders. The Committee was advised that, while that might well be desirable later on, the necessary first step was to amend the Remote Meetings Measure. The Committee noted that it would wish the Standing Orders Committee to consider this point.
18. The Committee agreed unanimously to retain subsections (2) and (3) of clause 1 without amendment.

**Clause 2 Legislative Reform Measure 2018: removal of sunset**

19. **Mr Benfield** first proposed the omission of the whole clause. He proposed as an alternative that the current sunset provision in the Legislative Reform Measure 2018 (the effect of which is that the Measure will expire in March 2024, five years after the first Legislative Reform Order was laid before Synod, unless it is earlier extended by means of an affirmative resolution statutory instrument) should be extended to ten years. Mr Benfield felt it was too soon for the sunset provision to be removed altogether.
20. Mr Benfield also referred to the contentious debate and close vote on the Legislative Reform (Church Commissioners) Order 2021. The Committee noted that removal of the sunset provision would do no more than change the default position, and that concerns about the operation of the 2018 Measure among members might stem from a lack of trust in the Synodical processes.
21. The Steering Committee supported retention of the clause without amendment.

22. The Committee agreed to retain clause 2 without amendment by a majority of 8 to 1.

### **Clause 3 (now clause 5) Terms of service**

23. There were no submissions on clause 3.
24. The Committee agreed a drafting amendment to the amendment in subsection (1) to replace a double negative with a positive statement. See what is now clause 5(1).

### **Clause 4 (now clause 6) Delegation of episcopal functions**

25. There were no submissions on clause 4 and the Committee was content with the clause as it stood.

### **Clause 5 (now clause 7) Lay residentiary canons**

#### *The point of principle*

26. **The Revd Neil Patterson** proposed the omission of the whole clause. The Committee accordingly decided to discuss the point of principle as to whether there should be lay residentiary canonries, before considering any amendments.
27. **The Archdeacon of Totnes**, a member of the Legislative Reform Committee (itself in favour of the principle of the introduction of lay residentiary canonries), spoke to support the retention of clause 5. Having also served as a member of the Revision Committee on the Cathedrals Measure 2021, he recalled that that Committee had rejected a proposal to include provision for lay residentiary canons in that Measure. That was because the matter had not been considered by the Cathedrals Working Group and it was not feasible in the time available for that Committee to explore the desirability of the proposal. But that Committee did recommend that further work be undertaken so that the matter could be considered properly by the Synod later.
28. The Archdeacon of Totnes went on to explain that the proposal stems from the case of St Paul's Cathedral, where the Chancellor, who is a licensed lay reader and a lay member of the Chapter, has been working so far as legally practicable as if she were a residentiary canon. The Archdeacon stressed, however, that this clause is about more than just one case; rather, it involves a wider principle about the profile of lay ministry and the desirability of parity, where feasible, between lay and ordained ministry.
29. **Mr Patterson** argued that the fact that this proposal was not considered suitable for inclusion in the Cathedrals Measure tended to suggest that it was not suitable for inclusion in a Miscellaneous Provisions Measure either since, in his view, such Measures tend not to contain contentious material.
30. The Steering Committee was not of one mind on this proposal. Its Chair, **Mr Stephen Hofmeyr KC**, opposed it on the grounds that it would be inconsistent with the Synod's overall policy of simplifying legislation, noting that many consequential amendments to ecclesiastical statutes would be required to give full effect to the proposal.

31. **Mr Geoffrey Tattersall KC (Manchester)** asked whether clause 5 had the support of the Deans. He also asked whether it would address the case of St Paul’s Cathedral (see paragraph 28 above).
32. In relation to the Deans, the Committee noted the following—
- (1) The Deans had been informally consulted, with some discussion at the College of Deans. The points they raised had been addressed in the group of amendments prepared by the Legal Office.
  - (2) The Deans are a special constituency of Synod and all those who are members of that constituency support the proposal for lay residentiary canons.
  - (3) Clause 5 provided for a ‘double lock’: first, a cathedral’s constitution would have to enable the creation of lay residentiary canonries; and second, the bishop would have to decide whether to appoint somebody.
  - (4) Parity between lay and ordained ministers did not mean they would be the same but rather that their functions should not be unreasonably reserved to the clergy.
33. The Committee agreed with the principle of introducing lay residentiary canonries and rejected Mr Patterson’s proposal to omit clause 5 by a majority of 6 to 4.

#### *Amendments*

34. **Mr Patterson** proposed an amendment that a person should be eligible for appointment as a lay residentiary canon only if that person has at least six years’ experience as a reader or lay worker. **The Dean of Bristol** made a similar point. The Committee unanimously accepted the amendment. See subsection (1) of the new section 14A of the Cathedrals Measure 2021 in what is now clause 7(1).
35. **Mr Patterson** also proposed that any lay residentiary canon must be accountable to the dean through the Chapter, in the same way as an ordained residentiary canon. The Committee unanimously agreed to make amendments to that effect. See paragraph 18(2) of the new Schedule 1.
36. **Mr Tim Fleming (St Albans)** argued that it should not be possible for a lay residentiary canon to be an executive member of the Chapter of a cathedral. But after discussion, he withdrew his proposal and acknowledged that his concerns had been assuaged, particularly by the assurance that a lay residentiary canon would not be entitled to payment from the Church Commissioners’ general fund. The Committee unanimously agreed to make an amendment to give effect to that assurance. See paragraph 23 of the new Schedule 1. The Committee recommended that guidance should be given to Chapters on the terms of service that would apply to lay residentiary canons (suitable guidance can be put on the online Cathedrals Portal).
37. The Committee agreed unanimously to accept the amendments prepared by the Legal Office to give full effect to the proposal for lay residentiary canons. The amendments in what were clause 5(2) and (3) along with many others are in the new Schedule 1. The provisions that were in clause 5(5) to (9) are in what is now the new clause 22.

**Clause 6 (now clause 8) Bishop's mission order: termination of licence**

38. There were no submissions on clause 6 and the Committee was content with the clause as it stood.

**Clause 7 (now clause 10) Judges: appointment and retirement**

39. **Mr Geoffrey Tattersall KC (Manchester)** proposed to omit subsection (3), which would raise to 75 the retirement age for ecclesiastical judges, in line with that for secular judges. As a 75-year old retired Chancellor, he argued that consistency was less important than ensuring that the bishop should retain the current right to decide whether an ecclesiastical judge should serve beyond 70. It was a process that worked well.
40. The Steering Committee argued that consistency is the more important point and that there was no rational basis for distinguishing ecclesiastical judges from secular ones.
41. The Committee unanimously rejected Mr Tattersall's proposal.

**Clause 8 (now clause 11) Judges: training**

42. There were no submissions on clause 8 and the Committee was content with the clause as it stood.

**Clause 9 (now clause 12) Disciplinary proceedings**

43. There were no submissions on clause 9 and the Committee was content with the clause as it stood.

**Clause 10 (now clause 13) Live broadcast of proceedings**

44. There were no submissions on clause 10 and the Committee was content with the clause as it stood.

**Clause 11 (now clause 14) Care of churches**

45. **Mr Benfield** expressed concern that the proposed duty to have regard to environmental matters might appear equivalent in standing to the existing duty in section 35 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 ("the 2018 Measure") on worship and mission. He proposed an amendment that, if there were a conflict between the two duties, the duty on worship and mission would prevail.
46. Members of the Committee countered that it should be for each body to decide in practice how to balance the two duties and that it would therefore be wrong to legislate for a hierarchy of the duties. It was further noted that the Five Marks of Mission already include protection of the environment but none of them has priority over another.
47. The Committee rejected Mr Benfield's proposal.
48. **The Legislative Reform Committee** proposed an amendment to require each Diocesan Advisory Committee to include at least one person with direct experience of accessibility issues. The amendment would implement part of a motion moved by the Revd Canon Timothy Goode at the July 2022 group of sessions.

49. The Committee agreed the amendment. See what is now clause 14(4).
50. **The Legislative Reform Committee** also proposed an amendment to enable a chancellor to make an order under section 78 of the 2018 Measure to permit, without the need for a faculty, the introduction of a monument erected on the curtilage of a church or other consecrated building or on consecrated ground. This would put on a statutory footing the practice of chancellors making churchyard regulations.
51. The Committee agreed the amendment unanimously. See what is now clause 14(5) and (6).

### **Clause 12 (now clause 15) Disposals etc. of land**

52. **Mrs Sue Cavill (Derby)** argued that, where there is a vacancy in a benefice, the parochial church council (“PCC”) or churchwardens, and not the bishop, should exercise the incumbent’s power to dedicate land as highway.
53. **Mr Tom Woolford (Blackburn)** proposed the omission of subsection (2), which would entitle the bishop, where there is a vacant benefice, to exercise the incumbent’s powers relating to land. In the same spirit, **Mr Jonathan Baird (Salisbury)** asked why it was the bishop, and not the PCC, who should have this entitlement.
54. The Committee was advised that giving these powers to the bishop would be consistent with other provisions of the Church Property Measure 2018; there is no case where a PCC or churchwardens may dispose of land belonging to a benefice. Furthermore, where a benefice is full, section 43(2)(b) of that Measure requires the incumbent to obtain the bishop’s consent before dedicating land for the purposes of a highway – that implies that the bishop has sufficient knowledge of relevant matters to be able to take informed decisions.
55. Members of the Committee observed that in many cases several PCCs would likely be involved and that would create a more complex process. They further noted that these proposals (like those on clauses 1 and 2) tended to indicate a lack of trust among parishioners.
56. The Committee was advised that, as an alternative in each case, the bishop could retain the power but be required to obtain the consent of the PCC before exercising it.
57. The Committee rejected the proposals from Mrs Cavill, Mr Woolford and Mr Baird by a majority of 7 to 2. And the Committee rejected the alternative approach (referred to in paragraph 56) by a majority of 6 to 2.
58. The Committee unanimously agreed to a couple of drafting amendments. The first, on subsection (1), was to make express what would otherwise be necessarily implied by stating that, if the bishop were to exercise the power of dedication, the bishop would not have to consent to his or her own decision. The second, on subsection (6) and made at the prompting of **Mr Benfield**, was to replace the reference to “acting” as priest in charge with a reference to “holding office” as such.

**Clause 13 (now clause 16) Care of cathedrals**

59. **Mr Fleming** was concerned that a cathedral should not find itself in a position where it wished to have one of its objects of special interest on display somewhere for a short period only but first had to go through a lengthy process of obtaining permissions. He argued that would be disproportionate and proposed that there should be an exception for such a case. The Committee was advised that there would have to be a mechanism for determining what was, and what was not, a “short period” for these purposes – and it was not clear what would be an appropriate mechanism in this case.
60. The Steering Committee was content with clause 13(1) and (2) as drafted.
61. The Committee rejected Mr Fleming’s proposal unanimously.
62. **The Legislative Reform Committee** proposed an amendment to change the composition of the Cathedrals Fabric Commission by providing that the single bishop who is to be appointed may be any diocesan bishop or any suffragan bishop rather than just those who are members of the House of Bishops.
63. The Committee agreed the proposal unanimously. See what is now clause 16(3).

**Clause 14 (now clause 17) Dealings in church property: designated adviser**

64. There were no submissions on clause 14 and the Committee was content with the clause as it stood.

**Clause 15 (now clause 18) Elections under Church Representation Rules**

65. **Mrs Amanda Robbie (Lichfield)** proposed that provision be made so that a close relative should not be able to nominate a person as a candidate for an election for parochial representatives or churchwardens. She argued that allowing such nominations could disrupt a PCC and also that it was wrong that a member of a PCC did not have to undergo a DBS check.
66. The Committee was invited to consider whether, if it were to support this proposal, it would wish to apply it to other Church elections. It was also invited to consider not making an amendment at this stage but to refer the point to the Elections Review Group (a sub-committee of the Business Committee) to consider the desirability of the change in principle and whether it should apply to other Church elections.
67. At its first session, the Committee agreed by a majority of 9 to 1 to include provision that a candidate may not be nominated by a spouse or civil partner, child, sibling or parent. It was noted that, as the Marriage (Same Sex Couples) Act 2013 did not apply to Church legislation, references to spouses would not, without amendment, include same sex spouses. The Committee wished the amendment to apply to same sex spouses.
68. The Committee also agreed to refer the amendment to the Elections Review Group so that they could consider the proposal in principle, the list of relatives that would be barred from nominating and whether to apply the proposal to other Church elections.
69. The Elections Review Group happened to meet between the Committee’s first and second sessions and made a preliminary assessment of the amendment before the end



of the Revision Committee Stage. The Group asked the Committee to reconsider the decision to make the amendment, so that it could consider the matter in depth. (The Group had noted, for example, that there were cases of congregations made up of members of the same family and for whom this amendment would pose a problem.)

70. At its second session, the Committee, taking account of the Elections Review Group's request, agreed unanimously to reverse its previous decision and not to make an amendment to give effect to Mrs Robbie's proposal. It welcomed the reassurance from the Elections Review Group that it would begin work on the proposal once it had completed its review of the 2021 Synodical elections.
71. **Mrs Robbie** also proposed that every election should include the option of "reopening nominations" to allow voters to express dissatisfaction with all the candidates, even in unopposed elections. If that option were to win, nominations would open again and a fresh election would be held. The Committee noted that this would involve a significant change to Church elections, not least because there would have to be an election even where there were not more candidates than places to fill. The Committee was again invited to consider referring this matter to the Elections Review Group.
72. The Committee agreed unanimously to refer this matter to the Elections Review Group.

#### **Clause 16 (now clause 19) Church Commissioners' functions etc.**

73. **Mr Benfield, Mrs Deborah McIsaac (Salisbury), Mr Margrave and Mr Stephen Hogg** each argued that the procedural safeguards which apply to committees of the Church Commissioners should also apply to their sub-committees (for example, Commissioners making up a majority of members). It was noted that this result is already achieved by clause 16(5), which would ensure that references in the Church Commissioners Measure 1947 to a committee will include a sub-committee.
74. The same members also expressed concern about the proposed delegations to the chair or deputy chair of a sub-committee or to an officer. The Committee was advised that this would bring the Commissioners' governance arrangements into line with those of other large charities. The Commissioners are prevented from such delegation because, unlike most charities, they are established and constrained by statute. The Committee was further advised that the proposed delegations would not involve significant cost or duplication of effort; for example, sub-committees would be able to meet remotely.
75. **Mr Ian Johnston** asked for an explanation for the inclusion of subsection (4) (which would give the Commissioners express power to borrow). The Committee noted the explanation already provided in paragraph 69 of the Explanatory Notes (GS 2272X1).
76. The Committee was content with clause 16 as it stood.

#### **Clause 17 (now clause 21) Meetings**

77. **The Legislative Reform Committee** proposed a group of amendments that would replace the amendments in subsections (1) and (2) of clause 17 with a new Schedule including those amendments and others on remote meetings for Church bodies. The Committee was advised that the amendments would, among other things, ensure that

statutory references to persons being “present” at meetings of certain bodies would include the possibility of members attending remotely from different locations.

78. The Committee was advised that the amendments to the Church Representation Rules in paragraph 1 of the Schedule would apply to those Rules and other Measures too. That would therefore avoid the need to amend every Measure that refers to being present at a PCC meeting. The Committee noted that paragraph 10 of the Schedule would give the Archbishops’ Council power to make provision on remote meetings.
79. The Committee agreed the proposal. See what is now clause 21 and new Schedule 2.
80. **Mr Ian Johnston** found the new paragraph 17A(3) (in subsection (2)) unclear. **The Legislative Reform Committee** proposed the insertion of a new paragraph (4) to correct this inadvertent omission. That amendment would ensure that a delegation by the Dioceses Commission to the Chair of approval of any business could be general or specific and that the Commission could impose conditions on the delegation. See paragraph 17A(4) in what is now clause 21.

#### **New clause (now clause 3) Safeguarding code revision: exceptions to requirement for Synod approval**

81. **The Legislative Reform Committee** proposed the removal, in two cases, of the requirement for Synod to approve a revision of the Code of Practice under the Safeguarding and Clergy Discipline Measure 2016. The first case would be a revision to the requirements imposed by the Code, if the House of Bishops considered that the revision was insubstantial. Such revisions would include, for example, amendments to update statutory references or job titles. The second case would be a revision on the guidance given on how to comply with the requirements imposed.
82. The Committee agreed the proposal. See what is now clause 3.

#### **New clause (now clause 4) Change of name of suffragan see: removal of requirement for Synod approval**

83. **Mr Patterson** proposed that the Synod’s approval should not be required for a change in the name of a suffragan see.
84. The Committee agreed the proposal. See what is now clause 4.

#### **New clause (now clause 9) Registered patron disqualified from election: exercise of patronage**

85. **The Legislative Reform Committee** proposed that, where the registered patron of a benefice is disqualified from office under the Church Representation Rules (for example, as a result of being included in a barred list), the Diocesan Board of Patronage should instead exercise the right of patronage.
86. The Committee agreed the proposal. See what is now clause 9.

### **New clause (now clause 20) Pensions Board: appointments during vacancy in archbishopric**

87. **The Legislative Reform Committee** proposed that, where the see of one of the Archbishops is vacant, the power of the Archbishops jointly to make certain appointments to the Church of England Pensions Board should instead be exercisable by the other Archbishop solely.
88. The Committee agreed the proposal. See what is now clause 20.

### **New clause (now clause 22) Orders: procedure**

89. The Committee agreed the insertion of this new clause as a drafting amendment. It would not make any change of substance and would merely aid clarity. It contains the provisions about the Synodical procedure for approval of an order that were in clause 5 (now clause 7) and in the new Schedule 2. The Committee was advised that having a new and separate clause dealing only with procedure would avoid duplication and would drain into the clause provisions which would otherwise clog up the flow of the Measure. See what is now clause 22.

### **New clause on safeguarding risk assessments**

90. **The Right Reverend Julian Henderson**, while still Bishop of Blackburn, requested that consideration be given to conferring new powers on bishops as part of their response to independent risk assessments under Canon C 30.
91. The Bishop argued that allegations that a person in holy orders has been acting inappropriately often fail to reach the threshold for investigation under the Clergy Discipline Measure 2003 or for investigation by the police. The only option a bishop has in that case is to commission a risk assessment. But if that assessment indicates that the person concerned is not safe to exercise public ministry, the bishop has no power to prevent the person from doing so.
92. The Committee, having been advised that the Bishop's proposal would require detailed legal and safeguarding advice, established a sub-committee (with support from the Legal Office and the National Safeguarding Team) to make a preliminary assessment of the proposal. The sub-committee concluded, in summary, that there was an urgent need to address the proposal and that, while it could properly be dealt with in this draft Measure or in Amending Canon No. 42, it was not feasible to do so in light of the policy work required and the desire to align that with the ongoing work on reforming the law on clergy conduct.
93. The Committee stresses to Synod, and to those with policy responsibility, its view that there is an urgent need to address the issue raised by the Bishop.

### **New clause on the Parochial Church Councils (Powers) Measure 1956**

94. **Mr Adrian Greenwood (Southwark)** made three proposals for inclusion in a new clause to amend section 2(2) of the Parochial Church Councils (Powers) Measure 1956.
95. Mr Greenwood's first proposal was to omit from section 2(2)(a) the words "co-operation with the minister in" which, he submitted, were superfluous. The Committee

was advised that it was not clear that the words were superfluous. The minister and the PCC are separate entities with separate responsibilities. Moreover, it is the minister who has cure of souls and the ministry exercised by the PCC members, while complementary, is different in nature.

96. The Committee rejected Mr Greenwood's first proposal.
97. Mr Greenwood's second proposal was to amend the description in section 2(2)(a) of the Church's mission ("pastoral, evangelistic, social and ecumenical") by adding wording to cover the Five Marks of Mission comprehensively – in particular, tackling injustice and avoiding conflict and protecting the environment. The Committee was advised that the word "social" was sufficient to cover all these matters.
98. The Committee rejected Mr Greenwood's second proposal.
99. Mr Greenwood's third proposal was to add to the non-exhaustive list of a PCC's functions an acknowledgment of the many functions a PCC has as a charity and the functions it has under other legislation. The Committee was advised that there was no need to add to the list and that any additions might become out of date.
100. The Committee rejected Mr Greenwood's third proposal.

#### **New Schedule (now Schedule 1)**

101. The Committee agreed to the Schedule of amendments ancillary to the introduction of lay residentiary canonries, trailed by clause 5 (now clause 7). It was noted that the amendments were drafted on the basis that a lay residentiary canon is to be an office holder on common tenure and be treated as analogous to a licensed reader or lay worker.
102. The Committee was advised that Schedule 2 would make the following provision—
  - (1) Paragraph 1 would make non-textual amendment to the Ecclesiastical Commissioners Act 1840. Sub-paragraph (1) would provide context by restating the effect of the new section 14A(3)(b) of the Cathedrals Measure 2021 (see what is now clause 7(1)). Sub-paragraph (2) would provide that the rest of the 1840 Act does not apply to a lay residentiary canon.
  - (2) Paragraph 2 would amend the Church Representation Rules so that a scheme made by a diocesan synod for representation on a deanery synod of the residentiary canons of the cathedral would also include a lay residentiary canon.
  - (3) Paragraph 3 would amend the Schedule to the Ecclesiastical Offices (Age Limit) Measure 1975, which lists the ecclesiastical offices subject to the prohibition on service beyond the age of 70. The list already includes residentiary canons, but on the basis that they are clergy. It also refers to those on common tenure, inserted by the Ecclesiastical Offices (Terms of Service) Measure 2009, but it is not clear that that reference was intended to include ecclesiastical offices the nature of which had not been foreseen in 2009. Accordingly, to avoid any doubt, an express reference to lay residentiary canons would be added.
  - (4) Paragraphs 4 to 7 would amend the Ecclesiastical Offices (Terms of Service) Measure 2009. Paragraph 5 would amend section 1 to provide that a lay

residentiary canon is subject to common tenure. Paragraph 6 provides for a lay residentiary canon to be subject to sections 3A and 3B of that Measure and liable to removal or suspension from that office. Paragraph 7 would amend section 4 of that Measure to provide that a lay residentiary canon is not entitled to a house of residence from the Chapter but could be given one on a discretionary basis.

- (5) Paragraph 8 would amend the Ecclesiastical Offices (Terms of Service) Regulations 2009. Those Regulations would apply to a lay residentiary canon as the holder of an office subject to common tenure. Those Regulations also make special provision for certain residentiary canons, known as “qualifying residentiary canons”, defined in regulation 2(4), and lay residentiary canons would come within that class. Therefore, a lay residentiary canon who was an executive member of Chapter would have an annual review with the dean.
- (6) Paragraph 9 would amend the Care of Cathedrals Measure 2011. In particular, it would amend section 11, which provides for certain decisions of the Cathedrals Fabric Commission to be sent for review by the Commission of Review. Section 11(3)(b) provides that the membership of the Commission of Review must include a person appointed by the Archbishops who is or has been a dean, provost or residentiary canon of a cathedral other than the one to which the review relates. Paragraph 9 would ensure that a person who is or has been a lay residentiary canon was eligible for appointment.
- (7) Paragraphs 10 to 13 would amend the Church of England Pensions Measure 2018. The amendments would provide for a lay residentiary canon to be treated in the same way as a licensed lay worker. Accordingly, a lay residentiary canon would be eligible for membership of the funded scheme and the Church Commissioners would not be liable to meet any of the pension costs. The Pensions Board would have the power to provide a lay residentiary canon with a retirement home and to provide a loan to buy or improve a house.
- (8) Paragraphs 14 to 17 would amend the Cathedrals Measure 2021 as follows—
  - In section 3 and Schedule 2, a lay residentiary canon would be a member of the College of Canons.
  - In section 5, the constitution could include provision for the appointment of a lay person as residentiary canon.
  - In section 9, the bishop would appoint any lay residentiary canon.
  - In section 12, a lay residentiary canon would be subject to the same requirements for accountability as the cathedral clergy.
  - In section 13, a lay residentiary canon would not be eligible for appointment as interim dean.
  - In section 14, a lay residentiary canon would not be eligible to be one of the two full-time residentiary canons required to be engaged exclusively on cathedral duties.
  - In section 19, a lay residentiary canon would be entitled to have departmental or operational responsibility and would therefore be eligible for membership of the senior management group.

- In section 22, there would be an acknowledgement that a lay residentiary canon could occupy a house of residence.
- In section 28, a lay residentiary canon would not be entitled to payment from the Church Commissioners' general fund as a residentiary canon engaged on cathedral duties.
- In section 40, the Church Representation Rules would be further modified so that any lay residentiary canon would be entitled to attend and participate in an annual or special parochial church meeting.
- In Schedule 1, any lay residentiary canon would be a member of the Chapter and, if the office holder were to carry out cathedral duties, would be eligible to be an executive member. Any lay residentiary canon who was an executive member would be entitled to pay from the Chapter for work relating to the cathedral.

### **New Schedule (now Schedule 2)**

103. The Committee agreed unanimously to include the Schedule of amendments making provision for remote meetings for various Church bodies, introduced by clause 17 (now clause 21).

### **Clause 18 (now clause 23) Short title, commencement and extent**

104. The Committee postponed its consideration of clause 18 until it had considered all proposals for amendment, including new clauses and new Schedules.
105. **The Legislative Reform Committee** proposed that the new clause 3 (removal of Synod approval for revisions to safeguarding Code) should come into force on Royal Assent.
106. **The Legislative Reform Committee** proposed to correct an oversight by providing for clauses 1 and 16 (now clause 19) and new clause 20 to extend to the Isle of Man.
107. The Committee unanimously agreed both proposals.
108. The Committee also unanimously agreed the following—
- (1) The new clause 4 (change of name of suffragan see) should come into force on a day appointed by order, since transitional provision may be required.
  - (2) Clause 6 (now clause 9) (registered person disqualified from election: exercise of patronage) should come into force on Royal Assent as there is a practical benefit in having it in force as soon as possible. See what is now clause 23(2)(g).
  - (3) Clause 14(4) to (6) (care of churches) should come into force on a day appointed by order, for consistency with the other amendments in this draft Measure to the Ecclesiastical Jurisdiction and Care of Churches Measure 2018.
  - (4) Clause 20 (Pensions Board: appointments during vacancy in archbishopric) should come into force on Royal Assent, as it regularises the position in practice. See what is now clause 23(2)(j).
  - (5) The new clause 22 (orders: procedure) should come into force on Royal Assent as it is merely procedural and enabling. See what is now clause 23(2)(l).

- (6) On clause 18 (now clause 23), subsections (10) and (11) should be amended to reflect discussions between the Legal Office and the Isle of Man authorities so that, in summary, the amendments in this draft Measure are subject to the same provision on extent to the Isle of Man as the provisions being amended.





**DRAFT AMENDING CANON NO. 43 (MISCELLANEOUS PROVISIONS)****Part 1 (now Part 2) Miscellaneous Amendments****Paragraph 1 (now paragraph 6) Services in parish churches**

117. There were no submissions on paragraph 1 and the Committee was content with the paragraph as it stood.

**Paragraphs 2 and 3 (now paragraphs 7 and 8) Marriage**

118. **Mr Scowen** proposed the omission of the amendments to Canon B 32 that would reflect the change by secular law to increase the minimum age of marriage from 16 to 18 on the grounds that, in his view, that change was not reason enough to amend the Canons. **Mr Greenwood** raised similar concerns. The Committee was advised that removing the amendments would imply that a person aged 16 or 17 could still enter a marriage according to the rites of the Church of England, even though that is prohibited by law (as Mr Scowen himself conceded). The Committee noted that the policy implications of an inconsistency between the age of consent (which is an aspect of the secular law on sexual offences) and the minimum age of marriage are a matter for Parliament to consider and cannot be addressed by amending (or not amending) the Canons.

119. The Committee also noted that section 3 of the Submission of the Clergy Act 1533 provides that “no canons...shall be made or put in execution within this Realm...which shall be contrariant or repugnant to...the customs laws or statutes of this Realm”. It also noted that, although that Act originally applied to canons made by the Convocations, section 1(3) of the Synodical Government Act 1969 provides that section 3 of the 1533 Act “shall apply in like manner to the making, promulging and executing of Canons by the General Synod”.

120. The Committee was advised that, once the Marriage and Civil Partnership (Minimum Age) Act 2022 comes into force on 26 February 2023, it will not be open to the Church to conduct a marriage of persons aged 16 or 17. Accordingly, to leave Canon B 32 as it stands would make it “contrariant or repugnant” to the laws or statutes of the realm, as it would imply that persons aged 16 or 17 might still be able to marry lawfully if they had parental consent. **Mr Scowen** submitted that this was too narrow an interpretation of the 1533 Act; he argued that the Act applied only to amendments to the Canons and that, since he was proposing no amendment to Canon B 32, the 1533 did not therefore apply. **Mr Patterson** countered that for centuries the Canons have been updated to reflect changes in secular law and that this case was no different. **Mr Hofmeyr KC** added that amending Canon B 32 would not be inconsistent with the Church’s view that sexual relations should take place only in a marriage between a man and a woman.

121. The Committee unanimously rejected Mr Scowen’s proposal.

#### **Paragraph 4 (now paragraph 9) Lay residentiary canons**

122. The Committee unanimously agreed to make a consequential amendment to Canon C 21 to reflect the change made by clause 5 (now clause 7) to enable a lay person to become a residentiary canon.

#### **Paragraph 5 (now paragraph 10) Rural deans**

123. **Mr Scowen** argued that the meaning of “other deputy” was not clear and could be read to include a lay person or a child. The Committee was advised that, since the provision as amended would refer to functions of an archdeacon carried out “in person or by the rural dean or other deputy”, the reference to another deputy had to be read in context and not in isolation. The Committee noted that Canon C 22.3 gives archdeacons power to delegate and recognises that the archdeacon’s jurisdiction could be carried out “by an official or commissary to whom authority in that behalf shall have been formally committed by the archdeacon concerned”. The Committee was advised that, if the intention were to enable the archdeacon to do something as unusual as delegating powers to a lay person or a child, express provision to that effect would be expected.
124. The Committee unanimously rejected Mr Scowen’s proposal.

#### **Paragraph 6 (now paragraph 11) Ecclesiastical Courts**

125. **Mr Mason** queried the meaning of “communicant” in the proposed new paragraph 2A in Canon G 4 and proposed that it be defined by reference to section 95 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 or by analogy with the term “actual communicant” in the Church Representation Rules. The Committee noted that the proposed wording would provide consistency with that in the preceding paragraph 2.
126. The Committee was advised that the Canons do not generally include definitions (although there are of course exceptions) and that words used in the Canons tend to have their natural meaning in context. In the context of an appointment under section 29(1) or 31(1) of the 2018 Measure, the person making the appointment might find it helpful to assess the regularity with which a candidate receives Holy Communion by reference to the definition in section 95(2)(b) of that Measure—

*“Communicant” means a person who has received communion according to the use of the Church of England or of a church in communion with it...at least once in the twelve months before the date on which he or she is offered an appointment or requested to act in a capacity for which that qualification is required.*

127. The Committee noted that, in contrast, the more detailed definition of “actual communicant” in the Church Representation Rules applies in the context of eligibility for voting or standing in certain elections.
128. The Committee further noted that Section G of the Canons is concerned with ecclesiastical jurisdiction and Canon G4 provides for the appointment of registrars. In that context, the natural meaning of “communicant” would accord more with the 2018 Measure than with the Church Representation Rules. The Committee was advised that the 2018 Measure consolidated much of the Ecclesiastical Jurisdiction Measure 1963

and that there is therefore a long-standing requirement in the context of the ecclesiastical courts and the work of legal officers that communion need be taken only once in the previous 12 months. To include now a requirement in the Canons for it be taken at least three times would be incongruous.

129. The Committee unanimously rejected the proposal to define “communicant”.

130. The Committee unanimously agreed that no amendment to paragraph 6 was required.

### **Paragraph 7 (now paragraph 12) Interpretation**

131. There were no submissions on paragraph 7 and the Committee was content with the paragraph as it stood.

## **Part 2 (now Part 3) Updating Statutory References**

### **Paragraph 8 (now paragraph 13) Section B (divine service and administration of sacraments)**

132. There were no submissions on paragraph 8 and the Committee was content with the paragraph as it stood.

### **Paragraph 9 (now paragraph 14) Section C (ministers, ordination, functions and charge)**

133. There were no submissions on paragraph 9 and the Committee was content with the paragraph as it stood.

### **Paragraph 10 (now paragraph 15) Section F (things appertaining to churches)**

134. There were no submissions on paragraph 10 and the Committee was content with the paragraph as it stood.

### **Paragraph 11 (now paragraph 16) Section G (the ecclesiastical courts)**

135. There were no submissions on paragraph 11 and the Committee was content with the paragraph as it stood.

## **New Part A1 (now Part 1) The Demise of the Crown**

136. The Committee unanimously agreed to make the amendments proposed by the Legal Office in consequence of the recent demise of the Crown to Canons A1 (the Church of England and its government), A7 (the Royal Supremacy), B19 (the Bidding Prayer), C13 (the Oath of Allegiance) and C17 (Archbishops).

## **General point**

137. **Mr Scowen** asked the Committee to consider merging this Amending Canon with Amending Canon No. 42 to form a single Amending Canon, on grounds of expense and convenience. The Committee has been advised that the Business Committee is proposing to take all the remaining stages of Amending Canon No. 42 at the February

2023 Synod but to take only the Revision Stage of Amending Canon No. 43 at that time (with the final stages to follow in July 2023). Merging the two Amending Canons would not therefore be desirable and the Committee has decided not to pursue the point.

**The Ven Nikki Groarke**  
Chair of the Revision Committee

December 2022

## Appendix

## SUMMARY OF PROPOSED AMENDMENTS &amp; THE COMMITTEE'S DECISIONS

## DRAFT CHURCH OF ENGLAND (MISCELLANEOUS PROVISIONS) MEASURE

Clause in original draft Measure (GS 2272)	Clause in draft Measure as revised (GS 2272A)	Name	Summary of proposal	Committee's decision
1(1)	1(1)	Revd Paul Benfield, Revd Dr Rob Munro, Mrs Rosemary Lyon, Mr Stephen Hogg	Art 7 or 8 business not to be taken at remote meeting	Rejected
1(1)	1(1)	Revd Dr Munro	Art 7 or 8 business to be taken at remote meeting only if certain conditions met	Rejected
1(2) and (3)	1(2) and (3)	Revd Paul Benfield	Power to hold remote meetings not to run indefinitely	Rejected
1	1	Mr Sam Margrave	Introduce sunset and review	Rejected
2	2	Revd Paul Benfield	Remove clause so that 5-year sunset remains	Rejected
2	2	Revd Paul Benfield	Extend sunset to 10 years.	Rejected
3	5	The Committee	Drafting amendment	Accepted
4	6	--	--	--
5	7	Revd Neil Patterson	Remove whole clause	Rejected
5	7	Revd Neil Patterson Very Revd Dr Mandy Ford	Require lay residentiary canon to have served six years as reader or lay worker	Accepted
5	7	Revd Neil Patterson	Lay residentiary canon to be accountable to dean through Chapter	Accepted
5	7	Mr Tim Fleming	Lay residentiary canon not eligible to be executive member of Chapter	Withdrawn
5	7	The Committee	Supplementary provision and ancillary amendments	Accepted
6	8	--	--	--
7	10	Mr Geoffrey Tattersall KC	Ecclesiastical judges still to retire at 70 subject to bishop's discretion to extend	Rejected
8	11	--	--	--
9	12	--	--	--
10	13	--	--	--
11	14	Revd Paul Benfield	Duty on worship and mission to have priority over new environmental duty	Rejected
11	14	Legislative Reform Committee	Diocesan Advisory Committee to include person with direct experience of accessibility issues	Accepted

11	14	Legislative Reform Committee	Chancellor to permit, without faculty, works on monuments etc.	Accepted
12(1)	15(1)	Mrs Sue Cavill	If benefice vacant, PCC (not bishop) to have power to dedicate land for highway	Rejected
12(2)	15(2)	Revd Dr Tom Woolford	If benefice vacant, bishop not to have incumbent's powers over land	Rejected
12(2)	15(2)	Mr Jonathan Baird	If benefice vacant, PCC (not bishop) to have incumbent's powers over land	Rejected
12	15	The Committee	Drafting amendments	Accepted
13	16	Mr Tim Fleming	Cathedral enabled to put historic objects on display without needing permissions	Rejected
13	16	Legislative Reform Committee	Single bishop on Cathedrals Fabric Commission to be elected by all diocesan and all suffragan bishops	Accepted
14	17	--	--	--
15	18	Mrs Amanda Robbie	In parish elections, to prevent nomination of candidates by relatives	Rejected but referred to Elections Review Group
15	18	Mrs Amanda Robbie	In all Church elections, to include option of re-opening nominations	Rejected but referred to Elections Review Group
16	19	Revd Paul Benfield Mrs Deborah McIsaac Mr Sam Margrave Mr Stephen Hogg	To have same procedural safeguards in Commissioners' sub-committees as in committees	No action (as draft already provided for that)
16	19	Revd Paul Benfield Mrs Deborah McIsaac Mr Sam Margrave Mr Stephen Hogg	To change provision on delegation to chair of sub-committee etc	Rejected
17	21	Legislative Reform Committee	Make provision on remote meetings for other bodies	Accepted
17	21	Mr Ian Johnston Legislative Reform Committee	Clarify provision on nature of delegation by committee to chair.	Accepted
18	23	Legislative Reform Committee The Committee	Drafting amendments	Accepted
New Clause	3	Legislative Reform Committee	Removal of Synodical approval for certain revisions to Safeguarding Code of Practice	Accepted
New Clause	4	Revd Neil Patterson	Removal of Synodical approval for changing name of suffragan see	Accepted

New Clause	9	Legislative Reform Committee	If registered patron disqualified, Diocesan Board of Patronage exercises right	Accepted
New Clause	20	Legislative Reform Committee	Where archbishopric vacant, other archbishop to exercise alone power of appointment to Pensions Board	Accepted
New Clause	22	The Committee	Drafting amendment	Accepted
New Clause	--	Rt Revd Julian Henderson	Give new powers to bishops in case of adverse safeguarding risk assessment	Rejected but stressed need for urgent policy work
New Clause	--	Mr Adrian Greenwood	Miscellaneous amendments Parochial Church Councils (Powers) Measure 1956	Rejected
New Schedule	1	The Committee	Ancillary amendments on lay residentiary canons	Accepted
New Schedule	2	The Legislative Reform Committee	Amendments on meetings	Accepted

**DRAFT AMENDING CANON NO. 43**

<b>Paragraph in original draft Canon (GS 2273)</b>	<b>Paragraph in draft Canon as revised (GS 2273A)</b>	<b>Name</b>	<b>Summary of proposal</b>	<b>Committee's decision</b>
1	6	--	--	--
2	7	Mr Clive Scowen Mr Adrian Greenwood	Remove amendments reflecting marriage age increase from 16 to 18	Rejected
3	8	--	--	--
4	9	The Committee	Consequential amendment on lay residentiary canons	Accepted
5	10	Mr Clive Scowen	Limit meaning of "other deputy"	Rejected
6	11	Mr John Mason	Define "communicant"	Rejected
7	12	--	--	--
8	13	--	--	--
9	14	--	--	--
10	15	--	--	--
11	16	--	--	--
New para	1	The Committee	Amend Canons A1, A6 after demise of Crown	Accepted
New para	2	The Committee	Amend Canon A7 after demise of Crown	Accepted
New para	3	The Committee	Amend Canon B19 after demise of Crown	Accepted
New para	4	The Committee	Amend Canon C13 after demise of Crown	Accepted
New para	5	The Committee	Amend Canon C17 after demise of Crown	Accepted