

## GENERAL SYNOD

**Chancel Repair (Church Commissioners' Liability) Measure Policy Briefing Note****Introduction**

1. Chancel Repair Liability (CRL) arises from the historic division of responsibility for the maintenance of parish churches in medieval times whereby the Rector of the benefice was responsible for the Chancel and the parishioners for the rest of the building. Monasteries became the rectors of many benefices (appointing a vicar to provide pastoral care) and therefore assumed the Rector's liability to repair the chancel. Following dissolution of the monasteries these rights and responsibilities transferred to other individuals and bodies with monastic property which they acquired. In many cases CRL remains attached to property and now rests with the current owner, which is a significant financial benefit for many parishes.
2. Over time, the Church Commissioners have become responsible for CRL for about 800 churches and with about 350 of these all or some of the liability is attached to land owned (currently or previously) by the Commissioners (rather than to a former entitlement to tithes). This can complicate disposals (potentially depressing the value) and also gives rise to administrative and pastoral difficulties (described below). This Measure would detach CRL from the relevant land owned by the Commissioners and make it a free-standing statutory liability of the Commissioners. It would not affect the CRL of any other bodies or individuals.
3. Cathedral chapters also have liabilities in respect of around another 200 church chancels, the vast majority of which are not based on land. The draft Measure would formally transfer all those liabilities on Cathedral chapters to the Commissioners.
4. The benefits of the Measure would be:
  - a) Parishes concerned would retain the benefit of CRL, with greater certainty and clarity and statutory underpinning;
  - b) Cathedral Chapters would be relieved of all CRL;
  - c) The administrative difficulties for the Commissioners and PCCs would be removed, saving staff and volunteers' time;
  - d) Sales of affected Commissioners land would be more straightforward, potentially with a modest uplift in value.
5. The Measure arises from a review by the Church Commissioners, in 2021, of their Chancel Repair Liability (CRL), as part of a wider national Church programme of legal simplification. The review recommended that a new Measure be introduced to address the various existing difficulties and achieve the benefits set out above.
6. The Board approved the review recommendations, so draft legislation has been prepared which will be considered at the February 2024 sessions of General Synod.
7. This note sets out the policy context and rationale for this legislation and should be read in conjunction with the draft Measure (GS 2343) and Explanatory Notes (GS 2343X).

**GENERAL SYNOD**

8. The legislation is narrow in scope, and is deliberately designed to address only the specific issues relating to the liabilities attached to Commissioners' land and Cathedral Chapters. The Measure makes no fundamental changes to the law around Chancel Repair Liability and is not intended to do so.

**Legal background**

9. Chancel Repair Liability (CRL) is a long-standing and legally enforceable liability to repair, or contribute to the cost of repair, of the chancel (usually the eastern part) of a parish church. Generally the rector would have been responsible for the chancel repair, whereas the repair of the nave historically would have been the responsibility of the parish.
10. Some CRL is attached to the ownership of particular pieces of land. That may be because the land in question was originally glebe and formed part of the endowment of a benefice (property given to support the priest who serves a parish); or because the land – as a result of subsequent legal rearrangement – has the notional right to tithes that had originally belonged to a rectory.
11. During the Middle Ages, monasteries acquired a large number of rectories and the property with which they had been endowed. Following the dissolution of the monasteries in the 1530s, some of those properties came into the ownership of cathedrals, either because the dissolved monastery was re-founded as a cathedral and the cathedral inherited the property which had belonged to the monastery, or because former monastic property was transferred to an existing cathedral by way of additional endowment. Where this former monastic property had originally belonged to a rectory, the cathedral inherited the liability to repair the chancel of the relevant parish church.
12. Some former monastic property that had originally belonged to rectories was also used to endow the new bishoprics founded by Henry VIII. Where that was the case, the bishop will have inherited the liability to repair the chancel of the relevant parish church. During the nineteenth and twentieth centuries, all episcopal estates and much of the property belonging to cathedrals was transferred to the Ecclesiastical Commissioners. Since its foundation in 1704, Queen Anne's Bounty also came into ownership of former rectorial property. The Ecclesiastical Commissioners and Queen Anne's Bounty therefore inherited the chancel repair liability that went with the property which had been transferred to them. Therefore, when the Church Commissioners was established in 1947, all those liabilities on those predecessor bodies were taken over, including via the ownership of land which carried with it a liability in respect of approximately 350 parish church chancels. In some cases, the Commissioners have the whole liability; in other cases the liability is shared with others.

**Government legal changes**

13. Before 2002, if land which carried CRL was sold, the CRL automatically passed to the new owner, whether or not the liability was recorded on the registered title of the property. However, in 2002, the law was changed to state that CRL would

**GENERAL SYNOD**

only pass to the purchaser of the land if the liability had been protected by an entry on the Land Register.

14. In addition, for completeness' sake, if a title is erroneous and rectification successfully sought, it is still possible for the liability potentially to be added, even though there was not previously an entry on the relevant registered title. If the liability was not recorded on the title the purchaser would no longer have the obligation. The legislation came into force in 2002, but there was a transition period to allow for registration to take place – until 14 October 2013.
15. In order to address this issue, Parochial Church Councils (PCCs) were initially advised to register the liability themselves to ensure they did not lose the benefit of the obligation. However, this caused both pastoral and reputational issues, given the sensitivities around CRL, and practical issues, as it was onerous for the PCCs.
16. So, in 2010 the Commissioners began registering their own liability on land (on behalf of the PCCs), but this process was ceased after it became clear that the registration was adversely affecting the ability to sell the land and was creating unforeseen technical complexities with the Land Registry which were hard to resolve.
17. The Commissioners then attempted to address the issue by giving each affected PCC a binding agreement ('deed of indemnity') instead of registering the CRL on the title, but that too became problematic. Drafting and agreeing the deeds became an extremely lengthy and time-consuming process and it put an administrative and cost burden on PCCs who had to research the issue and get legal advice on the agreements.

**Church Commissioners' Chancel Repair Liabilities**

18. In 2021, as part of the broader programme of legislative reform, the Commissioners reviewed the progress that had been made on agreeing the deeds of indemnity and considered if there were better ways to address the issue, particularly given the burden on PCCs.
19. The conclusion of the review was that the best option would be simply to create a free-standing statutory duty for the Commissioners to pay the CRL on the relevant land (only) in perpetuity, which would avoid the need for individual PCCs to get involved with the legal processes. This would save considerable time and money for PCCs and the Commissioners (in terms of staff resource). It would safeguard the CRL benefit for the relevant PCCs and also mean that the Commissioners could sell the land free from liability (ie the Commissioners would continue to hold the chancel repair liability after selling the land), which would facilitate the effective disposal of the assets. In both respects, this would benefit the mission of the Church more generally.
20. The Table annexed to the Explanatory Notes as part of the secondary material lists the Commissioners' liability on the basis of their records which have all been subject to a file based desk review. Should a dispute around the Commissioners' liability arise, the draft Measure provides for arbitration.

**GENERAL SYNOD****Cathedrals' Chancel Repair Liabilities**

21. As well as paying CRL on their own holdings, the Church Commissioners also give grants to the Cathedrals which inherited CRL in relation to some chancels from monastic property.
22. There are 15 Cathedral chapters which have the liability and the Commissioners have historically given grants towards the repairs. The level of the grants made by the Commissioners has fluctuated in recent decades between 50-100%, moving (on occasion) both up and down. In the mid-1990s, the grant level was set at 66%. With effect from 1st January 2019, the Church Commissioners increased their grant funding to 100%.

**Financial impact**

23. Most importantly, this legislation will ensure the Parishes concerned would retain the benefit of CRL, with greater certainty, clarity and statutory underpinning.
24. It is not possible to quantify exactly what the financial impact of this legislation will have on the disposal of Church Commissioners land assets – and it is not expected to be at all material – but the legislation should have a (small) positive effect by making disposal easier and in some cases encouraging a better sale price (i.e. rather than a reduced price because of the CRL obligation). This should serve to benefit the wider Church as it will help to maintain the level of funding being made available to the Church by the Commissioners for mission and ministry.

**Summary**

25. These proposals were approved by the Church Commissioners' Board of Governors in September 2022 and the Legislative Reform Committee in November 2022.
26. HM Land Registry has been consulted on the changes and is content with what has been proposed.
27. If Synod approves the referral of the draft Measure to the revision stage, the Commissioners' staff team will work up a plan to liaise with dioceses and cathedrals so that affected PCCs are made aware of the proposed changes.

**Wendy Matthews, Head of Mission, Pastoral & Church Property, February 2024**