

## Submissions to the Revision Committee for the National Church Governance Measure

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**The Revd Paul Benfield, Blackburn, 66**

**CLAUSE 3**

I understand the policy intention is to allow CENS to enable and enhance the efficiency and effectiveness of bodies other than PCCs, but that CENS should have power to give grants to PCCs. If so the wording suggested to me in correspondence with Harvey Howlett and drafted by legislative counsel is preferable:

7) **In subsection (3)(b)—**

(a) “diocesan body” has the meaning given in section 19(1) of the Dioceses, Pastoral and Mission Measure 2007, and

(b) a charity has “a Church ethos” if its ethos is based on the principles of the Church of England, whether or not it has the advancement of the Christian religion as a charitable object.

(8) **The charitable object of CENS specified in subsection (3)(b) does not include enabling and enhancing the efficiency and effectiveness of parochial church councils (and the definitions in subsection (7) are to be read accordingly).**

Additionally add at the end of Clause 3 (4) (g) ‘including to parochial church councils’.

**CLAUSE 4**

I am unhappy with the constitution of the Governance and Nomination Committee. It gives the impression of too much ‘marking one’s own homework’.

The committee will have only 7 members, 3 of whom are members of CENS. That gives CENS members too much power and influence.

I would suggest that there should be 9 members of the Committee:

Clause 4 (2) (c) should be amended to read ‘three persons’ rather than ‘two persons’

Clause 4 (2) (d) should be amended to read ‘three persons’ rather than ‘two persons’

Clause 4 (3) should be deleted. The Chair of CENS should not be Chair of the Committee. The Chair should be appointed in some other manner.

Clause 4 (7) It is not clear to me what action can be taken if CENS reviews the structure or scope of the Committee’s activities and decides that they ought to be changed. Would an amending measure be necessary or could it be done by a legislative reform order? Would it be better to give a power to CENS to amend this section by order (which would need to be approved by Synod under clause 23)?

**CLAUSE 5**

I am unhappy with the constitution of this committee which compares unfavourably with the constitution of the Audit and Risk Committee of the Archbishops’ Council. That

Committee has 6 members only 2 of whom are members of the Council. The proposed CENS audit and risk committee has 7 members, 3 of whom are members of CENS.

Clause 5 (3) (a) should be amended to read 'two members' rather than 'three members'.

Clause 5 (4) should be amended so that the appointment of the Chair is approved by Synod (as set out in GS2360P at para 61).

#### **CLAUSE 6**

This clause should be deleted and the functions relating to mission and pastoral matters retained by the Church Commissioners or given to some other statutory body entirely separate from CENS. This separation is necessary to give confidence in the independence of the adjudicating body.

If clause 6 is retained then clause 6 (3) needs some explanation in notes and examples of what functions are contemplated. It is unclear to me what is meant here.

#### **CLAUSE 7**

This clause would be removed if clause 6 is deleted.

If Clause 6 remains, clause 7 should be amended:

Clause 7 (1) (c) should be deleted. CENS should not appoint any members of the Adjudication Committee. It must be and appear to be entirely independent. Otherwise the impression will be given that CENS is appointing people who will support its policy and not deal with appeal fairly and in a disinterested manner. Some other method of appointment should be used for these 6 members.

Clause 7 (4) (a) should be deleted. No member of CENS should be a member of the Adjudication Committee so that there is an independence and an appearance of independence. This accords with the policy document (GS2360P) at page 36.

#### **CLAUSE 8**

There should be added to this clause provisions similar to those contained in the National Institutions Measure 1998 sections 2 (3) and 2 (6) in order to preserve the duty to respect the source of those funds from Queen Anne's Bounty:

*(3) The Council shall consider and determine how to apply or distribute such sums as have been made available by the Church Commissioners under subsection (1) above, but those sums shall not be applied or distributed by the Council for any purpose other than one for which the balance in the Church Commissioners' general fund was available immediately before the coming into force of this section and in applying or distributing those sums the Council shall have particular regard to the requirements of section 67 of the Ecclesiastical Commissioners Act 1840 relating to the making of additional provision for the cure of souls in parishes where such assistance is most required.*

*(6) As soon as practicable after the end of each year the Council shall cause a certificate to be issued to the Church Commissioners to the effect that the application and distribution of*

*the sums made available by them as aforesaid has been in accordance with subsection (3) above.*

In Clause 8 (5) (b) delete 'House of Bishops'. General Synod should set the principles for encouraging mission – and the House of Bishops is a part of General Synod.

Alternatively, if the suggestion above is not accepted, replace with 'both the House of Bishops and General Synod'.

### **CLAUSE 9**

Clause 9 (4) (b) should be deleted. The clause means that General Synod has no effective control over CENS. If Synod is unhappy with how CENS proposes to apply or distribute funds it cannot make any alteration but simply refuse to approve the budget under clause 9 (3) (c). If that happens it is not clear whether CENS could go ahead anyhow – arguably it could since it does not need to approval of Synod to apply or distribute funds.

Although this provision mirrors the provisions in section 4 of the National Institutions Measure 1998, it means that the role of Synod is simply that of a rubber stamp approving whatever is put before it. It is time for Synod to have greater control.

### **CLAUSE 17**

Clause 17 (1) seems very sensible except that the Archbishops are *ex officio* members of both CENS and the Church Commissioners (though see clause 22(4) which gets over that difficulty). However, in the case of the Archbishop of York he is also a member of the Board of the Commissioners. Is this sensible? I propose that he must choose to serve on CENS or the Board, but not both. If he serves on both would he not always be declaring a conflict of interest?

### **CLAUSE 19**

As drafted the Scrutiny Committee has no teeth to carry out its functions effectively. It must have power not only to require attendance of members and staff but also require them to produce minutes and documents. This power should be in the Measure and not left to General Synod standing orders.

### **CLAUSE 21**

A provision should be added requiring a report of CENS to be laid before parliament This provision would mirror the provision in section 12 of the Church Commissioners Measure 1947 which required a report to be laid before both Parliament and the Church Assembly. Without this provision parliament will only receive a report from the Church Commissioners on what income it has received but nothing from CENS on how that income has been spent.

### **SCHEDULE 1**

Should the chair be a member of General Synod? The chairs of other bodies are *ex officio* members eg the Pensions Board, Dioceses Commission. It seems odd that the chair cannot speak at Synod without standing orders being suspended.

**The Ven Douglas Dettmer, Exeter, 117**

In subsection 1(1)(d) of the draft Measure, the name of the National Society is given as ‘the National Society for Promoting Religious Education’. That is one of the National Society’s former names. The present name under which the National Society is incorporated (as listed at Companies House and with the Charity Commission) is:

The National Society (Church of England and Church in Wales) for the Promotion of Education

It seems to me subsection 1(1)(d) should reflect the present name. If that is right, the Legal Office may advise that this requires only a simple drafting correction, in which case it doesn’t need to be presented to the Committee as a proposed revision.

**Sam Wilson, Chester, 282**

I would like to submit two amendments to the National Church Governance Measure.

I suggest amending Section 20(5) so that it reads as follows:

(5) A resolution under this section is carried only if at least two-thirds of the members of Synod present and voting have voted in favour.

The purpose of this amendment is to reduce the majority required for a resolution setting up a Committee of Inquiry from a three-quarters majority of Synod to a two-thirds majority.

My reasoning is that this would put it in line with most other increased majorities required in Synod votes, such as those for liturgical business. I think the current three-quarters threshold sets far too high of a bar and suggests that we view liturgy as requiring less consensus than an inquiry. An inquiry is not definitive or final and is only part of the process laid out in the measure. Setting one of the highest bars in our proceedings for simply beginning an inquiry is difficult to justify to the wider church and beyond. An inquiry, by its very nature, is about collecting facts to help Synod and the national church make decisions. How can we expect three-quarters of Synod to agree from the outset there is enough information available to vote in favour of the resolution before the inquiry has begun to collect such information? We have already seen in this quinquennium how difficult a bar three-quarters is and what damage it does to trust when that bar is not reached. I humbly suggest we rethink this threshold and put it in line with other increased thresholds at two-thirds.

I suggest amending Section 20(9) so that it reads as follows:

(9) The Synodical Scrutiny Committee must give a copy of the report to the National Institution concerned; and that Institution must, within six months of receiving the copy of that report, publish its own report in response. The report of the Synodical Scrutiny Committee must also be published at the same time.

The purpose of this amendment is to ensure that not only the response of the National Institution is published promptly but also the original report they are responding to.

I expect this may have been the original intention of this paragraph but I would suggest we make it explicit. My reasoning is that it is important that the wider church and Synod have access to both reports so as to have all information available to inform their decisions. I think this will build trust and provide some equality between the National Institution and those charged with ensuring good governance and practice.

As always, I appreciate the specific language of the amendments I have suggested may not be in the right language and so understand if they need to be redrafted for clarity. I am also happy to appear before the committee if that would be helpful.

Thank you for your consideration.

**Jane Evans, Leeds, 326**

My proposed amendments and other comments are as follows:

### **1. Place of cathedrals in the new structure**

I am concerned about representation of cathedral ministry under the new arrangements. In particular, I regret the demise of the position of Third Church Estates Commissioner as the real and practical link between cathedrals and the NCIs. In recent years, the Third Church Estates Commissioner has been a real advocate for cathedrals and their ministry, largely because they have not had also to deal with other church buildings.

#### ***Measure - Schedule 1 Paragraph 10***

Noting that the Third Church Estates Commissioner's membership of CENS continues until the appointment of the chair of the Mission and Pastoral Adjudication Committee under section 7(1)(a), it is not clear that the M&PAC Chair would be come a member of CENS. Nor does it seem that the M&PAC has any role in the governance of cathedrals. Therefore, the 'replacement' on CENS of the Third Church Estates Commissioner by the M&PAC Chair seems inadequate.

#### ***Comments pertaining to the Supporting Policy:***

Para 67 - the establishment of a Buildings - Policy and Co-Regulation Committee 'would serve to join all committees relating to property and regulatory matters together'.... I believe property matters and other co-regulatory matters are two different animals and should not be combined in this way. Thinking of cathedral ministry, in particular, this is much wider than property matters so I am fearful that the main aspects and focus of cathedral life and co-regulation would not be well-served by being included in a largely property-focused committee. The chair of such a committee would not be in a strong enough position to be the champion for cathedral ministry that I believe is required, and that had to date been well served by the third Church Estates Commissioner.

In para 68, under 'Purpose', it is very clear that buildings and property are the primary purpose of the committee (four out of five of the points relate to property matters).

Para 69 - Grants Committee - makes specific reference to major grants to dioceses. Please also call out specifically major grants to cathedrals (currently the Cathedrals Sustainability Fund) - and clarify whether there will still be a specific and identifiable pot of money for which cathedrals may bid..

### **2. Governance of CENS**

Referring to paragraph 4(1) of the draft Measure (Governance and Nominations Committee), I note that the committee has the function of advising CENS on the effectiveness of the systems for the governance of CENS. However, I further note, under paragraph 4(3) that the committee is to be chaired by the chair of CENS. Is this not counter to good governance not to have an independent chair, who can critically review the systems of governance.

Paragraph 5(b) line 2 - suggest replacing **or** with **and**:

...must have due regard to the principles set out by the House of Bishops **and** General Synod for encouraging and enabling the work and mission of the Church of England.

Jane Evans Leeds 326



**Roy Faulkner, Leicester, 333**

I was not called in yesterday's debate. I would like to add the following comments to be considered by the Revisions Committee on this paper

The paper before us GS2360 is based on GS2307, discussed at York this time last year. There were misgivings about GS2307, which many of us thought were insufficiently debated.

The GS2307 report over-emphasises the importance of racial justice, safeguarding, and diversity in the governing bureaucracy, rather than in promoting good governance to the customers, that is the people in the congregation. It is all based on modern management practices covered by Environmental, Social and Governance (ESG) concerns, where staff are considered first and the customer comes last. It has yet to be established if this system actually works. Organisations using it are NHS, the Post Office, banks, HMRC, DVLC, insurance companies using WFH, and education, so you may draw your own conclusions regarding its effectiveness.

There was some disappointment expressed in the fact that diocesan and synodical governance was not considered in the GS2307 report, (para 9, p.6; and conclusion 24, p10) and suggested that further diocesan reviews were necessary. Nothing seems to have been done about this.

Finally, Paula Vennells was heavily consulted during the period when these ideas were generated. It seems entirely appropriate that the whole relevant reports, GS 2307 and GS2360, be re-visited, with less controversial figures giving advice.

Thank you

Professor R G Faulkner

Leicester 333

While giving overall support to the draft measure, I ask that the Revision Committee consider the following comments and proposals.

**Clause 3**

- The requirements for a majority of CENS members to be on General Synod, and for there to be a majority of lay CENS members, are currently covered in Schedule 1. These are vital requirements, and so should not be open to revision by order.

**Proposal 1: remove the requirements from Schedule 1 and insert within Clause 3.**

- Clause 3(7)(c): Excluding PCCs from being considered charities with a Church ethos means CENS would be unable to pursue its charitable objective of “enabling and enhancing the efficiency and effectiveness” (Clause 3(3)(b)) through, for example, making tools available that would reduce PCC’s administrative burden.

**Proposal 2: delete this subsection.**

**Clause 4(2)**

- The Governance and Nominations Committee plays a key role in ensuring CENS and its committees have strong membership, operate effectively and have a positive culture. It is therefore appropriate that the majority of its members are on General Synod.

**Proposal 3: insert requirement that at least one of the two CENS members appointed under Clause 4(2)(b) must be a General Synod member.**

- The operation of the Governance and Nominations Committee will be enhanced by having a close working relationship with General Synod’s Appointments Committee.

**Proposal 4: insert requirement that at least one of the two persons elected under Clause 4(2)(c) must be a member of General Synod’s Appointments Committee.**

**Clause 5**

- The Audit and Risk Committee and the Synodical Scrutiny Committee need to work effectively alongside each other, with a strong linkage and appropriate information flows,

**Proposal 5: add subsection to Clause 5(1) to require the Audit and Risk Committee to report matters of concern (as opposed to “grave concern” in Clause 5(1)(g)) to the Synod Scrutiny Committee.**

**Proposal 6: add subsection to Clause 5(1) to require the Audit and Risk Committee to provide copies of its meeting minutes to the Synodical Scrutiny Committee.**

**Proposal 7: insert requirement that at least one of the two persons elected under Clause 5(3)(b) must be a member of the Synodical Scrutiny Committee.**

- Part of the Audit and Risk Committee’s work is to give General Synod confidence in the financial and operational control of CENS. The majority of the Audit and Risk Committee’s members should therefore also be General Synod members.

**Proposal 8: add a requirement that at least one of the CENS members appointed under Clause 5(3)(a) must be a General Synod member and increase to three the number of Synod members elected under Clause 5(3)(b).**

**Clause 8**

- The structure of the grants programmes administered by the Archbishops' Council, such as SMMIB, and the Council's underlying priorities, have been a source of considerable contention within General Synod, with members concerned that they do not have adequate voice in shaping the programmes.

**Proposal 9: add a new section requiring CENS, before putting forward to the Church Commissioners the framework referred to in this clause for a financial year, to have obtained the approval of General Synod for any changes from the prior year to its "policies and priorities" (Clause 8(2)(a)) and/or how it proposes to exercise its power to make grants (Clause 8(2)(b)).**

**Clause 17**

- The exclusion by Clause 17(2) of the Prolocutors and the House of Laity Chair and Vice-Chair from election to a National Institution is to allow them to serve on the Synodical Scrutiny Committee without a conflict of interest. However, the holders of these offices have, in the past and into the present, brought great value to the functioning of the Archbishops' Council and its relationship with the General Synod's Houses of Clergy and Laity. There is no reason to doubt why this may not be the case were one or more of them to be members of CENS.
- The skills and experiences of some individuals holding these offices may bring more overall benefit to the life of the Church through membership of CENS rather than the Synodical Scrutiny Committee.
- If one or more of these officers is willing to stand for election to a National Institution, it is right to allow General Synod to decide whether they are the best candidate(s). If they were to be elected their place(s) in the Synodical Scrutiny Committee could then be filled through an election by and from the corresponding House.
- Having said that, it would not be appropriate for one of these officers to be appointed to membership of a National Institution, as that could be seen as an attempt to circumvent the right for General Synod to decide on their suitability.

**Proposal 10: delete "elected or" from the draft of Clause 17(2).**

- The wording of Clause 17(4) would bar an elected member of a National Institution, if removed from office by virtue of Clause 17(3), from ever again serving as an elected National Institution member. A permanent exclusion is excessive.
- The current wording would, however, allow a removed elected member to become an appointed member. The absence of minimum period of exclusion covering this is of concern.
- There is no equivalent of Clause 17(4) to cover the case of an appointed member being removed from office.

**Proposal 11: revise Clause 17(4) to (a) make it applicable to both elected and appointed members and (b) specify the period (10 years?) of ineligibility for election or appointment.**

**Clause 19**

- Consistent with the comments made regarding Clause 17(2) and Proposal 10, allowance needs to be made for one or more of the Prolocutors and House of Laity Chair and Vice-Chair to be elected to a National Institution.

**Proposal 12: add a new subsection specifying that, if one or more of the prolocutors or Chair and Vice-Chair of the House of Laity are elected to a National Institution, their place on the Synodical Scrutiny Committee is instead to be filled by a person elected by and from the corresponding House.**

**Proposal 13: add a new subsection specifying that, if the Chair of the House of Laity is elected to a National Institution, then the Vice-Chair of the House of Laity is to be chair of the Synodical Scrutiny Committee. If the Vice-Chair is also elected to a National Institution, then the Synodical Scrutiny Committee shall elect one of its elected lay members to serve as its chair.**

- The Synodical Scrutiny Committee needs to have good insight into the workings of the National Institutions.

**Proposal 14: add a new subsection requiring the National Institutions to provide the Synodical Scrutiny Committee with copies of their meeting agendas, papers and minutes in a timely manner.**

**Proposal 15: add a new subsection giving the Synodical Scrutiny Committee the power to require National Institution Committees to furnish it with such further information as it may request.**

- While it would be inappropriate to state it within the measure, in implementing Clause 19(9), General Synod's Standing Orders should identify the Synodical Scrutiny Committee as one of the bodies that can be the subject of Questions.

**Proposal 16: include within General Synod's Standing Orders that the Synodical Scrutiny Committee Chair is someone to whom Questions may be addressed.**

#### **Clause 20**

- Clause 20(6) requires a Committee of Inquiry to include all the Synodical Scrutiny Committee members within its membership. The availability of these individuals may impose undue delay on an Inquiry. The nature of the Inquiry may also mean that some of the Synodical Scrutiny Committee members are better suited to contribute to its progress than others.

**Proposal 17: revise Clause 20(6)(a) to allow the Synodical Scrutiny Committee to decide which of its members (with a minimum of, say, three) should serve on the Committee of Inquiry.**

- GS2360P proposes that 75% support in General Synod would be required to trigger a Committee of Inquiry. This seems excessively high as reputational damage will already have been done by the public identification of the concern prompting the motion to form the Committee.
- The paper is also silent as to whether the motion could be subject to a vote by Houses, rather than a vote of the whole Synod. The former should be excluded as there is a risk that its use could be seen as an attempt to bury an issue by the motion falling in one of the Houses.
- While these are important matters, it would be inappropriate to cover them in the measure itself.

**Proposal 18: General Synod's Standing Orders covering the Committee of Inquiry should require a two-thirds vote in favour of a motion calling for such a Committee to be formed, and the vote only taken as one of the whole Synod.**

- On occasion, a Committee of Inquiry will have been unable to complete its report before Synod is dissolved at the end of a quinquennium. As some of the members of the Committee

may then not be re-elected to Synod, or may cease to hold the office by which they are on the Synodical Scrutiny Committee, a mechanism must be provided by which the Committee of Inquiry can complete its work.

**Proposal 19: either a section is added to Clause 20, or an addition is made to Standing Orders, specifying that, once formed, a Committee of Inquiry's members shall continue to serve on the Committee even if they subsequently vacate the position by which they were qualified to serve on it.**

- There will also be occasions when an individual member of a Committee of Inquiry resigns for personal or other reasons. Depending on the stage that the Committee has reached in its work, it may be desirable to fill the vacant position.

**Proposal 20: either a section is added to Clause 20, or an addition is made to Standing Orders, specifying that, in the event of a position on a Committee of Inquiry falling vacant, the Synodical Scrutiny Committee and the Appointments Committee shall agree whether, and how, the vacancy is to be filled.**

#### **Schedule 1**

- The democratic accountability of CENS is significantly weakened by only six of the 15 members being elected to serve on it.
- There is no provision within the draft to ensure elected representation of both provinces on CENS.

**Proposal 21: revise paragraph 1(2)(d) and (e) so that, in both cases, three persons are to be elected, with at least one from each province.**

**Proposal 22: revise the number of appointees allowed for in paragraph 1(2)(g) to "no more than four".**

- There is no requirement within the draft for the archbishops to obtain Synod's approval for the appointments they could make under paragraph 1(2)(g). This is inconsistent with the equivalent provision for Archbishops' Council appointments. It is also inconsistent with paragraph 21 of GS2307, which noted "all appointed trustees should be endorsed by General Synod". The absence of such a requirement weakens the bond of trust needed between Synod and CENS.
- That bond is further weakened by the replacement of the requirement to consult General Synod's Appointments Committee on such appointments with one to make the appointments on the recommendation of CENS's Governance and Nominations Committee.
- It is of further concern that there is no requirement for the archbishops to consult in making the first chair's appointment (paragraph 1(3)), and to consult only with that chair in making the first appointments under paragraph 1(2)(g).

**Proposal 23: revise paragraph 1(7) so that no appointments under paragraph 1(2)(f) or (g) can take effect without Synod's approval.**

**Proposal 24: revise paragraph 1(3) and 1(4) so as to require the archbishops to consult with the Appointments Committee.**

**Proposal 25: revise paragraph 1(5) so that the future appointments are made on the joint recommendation of the Appointments Committee and the Governance and Nominations Committee.**

- GS2360P states that the chair and deputy chair will be members of General Synod (presumably this being given effect via Standing Orders). In the interests of having a broad pool of suitably qualified candidates, it is right that the person appointed as chair need not be an existing Synod member. Balancing this, from the perspective of democratic accountability, it is desirable that the deputy chair holds one of the elected positions on CENS.

**Proposal 26: revise paragraph 1(6) to constrain the deputy chair appointment to one of the persons elected under paragraphs 1(2)(c), (d) or (e).**

- To minimise the risk of perceived or actual deference arising from the oath of canonical obedience, the CENS chair should be someone not in holy orders.

**Proposal 27: add a requirement to paragraph 2(1) that the appointee must be lay.**

- Clause 3(4)(e) allows CENS to facilitate the development of policies “and engaging with individuals and bodies with a view to implementing those policies” but is silent as to how those policies should be approved. The complexity of the Church’s decision-making practices means there is no simple answer on this. The House of Bishops, General Synod or CENS itself are all potentially the right body to authorise policies. While CENS will endeavour to exercise good judgement, there is a risk that, in the eyes of some, CENS may be seen to over-reach itself on some policy making decisions, thus undermining trust.

**Proposal 28: add a paragraph to Schedule 1 placing a duty on CENS to consult with the Synodical Scrutiny Committee in all instances of policy making where it is unclear whether Synod’s approval is either required or, though not required, desirable.**

## **Executive Summary**

This submission aims to fortify the governance framework of the national church, augmenting integrity, efficiency, and responsibility while respecting the unique functions and charitable motives of the diverse church bodies.

Summary of the key amendments proposed herein:

1. Fine-tuning the creation and operation of Orders as per Section 23.
2. Enhancing the execution of the Church of England National Services' (CENS) functions and promoting deeper collaboration between the House of Bishops, the General Synod, and CENS.
3. Improving grant management to align with charitable purposes and statutory obligations.
4. Overhauling the Governance and Nominations Committee by leveraging current structures for better efficiency and oversight.
5. Adjusting committee composition and election procedures to enhance transparency and independent oversight.
6. Proposing a Joint Audit and Risk Committee for the Church Commissioners and CENS to consolidate audit and risk management.
7. Retaining mission and pastoral adjudication functions with the Church Commissioners.
8. Delineating funding responsibilities under Section 8 for strategic use of grant funds, especially for underprivileged parishes.
9. Implementing time limitations for the powers conferred by the measure to prevent inefficiencies from parallel institutional operations.
10. Recommending the Church Commissioners retain control over properties such as See Houses and Heritage Assets.
11. Scrutinizing membership eligibility to amplify quorum requirements and regulate re-election processes.
12. Giving the Synodical Scrutiny Committee investigative powers over member conduct and diverse representation.
13. Enabling the Synodical Scrutiny Committee to recommend sanctions for misconduct allegations among members of National Institutions, subject to General Synod approval.
14. Empowering the Synodical Scrutiny Committee to request information and summon members from any National Institution, with adherence to confidentiality and data privacy norms.

15. Stipulating procedural adaptations for Committee of Inquiry resolutions under Section 20 to ensure transparency and authority in handling motions.
16. Recognizing the necessity for balanced representation in CENS membership and suggesting revisions for composition and chairmanship.

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### **Preliminary**

My feedback is provided in the same order and groupings as in the measure. In almost every case I offer up the suggested amended wording. I have added brief explanatory text where needed to provide insight into what the proposed revision is seeking to accomplish. Sections for which I have not suggested changes are not included in this document.

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### **Section 2 – Establishment**

**§2 Subsection (4)** – insert ‘except for all of paragraph 1’ and append ‘in accordance with the procedure laid out in section 23 of this measure with the following additional provisions:

- (a) section 23(5) will not apply to any order to amend Schedule 1, and
- (b) a separate order must be drafted for each paragraph of Schedule 1 being amended other than paragraph 1 which is excluded.’

Alternatively – substitute:

‘CENS may by order amend Schedule 1, except for all of paragraph 1, in accordance with the procedure laid out in section 23 of this measure with the following additional provisions:

- (a) section 23(5) will not apply to any order to amend Schedule 1, ensuring that all such orders are subject to debate and amendable by the Synod, and
- (b) a separate order must be drafted for each paragraph of Schedule 1 being amended, other than paragraph 1 which is excluded, to facilitate focused consideration and discussion on each proposed change’

Explanatory Note: Improved clarity would be a good thing because here at the beginning of the measure, there are several subsections which reference the use of an order (see a similar *qualifying* reference to section 23 in §3(6)). I have heard from numerous reviewers that the measure weakens good governance through the overuse of “orders” because the connection with the later section laying out the procedure for orders has been overlooked.

These reviewers also express concern that a significant, fundamental transformation of CENS might be accomplished without the needed meaningful opportunity for Synodical debate and amendment. We should note the number of revisions or concerns raised with Schedule 1 as it goes through the revision process to recognise that we cannot make it too easy and quick to amend.

Thus, inserting “except paragraph (1)” would mean that a measure would be required to change the membership of CENS as is currently defined in all the sub-paragraphs of that section; this paragraph would be excluded. The proposed additional provisions would apply only to orders amending Schedule 1. Sub-subsection (a) would remove the option for the Business Committee to use the “deemed approve” procedures. All orders to amend



Schedule 1 would need to be debated and amendable. Sub-subsection (b) would require a separate order for each main paragraph being amended. If CENS wished to make changes to eligibility, that would require an order for the amendment of paragraph 2.

But if CENS wished to make changes to eligibility and committees, that would require separate orders – one for each paragraph. This compromise avoids the need for a full measure for these changes which would need to go through all the stages and take much longer. But it also ensures that a healthy debate will take place and ample opportunity for Synod to amend.

I am not sure I have found the best solution; it might simply be easier to strike §S2(4) completely. But the committee should understand the valid concerns that I am trying to address.

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### **Section 3 – Charitable status and objects**

**§3 Subsection (3)(b)** – as is – but see revision in subsection (7)(c) below which would no longer explicitly exclude parishes.

Note: Assuming the intent of this Subsection is to continue to allow the provision of common or shared services (as with ChECS currently), it would be appropriate to allow for current services to continue and future shared services to be established of which PCCs might decide to avail themselves directly (rather than always via the Diocese). Examples of potential shared services which might be offered to parishes in the future include those listed in Subsection (4)(h) of this section. Examples of current tools and services provisioned by the centre can be found in the explanatory note to the suggested revisions to Subsection (7)(c) below.

**§3 Subsection (4)(a)** – replace ‘or’ with ‘and’

Explanatory Note: Both the House of Bishops and the General Synod together set “principles for encouraging and enabling the work and mission of the Church”. Furthermore, whether a set of principles are seen to come from the House of Bishops or the General Synod, CENS must develop the necessary implementation strategies either way and cannot pick and choose (which the use of ‘or’ might imply).

**§3 Subsection (4)(b)** – insert the words, ‘to General Synod’, after ‘reporting’

Explanatory Note: Clarifies that it is the General Synod to whom CENS reporting must be made

**§3 Subsection (4)(e)** – replace ‘on matters of religious or political interest and engaging with individuals and bodies’ with ‘in accordance with the strategies developed under Subsection (4)(a)’

Explanatory Note: CENS cannot on its own decide to develop policies on matters of religious or political interest unless these are needed to implement the principles set out by the House of Bishops and the General Synod in accordance with Subsection (4)(a) of this section.

**§3 Subsection (4)(g)** – substitute ‘administering’ for ‘making’ and appending after ‘national level’, ‘and certifying to the body which is the source of the resources that such grants strictly adhere to the charitable purpose of that body and to any relevant legislation concerning that body’

Explanatory Note: CENS cannot make grants, for instance, from funds overseen by the Church Commissioners that the Church Commissioners themselves would not be permitted to make according to the legislation applicable to them. This principle should apply to any national body, current or future, from which resources are drawn. Furthermore, when making such grants, CENS should be required to produce annual certificates along the lines of the requirement to do so for the Church Commissioners under the National Institution Measure 1998 §2(6). See suggested revision under §8 below.

**§3 Subsection (5)** – insert after ‘by order’, ‘ made in accordance with the procedure laid out in section 23 of this measure ”

Explanatory Note: Improves clarity so that it is clear that all such orders must adhere to a specified procedure laid out subsequently in section 23;

**§3 Subsection (7)(c)** – omit and substitute, ‘as qualifying charitable objects, parochial church councils may voluntarily avail themselves of services and resources if and when such services and resources are made available by CENS; CENS may not otherwise interfere with parochial church governance.’

Explanatory Note: Even today ChECs makes available at the national level services meant to directly support parishes – including, but not limited to, information and guidance on:

- Safeguarding ([Resources and campaigns | The Church of England](#));
- Net Zero (<https://www.churchofengland.org/about/environment-and-climate-change/net-zero-carbon-routemap/reducing-emissions-churches> );
- Living in Love and Faith ([The Living in Love and Faith resources | The Church of England](#));
- and a complete A-Z resource for churches ([Support with running your church: what’s available nationally | The Church of England](#)).

In the future CENS may be commissioned by General Synod and the House of Bishops to make other shared services available. Both because of the current services provided directly to churches and to allow for future further such services, there is no reason to exclude PCCs as charitable objects as long as by providing these tools and services to PCCs, CENS does not interfere in their governance.

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#### **Section 4 – Governance and Nominations Committee: functions and membership**

Instead of creating a *new* committee, there would be beneficial synergies and improved oversight and governance if this section instead made changes to the *existing* Appointments Committee of the Archbishops Council and General Synod (including renaming it to reflect an expanded scope regarding governance). The changes to be made would align with the subsections as laid out in this section including the proposed revisions herein. These revisions are to be considered whether or not the Appointments Committee is to be used.

But if it is decided to repurpose the Appointments Committee, all wording in this section would need to be amended to be inclusive of both General Synod and CENS committees. For example, Subsection (6) would add General Synod's committees to those of CENS' over which the Governance and Nominations committee would need to keep review.

**§4 Subsection (2)(a)** – omit and substitute, 'the chair of the committee elected by, but not necessarily from, the House of Clergy and the House of Laity taken together so as to form a single electorate'

**§4 Subsection (2)(b)** – replace 'two' with 'one' and omit 'other'

**§4 Subsection (2)(c)** – add 'one other person elected by, but not necessarily from the House of Clergy and the House of Laity taken together so as to form a single electorate, and'

**§4 Subsection (3)** – omit and substitute, 'the chair of the committee, by virtue of that role, is also a non-voting member of CENS unless the chair is already otherwise a voting member of CENS.'

Explanatory Notes: The current proposed membership of this committee presents too many opportunities for conflicts of interest. Rather than 7 members (5 CENS appointed, and 2 Synod elected) as follows:

- the Chair of CENS
- two others from CENS
- two from General Synod, and
- two independent

These revisions propose 7 members (3 CENS appointed, and 4 Synod elected (but only 2 need to be from Synod) as follows:

- a chair elected by Houses of Clergy and Laity as a whole who is not necessarily a member of Synod
- one appointed from CENS
- two elected by and from General Synod (1 each from the Houses of Laity and Clergy),
- one other elected by, but not necessarily from General Synod, and
- two independent

Automatically making the Chair of CENS the Chair of the Governance Committee creates an actual conflict of interest – as the Governance Committee would be impeded by playing a truly independent advisory role. Having the General Synod elect the chair of the committee, who need not be a member of Synod, provides a more meaningful outside-in advisory role should this committee remain separate from the Appointments Committee.

This proposed membership avoids conflicts of interest "in the other direction" (that is in the running of CENS) by remaining advisory only and by placing the chair of the committee as a *non-voting* member of CENS solely for visibility and access. (membership of CENS under Schedule 1 to be amended to so indicate). However, nothing in the new language prevents

the Houses of Clergy and Laity taken together as a whole to elect the Chair of CENS or, indeed, another member of CENS if the majority so decide.

Finally, the proposed revisions shift the balance so that 4 of the 7 committee members are determined by General Synod; but it is important to note that 2 of the 4 do not come from Synod and 1 of the 4 need not necessarily come from Synod. A mechanism would need to be established to allow General Synod to identify and consider independent candidates.

**§4** – add a new subsection: ‘(8) The Committee must provide to the General Synod annually a report of the advice provided to CENS and the response by CENS to such advice’

Explanatory Note: This requirement improves transparency with regard to the committee’s activities.

### **Section 5 – Audit and Risk Committee: functions and membership**

Explanatory Notes: Currently, the existence of separate, autonomous Audit and Risk Committees for the Church Commissioners and the Archbishops Council does present a significant governance issue which impedes efficient leverage of external auditors and makes it difficult for stakeholders (such as General Synod, Dioceses, Parishes among others) to easily comprehend the spending by the National Institutions. Specifically, the production of separate annual reports by the Church Commissioners and the Archbishops Council makes it difficult to reconcile funds made available by the former and dispensed by the latter. Broad reputational risks are also interconnected between the Church Commissioners and Archbishops Council and real liabilities for the Church Commissioners (for example) can be created by poorly managed risks on the part of the Archbishops Council (for example). It is also true that there are certainly more operational risks that quite correctly pertain to each body independently.

Consideration should be given to establishing a Joint Audit and Risk Committee serving the Church Commissioners and CENS with slightly larger membership and associated support staff. The Joint Audit and Risk Committee would have the remit to audit and risk-manage both bodies from an end-to-end perspective considering the numerous cross-dependencies. At the same time the Joint Audit and Risk Committee should be able to operate independently for each charity, if and when required by the Charity Commission.

The Pensions Board and National Society also have their own audit and risk arrangements. While they are also to remain separate independent bodies, they do not have the same degree of cross dependency inherent in the relationship between the Church Commissioners and CENS which is made obvious by the need for sections 8, 11, 12, 15, 16, and 22(4) in this measure. Therefore, including them as part of a Joint Committee does not seem necessary – and could be counter-productive as, especially in the case of pensions, specialist knowledge is required. However, coordination amongst all the Audit & Risk Committees should be encouraged and Subsection (2) includes the duty of this committee to make their services available to other National Institutions.

Another alternative would be revising this section to require that each Audit & Risk Committee (in the case of the Church Commissioners and CENS) permit non-voting members of the other Audit & Risk Committee to attend as observers.

**§5 Subsections (1)(a) & (b)** – if a joint committee were created, a single external auditor could be appointed by the joint committee.

**§5 Subsections (1)(c) thru (g)** – if a joint committee were created, these sub-Subsections would be amended to apply to both CENS and the Church Commissioners

**§5 Subsection (1)** – add '(h) to respond promptly to any enquiry made of it by the Synodical Scrutiny Committee or its Committee of Enquiry.'

**§5 Subsection (3)(a)** – if a joint committee were created, after 'CENS,' add 'and not less than four members appointed by the Church Commissioners Board of Trustees of whom at least one is an elected Commissioner and at least two are persons who are not Commissioners,'

**§5 Subsection (3)** – if a joint committee is not created, after (c) add, '(d) a non-voting member appointed by the Church Commissioners as an observer.'

**§5 Subsection (4)** – replace 'CENS' with 'the members of the committee' and insert 'independent' after 'from among the'

Explanatory Note: The chair of the Audit and Risk Committee should be independent (not a voting member of CENS or the Church Commissioners Board of Trustees)

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## **Section 6 – Mission and Pastoral Adjudication Committee: functions**

Omit.

Explanatory Note: This function is best retained by the Church Commissioners because their existing practice and expertise is recognised currently as being fair and independent and they remain well positioned to exercise this role in the context of their fiduciary duty and charitable objectives to apply their funds for the cure of souls through supporting parish clergy. *If section 6 is retained, the following revisions are offered:*

**§6 Subsection (3)** – before 'functions', insert 'those '; and after 'consents', insert ' which are currently delegated by the Church Commissioners to ChECS staff'

Explanatory Note: This revision intends to clarify that the only functions pertaining to the granting of consents are the more administrative (non-decision making) aspects that already are performed by NCI staff.

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## **Section 7 – Mission and Pastoral Adjudication Committee: membership**

Omit.

Explanatory Note: This function is best retained by the Church Commissioners because their existing practice and expertise is recognised currently as being fair and independent and they remain well positioned to exercise this role in the context of their fiduciary duty and charitable objectives to apply their funds for the cure of souls through supporting parish clergy. Currently, pursuant to §56 of the Mission and Pastoral Measure 2011, the

Commissioners shall constitute a majority of the members of the Committee but, subject to that, the Committee may include persons who are not Commissioners. *Therefore, if section 7 is retained, the following revisions are offered:*

**§7 Subsection (1)(a)** – insert ‘(see subsection (6))’ after ‘His Majesty’.

**§7 Subsection (1)(c)** -- insert ‘an additional’ before ‘six’ and replace ‘CENS’ with ‘Appointments Committee’.

Explanatory Note: The appointment of the chair by the Crown is subject to the eligibility requirements specified in subsection (6) and that parenthetical might be added for clarity. CENS should not make half of the appointments as this dilutes both the appearance and the actual independence of this Committee which is of utmost importance. Thus, the Appointments Committee will appoint an additional 6 persons over and above the ones appointed by them as outlined in subsection (2). These additional 6 are subject to the constraints set out in subsection (4) (revised below). The goal is to create as independent a body as exists today – perhaps even more so.

**§7 Subsection (3)** – omit.

**§7 Subsection (4)** – replace ‘CENS’ with ‘Appointments Committee’ and omit ‘(subject to the restriction imposed by subsection (3))’.

**§7 Subsection (4)** – before ‘include’ insert, ‘may not already be a member of CENS, and must ‘

**§7 Subsection (4)(a)** – replace ‘CENS’ with ‘the Church Commissioners’.

**§7 Subsection (5)** – replace ‘CENS’ with ‘the Church Commissioners’ (all 3 instances).

**§7 Subsection (7)** – omit.

**§7 Subsection (8)** – omit.

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## **Section 8 – Payments by the Church Commissioners**

**§8 Subsection (1)(a)** – insert after ‘functions’, ‘as it pertains to grants, formula funding or other expenditures by CENS to other charitable object bodies under subsection (3)(a) and in accordance with subsection (4)(c)’

**§8 Subsection (1)** – renumber (1)(b) to (1)(d)

**§8 Subsection (1)** – add (1)(b) ‘to determine from time to time the amount to pay from its general fund to CENS to enable the exercise of its functions as it pertains solely to the internal operational costs of CENS under subsection (3)(b), and’

**§8 Subsection (1)** – add (1)(c) ‘to determine from time to time, with the approval of Synod, the amount to pay, if any, directly to other charitable object bodies, including Parishes, without using CENS as an intermediary’

**§8 Subsection (3)(a)** – insert after ‘functions’, ‘as it pertains to grants, formula funding or other expenditures it makes to other charitable object bodies in accordance with subsection (4)(c)’

**§8 Subsection (3)(c)** – replace with “the amount of money CENS expects to require for that financial year to enable the exercise of its functions as it pertains to its internal operational costs such as staff, facilities, and overhead, and’

**§8 Subsection (3)** – switch the order of (3)(b) and (3)(c) and renumber and omit ‘and’ from the newly numbered (3)(c) which was (3)(b) before the reordering and replace ‘that amount’ with ‘those amounts’

Explanatory Note: These revisions are meant to clarify the difference between amounts needed to fund CENS internal operational costs and amounts needed to fund grants (or other schemes) which CENS administers and allocates. Since these revisions introduce two clearer categories under the phrase “the exercise of its functions”, such clarification needs to be added to the framework under subsection (3). The (3)(b) referenced in these revisions is to a revised (3)(a) and the reference to (3)(b) is to the revised and renumbered (3)(c) of the current text. The existing (3)(b) is renumbered to be (3)(c). Another category of expenditure is also made possible with the addition of subsection (1)(c). This additional category makes it possible for the Church Commissioners, with the approval of the General Synod, to pay amounts directly to charitable bodies. Such a provision reasonably provides for any future simplifications of cashflow which might be seen as beneficial. Indeed, such an effort to simplify cashflow is currently underway.

**§8 Subsection (4)** – add (4)(c): ‘CENS shall consider and determine how to apply or distribute such sums as have been made available by the Church Commissioners under subsection (1) above, but, aside from amount of money needed as specified in subsection (3)(b) above, those sums shall not be applied or distributed by the CENS for any purpose other than one for which the balance in the Church Commissioners’ general fund was available immediately before the coming into force of this section and before the coming into force of section 1 of the Church of England (Miscellaneous Provisions) Measure 2018. In applying or distributing those sums CENS shall have particular regard to the requirements of section 67 of the Ecclesiastical Commissioners Act 1840 relating to the making of additional provision for the cure of souls in parishes where such assistance is most required. At all times, the amount of money needed as specified in subsection (3)(a) above must disproportionately adhere to this provision over any other purposes.’

Explanatory Note: References to (1) and (3)(b) in the proposed revision above to subsection (4) assume that the revisions to these subsections have been made; thus “(3)(b)” refers to the revised version of the original (3)(c) as above. This language is a slightly revised repetition of language found in section 2(3)(a) of the National Institutions Measure 1998 which substitutes CENS for the Archbishops Council and adds wording to allow for the Commissioners to also fund the costs of CENS “to exercise its functions” as it pertains to grants which is being otherwise removed with the repeal of section of the Church of England (Miscellaneous Provisions) Measure 2018 in subsection (9). However, such grants must

disproportionately be used to fund the provision for the cure of souls in parishes where such assistance is most required. A small proportion of the grant money may be used for other purposes. The term word “disproportionally” like the term “special regard” in the 1998 measure – is intentional and is meant to avoid overly precise formula setting. Most of the money should be spent on the provision of the cure of souls in parishes where it is most needed – that’s the point.

**§8 Subsection (5)** – replace ‘subsection’ with ‘subsections’ and after ‘(1)(a)’, insert ‘, (1)(b), and (1)(c)’

**§8 Subsection (5)(b)** – replace ‘or’ with ‘and’; insert at the end, ‘, and’

**§8 Subsection (5)** – add (5)(c) ‘must have due regard to subsection (4)(c) above.’

Explanatory Note: Reworded to align subsection references based on revisions and to make sure due regard for principles set out by General Synod is **not** optional.

**§8 Subsection (6)** – insert at the end, ‘and the Synodical Scrutiny Committee’

**§8 Subsection (7)** – insert at the end, ‘and the Synodical Scrutiny Committee’

**§8 Subsection (8)** – insert at the end, ‘and, in particular, whether amounts received from the Church Commissioners have been applied in accordance with subsection (4)(c) above.’

Explanatory Note: These revisions are meant to provide more engagement of the Synod Scrutiny committee to enable it to fulfil its intended purpose.

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## **Section 9 – Archbishops’ Councils functions**

Add new subsection (5):

‘The power conferred by section 9(1) shall cease upon the expiration of 12 months from the commencement of this measure.’

Explanatory Note: It has been pointed out that Section 9(2) could potentially split the transfer of functions for different purposes over a significant period of time. Unless time-limited, such an outcome would defeat the purpose of the measure which is to simplify church structures because it would leave two institutions running in parallel.

## **Section 10 – Church of England Central Services’ functions**

Add new subsection (5):

‘The power conferred by section 10(1) shall cease upon the expiration of 12 months from the commencement of this measure.’

Explanatory Note: As with the previous section, unless time-limited, an outcome could result in leaving two institutions running in parallel.

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## **Section 11 – Church Commissioners’ functions**

**§11 Subsection (3)** – renumber as (4)

**§11 Subsection (2)** – Insert at the end, ‘ and any such order must identify the function to be transferred and may contain such incidental, consequential and supplemental provisions as



may be necessary or expedient for the purpose of giving full effect to the order, including provisions—

- (a) for the carrying on and completion by or under the authority of CENS of anything commenced by or under the authority of the Commissioners before the date on which the order takes effect;
  - (b) for such adaptation of the statutory provisions relating to any such function transferred as may be necessary to enable it to be exercised by or on behalf of CENS;
  - (c) for the substitution of CENS for the Commissioners in any instrument, contract or legal proceedings made or commenced before the date on which the order takes effect.
- (3) Before making any such order which relates to the functions of the Church Commissioners under the Dioceses, Pastoral and Mission Measure 2007 or the Mission and Pastoral Measure 2011 the Archbishops shall obtain the consent of the Prime Minister and the Church Commissioners.’

Explanatory Note: These revisions reflect the safeguards placed on the transfer of functions which were included in the National Institutions Measure 1998, section 5 and requires functions intended to be transferred to be identified. Doing so provides Synod the opportunity to consider, debate and amend any order with sufficient detail. It also provides for consultation with the Prime Minister and Church Commissioners in relation to mission and pastoral and church property functions, if any, to be transferred.

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## **Section 12 – Church Commissioners’ functions**

§12 Subsection (2) – if sections (6) and (7) are omitted, then add –

‘(h) the functions currently exercised by its Mission, Pastoral & Church Property Committee’

Explanatory Note: If my requested revisions to completely omit sections (6) & (7) -- which are the sections of this measure which effectively transfer the functions currently performed by the Church Commissioners’ Mission, Pastoral & Church Property Committee to the proposed Mission and Pastoral Adjudication Committee of CENS – are accepted, then the wording of this section would need to be altered so that those functions are retained by the Commissioners. Specific references to the particular functions listed under §6(1) and the “relevant Measures” listed under §6(2) might need to be included here so as to be specific that these are now retained. Likewise, should there be a desire to call out the administrative aspects of the granting of consents that are currently handled by NCI staff as something which is NOT retained, then wording aligning with §6(3) would also need to be added here.

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## **Section 13 – Transfer of employees and property etc.**

**§13 Subsection (3)** -- add ‘ other than where such property, rights or liabilities are enjoyed or incurred by the Church Commissioners’.

Explanatory Note: If the intent here is to transfer operational property and liability, then care must be taken NOT to transfer any of the property (such as See Houses and Heritage Assets) that is owned by the Church Commissioners. The supporting policy document (GS 2360P) refers to an intention to transfer “See Houses and Heritage Assets” (para 95) to CENS for potential disposal. These disposals should be undertaken by the Commissioners to avoid conflicts of interest arising. The Commissioners role as asset managers puts them in a much better position to manage the disposal of these assets than CENS. Furthermore, See Houses that are to be retained as See Houses should remain in the ownership of the Commissioners where the Commissioners remain responsible for expenditure on those See Houses. While ownership would remain with the Church Commissioners, day-to-day property management that is today performed by NCI staff managed by the Church Commissioners could be, however, transferred to CENS.

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**Section 14 – Further provisions on transfers**

**§14 Subsection (1)** -- omit ‘supplementary’.

Explanatory Note: Otherwise, it allows too much discretion in amending what may be substantive provisions in existing legislation.

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**Section 15 – Constitution**

If section 7 is omitted, then

**§15 Subsection (5)** – substitute ‘As a consequence of the amendment made by subsection (1), at such time as this provision takes effect, the deputy chair of the Mission, Pastoral and Church Property Committee shall assume the role of the chair and subsequently both the chair and deputy chair shall be elected annually by and from the members of the committee or appointed from among its members in such other manner as its terms of reference may specify.’

Explanatory Note: If the MPCP committee is retained by the Church Commissioners, a new provision for electing or appointing the chair of that committee will be needed when and if the role of Third Church Estates Commissioner no longer exists.

**Section 17 – Eligibility for membership etc.**

**§17 Subsection (3)** – omit the words ‘present and voting’

Explanatory Note: This revision avoids manoeuvring at a barely quorate meeting. A decision of this kind should be taken at a properly attended meeting.

**§17 Subsection (4)** – substitute:

‘Where a member of a National Institution ceases to be a member of it under subsection (3) above, the person ceases to be eligible to be –

- a) appointed as a member of that or any other National Institution

- b) elected as a member of that or any other National Institution unless elected by at least three-quarters of the relevant members of the General Synod present and voting'

Explanatory Note: The same standard should apply to appointed members as to elected members and General Synod should be able to override the removal by a super-majority.

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## **Section 19 – Synodical Scrutiny Committee**

**§19 Subsection (2)(b)** – at the end, add ' and,

- (a) the conduct of its members'

Explanatory Note: It is important for good governance and as a foundation for trust amongst the institutions that a body outside of the National Institutions has the ability to investigate misconduct. This committee is well placed to serve that purpose.

**§19 Subsection (5)(e)** – at the end, add ' and,

- (f) two persons elected by and from the House of Clergy and the House of Laity taken together so as to form a single electorate who
- (i) do not hold any other office or appointed role within the General Synod. and
  - (ii) are not members of any National Institution, and
  - (iii) are not otherwise engaged in any leadership, representative, or official capacity beyond their elected membership.'

Explanatory Note: The Synodical Scrutiny Committee by its composition commands the respect of the Synod precisely because it is made up of its leadership. This revision adds a much needed "outside in" perspective to this committee by making sure two "backbenchers" (so to speak) are also included.

Add the following subsections:

'(11) The committee may request information and summon members from any National Institution, including CENS, and such requests are to be answered as completely and as timely as is reasonable, in accordance with all appropriate confidentiality and data privacy procedures'

Alternatively:

'(11) The committee is empowered to request any information and summon any member from National Institutions, including CENS, necessary for the execution of its oversight functions. Such requests must be complied with fully and within a reasonable timeframe, as determined by *[specific criteria or reference to a governing policy]*. All information provided to the committee is subject to the protections outlined in *[specific data protection laws or internal confidentiality policies]*. The procedure for summoning members shall be as follows: *[outline of the process]*.'

Explanatory Note: The Synodical Scrutiny Committee needs explicit powers of disclosure to summon and to request information other than through General Synod the "questions procedure" and they should have access to more information – acting under data protection

and confidentiality – then can be made available by the published answers through the General Synod’s “questions procedure”.

‘(12) The Synodical Scrutiny Committee, or its Committee of Inquiry as established under section 20, is authorized to investigate allegations of misconduct among members of National Institutions, including but not limited to:

- (a) acts of dishonesty or breaches of integrity; and
- (b) participation in decisions or activities where the member has an actual or potential conflict of interest.

and upon concluding an investigation, the committee shall present its findings and recommend sanctions to the General Synod, which may include proposing the removal of the individual from their position as a member or committee member of a National Institution. Such sanctions shall only apply if approved by the General Synod and, if so applied, section 17(4) shall apply to this section and be construed accordingly.’

Explanatory Note: The aim of improving trust and accountability can only be achieved if Synod oversight includes the power to meaningfully address misconduct in National Institutions.

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#### **Section 20 – Committee of Inquiry**

**§20 Subsection (1)** – add at the end: ‘or has applied funds for a purpose not permitted by its charitable objects or otherwise in contravention of a certificate as to the application of funds given under this Measure.’

Explanatory Note: This revision is needed to ensure financial propriety and consistency with the purpose of this section.

**§20 Subsection (2)** – substitute:

‘(2) A motion for a resolution under this section may be moved by the chair of the Synodical Scrutiny Committee:

- (a) on the committee’s own initiative; or
- (b) must be moved upon receipt of a request from at least 60 members of the Synod.’

Explanatory Note: The intention behind the proposed new wording is to ensure that the chair cannot refuse to move a motion for a resolution when a significant number of Synod members (60 or more) have requested it.

**§20 Subsection (4)** – insert after ‘Houses’: ‘under standing orders that allow amendments to be made’

Explanatory Note: Otherwise, the chair of the committee would have sole discretion over the terms of reference if the option to use standing orders that do not permit amendments

is permitted and used by a Business Committee who might be influenced by Synod leadership to keep a tight rein.

**§20 Subsection (5)** – replace ‘three-quarters’ with ‘two-thirds’

Explanatory Note: While there was a recent example (issues with the dissolution of the ISB) in which a three-quarters threshold was reached, one exceptional case makes for bad law. Recognising that a simple majority might be too low a bar, this revision strikes a compromise with a two-thirds requirement. Setting the threshold so high as to thwart a clear majority of Synod members wishing to pass such a resolution, would merely feed the suspicion that this clause is “window-dressing” and designed so as to be unusable in practice. Frankly, 66% might still be a bit too high.

**§20 Subsection (6)(a)** – replace ‘each member of’ with ‘three members elected by and from’

**§20 Subsection (6)(b)** – replace ‘four’ with ‘two’ and at the end add ‘ and,

- (c) a barrister in England or Wales who has been qualified and practised as such for at least the preceding seven years, who is appointed by the Appointments Committee and remunerated by the National Institution in question on the terms agreed with such barrister by the Chair of the Synod Scrutiny Committee, and
- (d) at least one person selected by the Appointments Committee to be seconded from the staff of CENS and/or hired externally to be remunerated from funds budgeted annually for this purpose in accordance with section 8 of this Measure’

Alternatively: substitute:

‘(6) If a resolution is carried, the Committee of Inquiry is convened with the following membership:

- (a) three members elected by and from the Synodical Scrutiny Committee, and
- (b) persons appointed by the Appointments Committee, comprising:
  - (i) two members without specific qualifying conditions,
  - (ii) one barrister in England and Wales who has been qualified and practised as such for at least the preceding seven years, appointed on terms agreed with the Chair of the Synodical Scrutiny Committee and remunerated by the National Institution in question, and
  - (iii) at least one person selected to be seconded from the staff of CENS and/or hired externally, remunerated from funds budgeted annually for this purpose in accordance with section 8 of this Measure.’

Explanatory Note: The size of the Committee of Inquiry should not be too large because it needs to be nimble and efficient to be effective. However, the committee should have sufficient legal professional investigative capacity and the support of at least one full-time resource to assist with the production of reports and other deliverables. This revision

reduces the membership down to 3 of the 5 members of the Scrutiny Committee and requires that 2 of the possible 4 appointed members bring the necessary skills and capacity.

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## **Schedule 1**

### **Church of England National Services**

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#### **Paragraph 1 – Membership**

Initial observation: There should be a healthy debate about the appropriate membership of CENS. Its membership should reflect a careful balance amongst representation, institutional knowledge, independence, and expertise. The revision committee will need to welcome such debate as there might yet still be some good ideas to be considered.

Included in the following recommended revisions are areas which would need to be addressed if certain of the recommended revisions of the main sections above were adopted. These may not be all-encompassing, and some dependencies may have been overlooked.

**¶1 Sub-paragraph (1)** – at the end add ‘voting members.’

**¶1 Sub-paragraph (2)** – add sub-paragraph:

‘(h) the elected chair of the Governance and Nominations Committee as a non-voting member, if the elected chair is not already otherwise a voting member of CENS.’

Explanatory Note: Assuming the adoption of the revisions recommended under §4(2)(a) of the main measure which specify that the chair of the Governance and Nominations Committee is to be elected by, but not necessarily from, the Houses of Clergy and Laity as a whole, these revisions align with the proposed revision to §4(3) of the main measure.

**¶1 Sub-paragraph (3)** substitute ‘The members shall elect a chair from among their number.’

Explanatory Note: Aligning with similar revisions to committee chairs above, this revision reflects greater trust that committee members can determine who should be their chair and it creates the kind of independence that CENS ought to operate under. It is important to always keep in mind that it is not meant to decide vision and mission, but to execute it objectively.

**¶1 Sub-paragraph (9)** – substitute:

‘The First Church Estates Commissioner has, by virtue of that office, the right to attend meetings of the members of CENS as a non-voting member and may send a delegate.’

**¶1 Sub-paragraph (10)** – omit

Explanatory Note: Assuming that §6 and §7 of the main measure are omitted and/or revised as proposed above, the Third Church Estates Commissioner would not be a member of CENS. However, the National Governance Program Board had made the recommendation captured here (that the First Church Estates Governor attend in a non-voting capacity).

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**Paragraph 7 – Chief executive officer**

**¶17 Sub-paragraph (3)** – substitute: ‘The chief executive officer shall formally report to the chair of CENS while being accountable to and serving the interests of all members of CENS.’

Explanatory Note: If an organisational reporting line is required from an HR perspective, then that will technically be to the chair of CENS. But the CEO serves and responds to all the CENS members.

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**Paragraph 10 – Proceedings**

**¶10 Sub-paragraph (2)** -- omit the words ‘or a defect in a member’s appointment’.

**¶10 Sub-paragraph (3)** – add at the end: ‘provided such procedures have been made available to the Synodical Scrutiny Committee for review.’

Explanatory Note: The procedures and workings of CENS should be transparent. The General Synod, via the Synodical Scrutiny Committee, should have the opportunity to understand what they are and to be made aware of any changes and any possible implications. This use of the Synodical Scrutiny Committee is a perfect example of the advantages in creating it.

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**Paragraph 11 – Remuneration**

**¶11 Sub-paragraph (1)**: I need to understand more about the possible compensation that would be needed for the loss of office of a chair who does not otherwise receive any remuneration – unless I’ve misunderstood something.

If there is a good rationale, it might be applied to other members of CENS as well.

**John Brydon, Norwich 370**

Following on from the speech I made at the July 2024 General Synod I write to ask the Revision Committee to consider changes to the following sections of the National Church Governance Measure GS2360. I have highlighted the relevant sections of the paper and below each detail my suggested changes and the rationale behind them.

**Audit and Risk Committee: functions and membership**

The Audit and Risk Committee has the following duties—

5. (1) (a) to recommend to CENS an external auditor for appointment.

Change 1.(a) to the Audit and Risk Committee to appoint an external auditor

(3) The membership of the committee consists of—

(a) three members appointed by and from CENS,

(b) two persons elected by and from the House of Clergy and the House of Laity taken together so as to constitute a single electorate, and

(c) two independent persons appointed by CENS.

(4)The chair of the committee is appointed by CENS from among the members of the committee under subsection (3)(a).

Change 3 (a) to one member to be appointed by and from CENS.

Change 3 (b) four persons elected.....to constitute a single electorate

Change 4 The chair of the committee is appointed by the committee from among the members of the committee.

**Payments by the Church Commissioners**

8. (5) (b) must have due regard to the principles set out by the House of Bishops or General Synod for encouraging and enabling the work and mission of the Church of England.

Change 5 (b) replace the word **or** with **and** to read:- must have due regard to the principles set out by the House of Bishops **AND** General Synod for encouraging and enabling the work and mission of the Church of England.

**Rationale:**

In respect of the constitution of the Audit committee then I am aware that the current proposal is in line with the Companies Act Section 177. Nevertheless the Church of England is a separate entity and does not have to follow this. My main reasons for suggesting the changes are for transparency and trust. You will be aware that the word trust or rather lack of it has been apparent during various meetings of the current synod, so much so we have had an actual paper GS2354 presented at the July synod to try and address the matter. In



particular there has been a strong feeling amongst many members that the on numerous occasions synod is only there to 'rubber stamp' decisions made elsewhere. Whilst one would hope the proposed CENS does not elicit similar criticism my proposals would obviate this by allowing synod to elect the majority of the committee. Allowing it to elect its own chairman and appoint its auditor will further demonstrate both transparency and trust in synod and visible independence from CENS.

With reference to Payments by the Church Commissioners then they are of course under the scheme the final arbiters of funding decisions. However, my proposal in changing OR to AND allows synod as a whole to have an input into any proposals. Hitherto major financial decisions e.g Triennium Funding or the proposed Slavery Reparation Fund have been made without any consultation with the Houses of Clergy or Laity. Trust and transparency surely demands that synod as a whole is consulted. This can be done via a variety of mechanisms but perhaps the simplest is for people to be invited to write in as they are asked to do on other matters and at the end of each synod.

The previous Turnbull report was criticised because of a lack of accountability and a move towards centralisation. For these, you can substitute transparency and trust and my proposals, if accepted, will go some way to deflecting any similar criticisms which were made against Turnbull.

John Brydon

Norwich 370

**Andrew Presland, Peterborough, 384**

1. **Clause 17 (2)** – I wish to propose that the entire Clause is deleted because it seems unjust that four Officers of the Synod should be banned from serving as Trustees of CENS whilst the other two continue *ex officio*. If the relevant Houses wish these people to serve as Trustees of CENS, they should be free to elect or appoint them. This amendment touches directly on Clause 19 (5) (a) to (d).
2. **Clause 21** - As a Government statistician by day, I'd be in favour of the legislation enshrining a culture of trust and transparency within the Church by including a commitment to transparency in producing and publishing statistics of attendance, membership, finance and other measurable aspects of the life of the church, by adding an extra sub-clause to that effect within clause 21 on accounts, reports etc.
3. In practice, that might be achieved through voluntary compliance by the Church with the Government's **Code of Practice for Statistics**, and its focuses on trustworthiness, quality and value: <https://code.statisticsauthority.gov.uk/voluntary-application/>, although I recognise that it may be too prescriptive to specify that on the face of the Measure.
4. **Schedule 1, Section 2 (1)** – given that Rule 83 (2) of the Church Representation Rules makes clear that that an 'actual communicant' is, in practice, a lay person, I suggest that it should be made explicit within the wording of the section that the Chair must be a lay person i.e. not in holy orders.

## Ian Johnston, Portsmouth 387

### Summary

GS 2360 represents substantial progress in the renewal of our church's governance. Some of its proposals are necessary for holistic, structural reasons and others, necessarily radical, are departures from convention. All are welcome as a basis for detailed revision. The missing element is, however, fundamental. We must have a system of oversight that is commensurate with the nature, power and authority of CENS. GS 2360 does not have this balance, which absence will only preserve our widespread lack of trust (see GS 2354). Like a boiling frog, our system has been failing progressively for years. It has been long overdue for reform.

So, this paper:

- highlights the necessary interdependence of policy making, funding, execution and oversight;
- sets out the principles of good oversight;
- seeks a renewed balance in the central church and re-establishes Synod as a genuine partner;
- emphasises Synod's role as the ultimate overseer;
- and then applies this approach to GS 2360 for its revision committee (in Annex A, page 4).

Lack of effective oversight is our Achille's heel and continued evasion is not a viable option. We have an obligation to our church, indeed our nation, to change. GS 2360 offers us an excellent springboard but it is too cautious. We must be sensibly bolder.

### Introduction

Our current system of oversight has clearly failed us repeatedly. The two major reasons for this are related: structural weakness, for example the loss of Synod's role when Turnbull removed its standing committee, and the pervasive lack of trust. So, there are two themes that must be developed:

1. firstly, we need organisational change that enforces effective oversight, genuine accountability and balance - Synod must be at the heart of our system and processes as envisaged by Parliament since at least the Church of England Assembly (Powers) Act of 1919; and
2. secondly and related closely to the first, we need a culture change in the hearts and minds of our church - we need to trust.

GS 2360 recognises these weaknesses and its proposals for the central place of Synod within its structure, dominated by CENS, are welcome but incomplete. The wide and deep talent available in Synod gives it the ability not only to review fully proposals, budgets and reports from across the Church but also provide necessary, independent, holistic oversight.

The key to good oversight is independence. An obvious recent failure has been Archbishops' Council's management of the Independent Safeguarding Board. Less obvious are the conflicts of interest people have when they sit on more than one committee, which leads to a diminution of objective, independent thought.

The key to good, independent oversight is trust. In its absence, which is where our church finds itself, we need to have a structure that will compensate as much as it can: we must have rules and it must be made very difficult to avoid or ignore them.

The keys to a good set of rules are the independence of policy making, funding, execution and oversight.

All these issues are linked inextricably: improving the latter will improve the others.

The skeleton for this cascade of needs can be found or is implied in GS 2360.

- a) The House of Bishops, after due involvement of others as might be necessary, will be responsible for policy making; it will remain a constituent part of Synod.
- b) The Church Commissioners will revert to managing the church's investments and providing the funds to fulfil these policies (including the National Institutions Measure 1998) and other activities.
- c) Policy execution will be the responsibility of CENS with its realisation being in our parishes, deaneries and dioceses.
- d) Oversight, however and most crucially, will not be commensurate with the size and scope of CENS.

Points a) to c) will attract comments from others. My concern is with point d). Even with all the changes GS 2360 proposes, which exceed expectations, it remains a woollen fist inside a velvet glove.

### **Guiding principles**

The introduction leads naturally to the following proposals, from the more general to the more specific.

1. Oversight should be provided by transparently independent committees.

The arguments against independent, external oversight are self-serving and defensive: self-serving because, even with copious evidence to the contrary, we pride ourselves that we know ourselves best – we are a church; defensive, because we abhor publicity – we are the established church! We do not have the self-confidence to accept critical friendship. Independent oversight will break the vicious cycle of lack of trust leading to lack of oversight to groupthink and back again.

2. Oversight and the provision of the information it requires should be timely, proactive, no more intrusive than necessary, constructively supported by all parties and considerate.

There will be little point in establishing Synod's scrutiny committee, for example, if it is not to be given the tools it will need to be a constructive participant.

3. The Chair of an oversight committee should not be full member of its subject organisation.

Oversight must be independent. To be so, its committees will need their Chairs to be, and to be seen to be, independent also. They must have privileged insights into their subject organisations but must not be bound by them. Thus, they must be non-voting members (in attendance).

4. Our silo charities should be obliged to pay due regard to their overseers.

A major weakness of our present system is that the trustees of our charities are not obliged to take account of any external oversight. Charitable status is our norm but it is a defensive, introspective, untrusting approach to one of our most serious structural issues. An alternative is the Church Charity<sup>1</sup>, which would be defined in statute as a secular one with the added requirement that its trustees are obliged to take due regard of its overseers. It would provide balance, compel our charities to be genuine partners in our future and not allow them to remain self-regarding silos.

5. Synod should be the ultimate overseer and should have the means to fulfil this role.<sup>2</sup>

GS 2360's Synod will be hamstrung by its implied terms of reference. It will need to be authoritative, agile and responsive to be of any use. We need to trust Synod and its committees to be genuine partners in our team. Its scrutiny committee, for example, must be able to establish an inquiry on its own determination. This trust is most unlikely to be abused for fear of it not being seen as such a partner. Failing such trust, it will very quickly become an isolated irrelevance and will revert to the norm of recent years. This cannot be afforded. We must enable Synod to be a genuine partner in our future. We must resource it properly and support it constructively and cordially.

6. Every matter brought before Synod should have an amendable motion of acceptance.

If Synod is going to be such a positive partner, it must be allowed to express its opinions. Our take note debates are of very limited use: they are listened to too often with a surreal air. Amendable motions would sharpen attitudes and force Synod to be taken more seriously. Synod, in its turn, would have to behave appropriately as a genuine partner in the decision-making processes. This would be a self-policing approach in a virtuous cycle. Wrecking amendments would not be allowed; nor would any such matter be capable of being deemed.

In support of this more constructive approach, Synod's Business Committee must be able, with its Scrutiny Committee, to call proactively for reports on chosen subjects to be debated. This should be done following conversations with those involved but it must be able to insist *in extremis*.

These proposals are intended to establish Synod as a genuine partner. Implied is a greater degree of insight, monitoring and, *in extremis*, regulation of our NCIs and others. This radical proposal (to some) is more than justified by our woeful history. It is an appeal for connectedness and balance in our structure.

### **Summary view of GS 2360**

GS 2360 is a huge and welcome improvement on our current curate's egg of an organisation.

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<sup>1</sup> More detail is given in Annex B.

<sup>2</sup> Some form of exceptional process might be necessary to resolve matters in the event of a significant failure of Synod (to be defined) – maybe a meeting of the archbishops, the Chairs of each NCI and Synod to provide guidance or even instruction – but the existence of such an option should be an effective deterrent.

A general concern is that it pays too much homage to the past. Its objective is to provide an efficient, effective structure for the development of our church. Three most obvious current failures have been mentioned: the lack of oversight, the lack of trust and the sidelining of Synod. All proposals should show how they will remedy this situation. GS 2360 goes some way in doing so but it is not determined enough. We seem to be institutionally afraid of oversight, which is not surprising given our lack of trust, but we do need to develop a process that will be effective and build confidence. We need a better balance between our NCIs. We need more than is being offered.

A specific concern is the nature of CENS. It might need the authority as proposed but it is far too insular with far too few effective external controls over or insights into its actions. GS 2360's structure is unbalanced. Not unlike our present-day Archbishops' Council, CENS risks becoming a law unto itself by developing into an autonomous, introspective charity with its own dedicated resources, responsible for all practical purposes to no-one. It is disconnected and risks becoming more so. This weakness cannot be overstated.

So, the theme of my comments and proposed changes is to create a balanced team approach to our future, the members being Synod, CENS, the Church Commissioners and the other NCIs and church bodies, not least our parishes. Central to this objective will be the effectiveness of oversight.

### **Conclusions**

Trust will be the key to success. The guiding principles of this paper all require trust to work and they will generate trust when working. Together, they will form a very desirable, virtuous circle.

GS 2360's governance structure, as it stands, will not enable General Synod, which is our only representative body at this level, to be a genuine partner with the NCIs and other bodies in our church's future. It will, as now, be too easy to sideline. This will weaken not only its policy making contribution but also its oversight competence. It will remain a discursive talking shop.

On the particular theme of this paper, GS 2360's otherwise excellent approach to oversight<sup>3</sup> has been constrained by the desire of some of those consulted to not let go, to not fully trust colleagues. Our church is well established to enable its vested interests to defend their fiefdoms<sup>4</sup> but, and our history has shown this to our great frustration, this does nothing to improve trust or, as part of this virtuous cycle, our effectiveness. We have to let go. We have to accept, positively, constructively and collegiately, that we are members of teams that extend beyond our managerial and, indeed, our charitable responsibilities.

CENS and our other NCIs will have to be agile, opportunistic, effective and efficient. In return for such power, however, there must be a counterbalancing ability to exercise proper scrutiny over the processes by which £1bn+ of charitable funds will be expended annually.

In short, we need a better balance: oversight's competence must be commensurate with the power and influence of its subject organisation. That, the objective of this paper, is the least we must do, failing which we will be just starting to boil another frog.

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<sup>3</sup> It bears repeating: the proposed Synodical committees and restriction on committee membership are constructive and welcome.

<sup>4</sup> as happened to Turnbull's proposals.

## **Annex A: Proposals for the GS 2360 Revision Committee**

The following might appear very specific but it is no more than an interpretation of the above principles as applied to GS 2360's language. Where necessary, the principles take precedence.

### **Section 2: Establishment**

(4) After "... CENS may" insert ", with the prior and considered approval of Synod,": otherwise, there would be no control over how CENS could develop. The details of Schedule 1 have been agreed by Synod; changes to it must be also. We must beware of policy drift.

### **Section 3: Charitable status and objects**

(1) The downside of CENS being a charity is that its oversight will be bedevilled by its silo nature: its trustees, *in extremis*, do not have to take any regard of an external party such as its overseer. The Church Charity is discussed in Annex B. Of various options to address this issue of interconnectedness, this would be the most emphatic and straightforward.

(3)(a) Replace "... and ecumenical;" with ", ecumenical and the cure of souls in every parish;": for the avoidance of doubt.

(4)(a) Replace "or" by "and": the House of Bishops must consult Synod meaningfully and not retrospectively.

(4)(b) After "... and reporting" add "to Synod": to which other body would CENS report?

4(d) Note: The solitary mention of the parish in this draft measure is here; this is an inappropriate lack of emphasis.

(4)(e) Insert at the start "recognising that the House of Bishops, through General Synod, is the source of policy development," and replace "... of policies..." by "of these same policies ...": to emphasise the House of Bishops' primacy in these matters.

(4)(f) After "... culture of learning" insert "across all its traditions": ours is a broad church and this feature must be imbedded in its structure.

(4)(g) After "... national level" insert "with the primary purpose being the cure of souls within all our parishes": for the avoidance of any doubt; but there remains the key issue of exactly how CENS will be effective at the parish level.

(5) After "... this section" insert "with the prior, informed approval of Synod": otherwise, there would be no control over CENS reinventing itself.

(7)(b) After "Church of England" insert ", which includes trust and mutual Christian love,": this point is crucial so it must be identified in the headline definition of CENS.

(7)(c) Delete "neither a diocesan body nor". So, what is a PCC? The draft measure is saying that a PCC doesn't count when it comes to the charitable purposes of CENS! Will CENS have no interest in the cure of souls in our parishes? As written, this makes little sense as all PCCs are charities<sup>5</sup>. They are not required to register with the Charity Commission unless their income exceeds £100,000 but they are still charities.

### **Section 4: Governance and Nominations Committee etc.**

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<sup>5</sup> [Frequently Asked Questions - Parish Resources](#)[Parish Resources](#)

Both CENS and the Church Commissioners will have their own, separate Governance and Nominations Committee (GS 2360P, page 23). Surely, this is either excessive or an editorial mistake.

(1) Others will ask this, no doubt, but why not use Synod's existing Appointments Committee? It would be genuinely independent of CENS. Paragraphs 62 – 64 of GS 2360P, the supporting policy statement, do not give a rationale for this proposal. The duplication seems unnecessary and needs to be justified. The danger is that CENS might, over time, become a self-serving, introspective silo.

Key objectives of the governance review must be to harmonise, make more efficient and effective and generally improve our systems and processes as much as possible. This bifurcation of what could be a single committee works against these objectives. Synod's Appointments Committee, presently more for nominations, should be reformed to deliver on the governance needs of CENS. We should aim to have a single, well-functioning, independent Governance and Nominations Committee that could serve both Synod itself for its committees (e.g. Revisions, etc.), all NCIs and the other central church bodies. It would be advisory but Synod (as a whole House) could question and object when its advice was not taken without good reason.

If this proposal to enhance Synod's Appointments Committee was accepted, then much of what follows in this section would be superseded.

(2)(c) There should be two members from each of the House of Clergy and the House of Laity: for reasons of representation.

(2)(d) After "... CENS" insert "following recommendations by its Synodical representatives.": otherwise the majority on this committee will be appointed by CENS, which is not a good approach.

(3) The Chair of CENS should not be the Chair of this Committee. (S)he would not be if Synod's Appointments Committee were to be used, as it should.

Replace the text of (3) with:

"The Chair of the Committee should:

(a) be elected by Synod (but need not be a member of it); and

(b) after election, become a non-voting, in attendance member of CENS."

(6)(7) Such reviews must be shared with the Synodical Scrutiny Committee in a timely manner. Note that the use of Synod's revamped Appointments Committee would make the association with its Scrutiny Committee that much closer.

(7)(b) Include at the end ", which includes trust and mutual Christian love.": it bears repetition.

#### Section 5: Audit & Risk Committee etc.

Insert:

"Preamble: This Committee must operate in accordance with published best practice from the Charity Commission and from other appropriate organisations.": because today the Archbishops' Council's equivalent does not follow these professional standards.

Append:

"(1)(h) to respond promptly to any enquiry made of it by the Synodical Scrutiny Committee



or its Committee of Inquiry.”: one of the serious problems we have at present is delay in being aware that information is needed and then having it provided. There is no point in having, for example, a five yearly review of anything. We need to be far fleetier of foot.

(2)(a, b) Having this Committee’s remit run over other NCIs only increases the need for its independence to be and to be seen to be transparently genuine.

(3)(b) There must be two members from each of the House of Clergy and the House of Laity.

(3)(c) After “... CENS” insert “following recommendations by Synod’s representatives.”: the majority on this committee will otherwise be appointed by CENS, which is not a good approach.

(4) The Chair of the Committee must be independent of CENS. Otherwise, the conflict of interest would be unacceptable in principle and undesirable in practice. Thus:

Replace the text of (4) with:

“The Chair of the Committee should:

(a) be appointed by CENS from among the members of the committee under subsection (3)(c); and

(b) after appointment, become a non-voting, in attendance member of CENS.”

(9) After “... General Synod” insert “and support it by means of a meaningful debate with an amendable motion.”: Synod must be able to express its opinion on the report. The report must not be capable of being deemed.

#### Section 6: Mission and Pastoral Adjudication Committee: functions

GS 2360P, paragraph 72 (page 35) states that this Committee will be “arms-length” and “independent” but it will be a part of CENS. There is no justification for this, only a self-serving statement. To be genuinely independent of CENS and not be subject to any policy drift in the future, it should be a separate entity on a similar basis to the Dioceses Commission.

#### Section 7: Mission and Pastoral Adjudication Committee: membership

Comment: Much of this section is aimed at ensuring the Committee’s independence from CENS. It would be far easier (“simpler, humbler, bolder”) to have a statutorily independent committee, maybe a commission, to deal with this matter.

(1)(b) Replace “six” with “twelve” and after “... Committee” insert “, who are not members of CENS”: for reasons of independence.

#### Section 8: Payments by the Church Commissioners

Comment: It is understood that the Church Commissioners have in principle, but this may be honoured more in the breach, the ultimate responsibility for the allocation of funds for the cure of souls in our parishes. They can and do apply considerable assets to other interests as agreed (chattel slavery, for example<sup>6</sup>) but these should not detract from their superior role – and they claim strongly that it does not. It is not clear how this responsibility will carry through to the world of GS 2360 but it must. My proposed changes attempt, therefore, to ensure that means are not provided officially and legally for the spending of the Church

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<sup>6</sup> I have written on this: “On the allocation of Church Commissioners’ funds (Question 107 at York 2024)”

Commissioner's endowment far beyond its original charitable object (the cure of souls in parishes).

This framework is a good, necessary proposal.

Append:

“(1)(c) to determine, with the approval of Synod, what payments, if any, it will make directly to other charitable object bodies, including dioceses and parishes, without using CENS as an intermediary”: to ensure that the Church Commissioners' historic role is preserved.

(2) After “... each financial year” insert “following approval by Synod”: Synod must be ahead of events rather than behind them. The intent here is not to change fundamentally the relationship between the Church Commissioners, the other NCIs and Synod. Rather, it is to try to exert some influence on CENS, which otherwise would be capable, in principle, of managing this extremely important matter entirely independently of Synod. Synod must be among the signatories to these plans – it must be a full part of the team.

(2)(a) After “... financial year” include “, which always must include the making of additional provision for the cure of souls in parishes where such assistance is most required as a top priority.”: this responsibility is not defined precisely at present; or if it is (e.g. National Institutions Measure 1998, Section 2 Application of Funds), it is evaded. We cannot afford such ambiguity with CENS.

(5)(b) Replace “or” by “and”: the House of Bishops must consult Synod meaningfully and not retrospectively.

(6) After “... CENS” insert “ and Synod”: Synod must be ahead of events rather than behind them.

(7) After “... Church Commissioners” insert “ and Synod”: ditto.

(8) Five years is too long a period. We have seen how SDF was allowed to miss-perform in the main because it was not reviewed often enough (or at all until Chote). CENS' actions in giving grants should be the subject of annual review by Synod's Scrutiny Committee. This review should include how its specific responsibility for the cure of souls had been met. It must not be limited to the process used but include an analysis of the grants made and their consequences.

So, replace (8) with:

“(8) Synod's Scrutiny Committee must review the purposes, processes and consequences of CENS's grants making activities annually in summary and tri-annually in detail. It may seek and must be provided with in a timely fashion such clarification as it requires.”

#### Section 17: Eligibility for membership etc.

(1) This is a good proposal in that it will minimise conflicts of interest.

(2) Ditto.

Insert a new (4) and renumber accordingly:

“(4) Notwithstanding subsection (3), no National Institution should have the power to remove a member elected by the Synod but should have the power to raise a motion in Synod to request a removal by a counted vote of the whole house.”: if Synod elects a member to an NCI board, it must be responsible for their removal.

(old 4) Insert after "... any other National Institution", "for a period of five years": a sunset clause.

#### Section 18: Belonging and inclusion

We should be mindful that the Privy Council has ruled that the Church of England is not subject to the Equality Act.

Included in this section should be (but I'm not sure where): "trust and mutual Christian love."

(6) To this definition should be added "diversity of opinion": to help to avoid group think.

#### Section 19: Synodical Scrutiny Committee

(4) As mentioned under section (8)(8), five years is too long a period for any review to be useful. This committee needs to be pro-active and involved in the process. It should use its own discretion on the use of its power to call for a review. This would be a self-limiting feature as its overuse would bring its credibility into question.

(5) The committee should have a lay majority by electing two House of Laity backbenchers. So,

Append:

"(f) two members of the House of Laity elected by that House who do not otherwise hold any leading roles (e.g. committee chairs)."

(10) This is a wrecking subsection. There will be no point in having such a committee, which is most welcome in general, unless it has a sanction over the NCIs. I can understand the sensitivity over this issue but it comes down to a matter of trust.

Crucially, if sanctions were to be available, then it would require the committee, and Synod more generally, to play an active, responsible part in the life of our church. A mechanism would have to be put in place to respond to its abuse but the responsibility being put onto those involved would mitigate against that situation arising. This is a most important issue that goes to the heart of the matter: do we trust each other and how do we manifest it? We must learn to trust Synod and it must respond accordingly.

Insert:

"(11) The committee may call for any information from any NCI or church body it sees fit, which will be provided expeditiously, adhering to all appropriate confidentiality and data privacy procedures.": it will be important for any scrutiny to be sensitive to the timescales involved. Providing relatively small amounts of information regularly will increase trust and aid the committee's effectiveness. Any such call should be subject to appropriate confidentiality undertakings but nothing should be beyond scrutiny.

#### Section 20. Committee of Inquiry

(1) Add at the end: "or that of the Church of England.": obvious.

(4) After "... right to speak" insert "but not to vote": obvious.

(5) 75% of the whole of Synod being necessary to establish a committee of inquiry questions the trust we have in its commitment. Just as the Scrutiny Committee will be one of Synod, so the Public Accounts Committee is one of Parliament. It provides a good model to follow. It may enquire into "such ... accounts laid before Parliament as the committee may think

fit”<sup>7</sup>. It is very jealous of its credibility, which could be ruined easily. This is an inbuilt safeguard against its overuse and abuse.

In our case, the only possible interpretation of the proposed threshold is that, deep in our corporate souls, Synod is not trusted. Argue it as one might, this is the only possible conclusion and it is unbecoming. Even if it were to be changed in revision, the point has been made: it cannot be unmade. A constructive, trusting approach would be to give the Scrutiny Committee its head: let it establish an inquiry of its own volition. This high degree of corporate responsibility would inhibit its enthusiasm. As with my comment on section (19)(10), this is a closely related, most important issue that goes to the heart of the matter: do we trust each other and how do we manifest it? We must learn to trust Synod and it must respond accordingly.

Insert a new (6) and renumber accordingly:

“(6) The Committee of Inquiry should have funds allocated by the Church Commissioners to pay for the support of at least 2 FTE resources to be seconded from the staff of CENS or hired externally.”: to be effective, the committee must be resourced appropriately.

(old 9) Replace “six months” by “expeditiously and, in any event, in less than 40 working days” : a sense of urgency would signify the importance of the matter. Synod must be seen as a genuine partner in our church’s future and not just as some necessary but embarrassing, distant relation.

(old 11) See my comments under section (19)(10), which apply equally here. This is a matter of trust, little of which is indicated in the text.

## Section 21: Accounts, reports, etc.

Insert:

“(5) Synod will have the ability to qualify<sup>8</sup> its acceptance of any matter brought before it by amending a motion to accept the same.”: Synod must have the ability to express its opinions in more constructive and intentionally helpful ways than just witnessing take note debates.

## SCHEDULES

### 1: Membership

(1)(2) The Archbishops should not be members of CENS. It will be an executive committee, not a policy making body. Policy will be made and recommended by the House of Bishops, of which they are members, through Synod.

(7) Insert at the end: “following prior, adequate consultation.”: Present practice is to bounce Synod into approving nominations with next to no information on the candidate. This process diminishes Synod and does nothing to improve trust. The Church of England cannot afford to have its General Synod being seen as a mere rubber stamp of decisions taken elsewhere.

### 6: Committees

Insert:

“(8) Any committee of CENS or a sub-committee of it must receive prior approval of Synod

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<sup>7</sup> Erskine May: [committees.parliament.uk/publications/43052/documents/214083/default/](https://committees.parliament.uk/publications/43052/documents/214083/default/)

<sup>8</sup> This is not intended to be to qualify in the sense of an auditor but more to enable Synod to record its opinion, which would, of course, become part of the public record.

before its establishment.”: One of the issues facing us is the proliferation of committees, a matter of which the governance review was conscious but which simplifying changes to procedures have encouraged<sup>9</sup>. This was the first reason given when its reference group asked why the governance review was being carried out<sup>10</sup>.

#### 7: Chief Executive Officer

(1) A good proposal.

(5) Insert at the end “following an exhaustive, transparent selection process.”: This will be a key appointment and the best person will be needed.

Insert:

“(6) The Chief Executive shall not hold any appointment or license (remunerated or not), which is in the gift of either archbishop or a member of the House of Bishops.”: The recent history of the Post Office provides us with a salutary lesson.

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<sup>9</sup> GS 2272, clause 19.

<sup>10</sup> ‘Why is there the need for reform?’ - GRRG(22)02 paragraph 3: “[The first reason is] there are far too many committees within our governance structure and too much staff time is used up servicing these committees, rather than focusing on the delivery of services and support to dioceses and parishes.”

## **Annex B: A Church Charity**

The Church of England has a unique organisation. Other large charities exist in the UK but none has its complexity. It has seven National Church Institutions (NCIs) in its central organisation, 42 dioceses, all of which are independent charities, and some 1,250 parishes, many of which are also charities. No-one knows the total number<sup>11</sup>. Comparisons between our Church and these other national charities is thus only appropriate at the level of charitable principle: they have little to offer in the crucial area of the interaction between constituent charities. The Church of England is unique in being the only large, multi-charity organisation. It needs a unique structure.

A system of centralised, representative approval and delegated execution is necessary but as important will be how efficient and fair oversight will be assured. The question turns on how Synod can be given the necessary authority while maintaining the collegiate sensibilities appropriate for our Church. The governance review's proposal for scrutiny and enquiry committees is excellent but it suffers from an inadequate enforcement process. A specific issue is, *in extremis*, the ability of a silo charity to be influenced by an external oversight body. As mentioned, the Archbishops' Council's handling of safeguarding issues is one example; our church's various budgets are another. In neither case, nor in many others, has Synod, not a charity, had any influence. How can it be right that the only representative body at this level in our church has no practical influence over a total annual spend of some £1bn? It isn't right. It is indefensible.

This weakness can be corrected by defining in statute a Church Charity, which would have all the characteristics of the secular one with the additional requirement for the subject charity to accept and respond constructively to the opinions of its oversight body and, ultimately, Synod. This is not a new idea. GS 2325P, the briefing note on abuse redress, refers (paragraph 9) to the problems caused by the "number of free-standing legal charitable bodies". The Jay report refers to two charities, one to provide uniformity of safeguarding between our dioceses and the other to provide oversight of the first, which would be required by statute to take due regard of its opinions. It arose earlier in the governance review. Nor should it be dismissed out of hand as there is no other solution to the silo nature of our charities.

This straightforward change would have far-reaching consequences. Applicable to both theological and administrative matters, it would have significant effects on representation, openness and responsibility.

The drive to minimise central costs is laudable but it must distinguish between an essential minimum of required costs, among which must be those for good governance, and all others. Good governance, to which a Church Charity would be an, I would say, essential contributor, might not be cheap but it must be afforded.

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<sup>11</sup> Question 125 at the February 2024 group of sessions of General Synod.

**Tim Fleming, St Albans, 394**

*3 (3) (b) Charitable status and objects*

The “other National Institutions, diocesan bodies and charities with a Church ethos” as referenced in this clause are all independent bodies of CENS with their own corporate personality. I would therefore suggest that the words “enabling and enhancing the efficiency and effectiveness of...” are not really appropriate as objects for CENS, as the enabling and enhancing of the efficiency and effectiveness of these bodies rests with the bodies themselves (and their respective trustees).

Perhaps the words “supporting and facilitating the ongoing efficiency and effectiveness of...” (or something similar) might be more appropriate.

*3 (4) (f) Charitable status and objects*

I recommend this clause is extended to “...a culture of learning *and development*...” so that the fostering is not just the promotion of learning but then turning that learning into action and continuous improvement through active development.

*4 (1) (c) Governance and Nominations Committee: functions and membership*

In light of the stated focus on diversity, I recommend the extension of this clause to read “the skills, knowledge and experience of, *and the diversity among*, members of CENS and members of its committees”.

*4 (2) (d) Governance and Nominations Committee: functions and membership*

In order to provide sufficient independent perspective, and so that the committee has sufficient skills in the areas of governance effectiveness and trustee recruitment, I recommend the number of independent persons appointed by CENS to the Governance and Nominations Committee is increased from two to three.

*5 (1) (a) Audit and Risk Committee: functions and membership*

In line with good practice in relation to duties of audit and risk committees, I recommend this clause is extended to read along the lines of “to review the *ongoing performance of CENS’ external auditor*, including recommending to CENS on the appointment of the external auditor as required”.

*5 (1) (c) Audit and Risk Committee: functions and membership*

In line with good practice in relation to duties of audit and risk committees, I recommend this clause is extended to read along the lines of “...and any reports made and advice given to CENS by the auditor appointed by CENS, *including the adequacy of management responses*”.

*5 (1) (g) Audit and Risk Committee: functions and membership*

I recommend that in order to secure ongoing trust, transparency and confidence, the committee's reporting to General Synod is not restricted to matters "which cause the committee grave concern and about which CENS has been unable to satisfy the committee" but instead simply to matters "which cause the committee significant concern". I would assert that "significant" is a term that is more readily understood than "grave", and that regardless of the committee's secondary judgement on whether it is satisfied or not, all matters that cause it significant concern in the first place should be reported.

*5 (3) (c) Audit and Risk Committee: functions and membership*

In order to provide sufficient independent perspective, and so that the committee has sufficient skills in the areas covered by its duties, I recommend the number of independent persons appointed by CENS to the Audit and Risk Committee is increased from two to three.

*5 (4) Audit and Risk Committee: functions and membership*

In order to ensure good practice in governance, and recognising that the chair of CENS is the chair of the Governance and Nominations Committee by virtue of clause 4 (3), I recommend that the chair of CENS is prohibited from being the chair of the Audit and Risk Committee.

*17 (4) Eligibility for membership etc.*

As well as providing for the removal of members by vote, I recommend that for good governance purposes, and in line with recent reporting on rebuilding trust, provision is also made in this clause to enable removal if the member "acts contrary to any code of conduct in place from time to time as adopted by the National Institution for members of the National Institution and its committees".

*Schedule 1: 2 (3) Eligibility etc.*

Is there a drafting error in that section 2 (3) should refer to section 17 (2)?

*Schedule 1: 11 (1) Remuneration etc.*

The payment of remuneration to the chair of CENS inevitably begs the question of independence. Even in the absence of remuneration being paid to a chair, but noting that if remuneration is paid the following is even more important, it is increasingly accepted that charity trustee bodies benefit from the inclusion of a "senior independent trustee" in their make-up. The concept of having a senior independent director/governor/trustee is now well established in most sector governance codes.

I recommend the revision committee gives significant consideration to the inclusion of a senior independent trustee within the make-up of CENS. Examples of the activities that such a role typically performs include the following:



- acting as an independent sounding board for the chair
- an intermediary for other trustees
- leading the appraisal of the chair's performance
- a route for relevant parties to make contact if they have concerns where contact through the normal channels have failed to resolve, or for which such contact would not be appropriate
- supporting the resolution of difficult issues by the trustee body as a whole
- helping through the management of any disputes that may arise between the chair and chief executive
- facilitating follow through on concerns which the trustee body as a whole, or in majority, does not consider are being properly addressed

It is important the revision committee notes that the roles of a senior independent trustee and that of a vice chair/deputy chair are different.

**Jonathan Baird, Salisbury, 400**

1. In the '47 & '98 Measures, there is great clarity in ( & , manifestly, much thought was given to ) the definition of the charitable objects of the Church, not least pertaining to the cure of souls.

As presently drafted, the charitable objects in clause 3 are obscure, insufficiently clear & merit much closer attention.

2. The draft Measure would hand additional ( & potentially troubling ) powers to the House of Bishops.

The relevant clauses are:

*3 (4) The actions which CENS may take to fulfil its charitable objects include—*

*(a) developing strategies for implementing principles set by the House of Bishops or the General Synod for encouraging and enabling the work and mission of the Church;*

*(b) monitoring and reporting on the implementation and impact of the principles referred to in paragraph (a);*

*(c) supporting the work of the other National Institutions, the General Synod, the House of Bishops, all those who hold office as a diocesan or suffragan bishop (taken as a group) and national Church bodies;*

*(d) supporting the work of bishops in their corporate capacity and of dioceses, cathedrals, parishes, chaplaincies and other local or regional Church bodies; (e) facilitating the development of policies on matters of religious or political interest and engaging with individuals and bodies with a view to implementing those policies;*

*(f) fostering a culture of learning within the Church of England;*

*(g) making grants from resources held at a national level;*

*(h) providing professional, procurement, payroll, administrative or secretariat services.*

Clause 3 (4)(a) states that the House of Bishops will set principles ... for enabling the work and mission of the church.

(a) also states CENS will develop those principles for implementation.

(b) states CENS will then monitor and report on that implementation.

(h) states CENS will make grants from national resources – presumably for that implementation, as this is all under the same section (4).

And previously, the draft Measure in clause 3 (3)(b) specifies that the only constraint on such grants is that they must go to organisations with a 'Church ethos.'

So, by way of illustration, the draft Measure suggests that, if the House of Bishops were to decide upon a 'principle' that 50% of the dispensable income from the CCs should go to the [ Church ] Revitalisation Trust, which would meet the criteria of 'encouraging the mission of the Church' and 'Church ethos', CENS then would have to allocate resources, implement and monitor accordingly.

3. The introduction of the notion of a 'Church ethos' is inconsistent & incoherent vis-à-vis the '98 Measure.

Furthermore, the words are vacuous & worrying imprecise.

As per the observations above about charitable objects in clause 3, careful further thought is required.

4. The church has presently an alarming & growing shortage of stipendiary clergy: partly, as a result of baby boomer retirement ( as the Church has known for well over a decade, 20% of clergy are due to have retired between '20 & '25 ); & partly, due to the 40% fall in ordinands in training ( in other words, too few are coming off the production line, in part because too few are commencing training ).

Notably in clauses 3 & 4, is this paucity recognised as being of preeminent importance? And, if so, does the draft Measure, within its scope, prioritise & address adequately this matter?

In other words, concentration of effort & resources versus distraction.

5. There has been much debate about fair representation on boards & committees; the need for muscular scrutiny of them; & meaningful & clear accountability ( inter alia, clauses 4, 5, 6, 7, 19 & 20 ).

Confidence in these three dimensions will do as much as anything to restore trust in the Church, its institutions & the episcopate.

Are there precedents in the secular ( notably corporate ) world, which may be helpful & merit attention?

International examples may be pertinent, such as public corporate boards in the US ( with a preponderance of weighty & involved non-execs ) & the historical supervisory board structure of, for instance, Volkswagen, where the interests of the Länder & employees are appropriately represented.

Thank you very much for your attention.

## Debrah McIsaac, Salisbury 402

### Clause 1

Clause 1 Unless there is a good reason to separate Clause 1 from Clause 23, these provisions should be appear together to aid understanding.

#### Clause 1(3)

- What is the relationship and overlap between a Legislative Reform Order and Clause 1(3) and Clause 23(5)? It is stated in GS Misc 1388 paragraph 12 that the Legislative Reform Committee 'would like to take forward its current work' until such time as the National Church Governance Measure is implemented. However, the LRC is a wholly appointed body and there is no record of the Appointments Committee having been consulted when the LRC's remit was significantly expanded in 2019.
- There is no explanation or rationale as to why 'flexibility' is needed to enable an addition to or removal of a National Church Institution by the Archbishops when the Order would, in any case be subject to Clause 23.

### Clause 2

Clause 2(4) should be OMITTED.

CENS itself should not be able to amend its own constating instrument which is contrary to the principles of good governance.

### Clause 3

#### Clause 3(3)(a)

- The statement of charitable objects must be very clear and as all-embracing as possible and might be slightly better expressed as  

'to serve, support, encourage and enable the mission and ministry of the whole Church of England, pastoral, evangelistic, social and ecumenical'.

#### Clause 3(3)(b)

- OMIT 'charities with a church ethos'.

There is no generally agreed meaning of 'church ethos.' (see comment on Clause 3(7) below) new Clause 3(3)(c)

INSERT new clause 3(3)(c) as follows:

'nurture, support and encourage traditional, new and emerging expressions of church.'

- This new clause would make it clear that all forms of church are to be supported.

new Clause 3(3)(d)

INSERT new clause 3(3)(d)

‘Making provision for the cure of souls in parishes [and other places] where such assistance is required’.

This insertion tracks the Ecclesiastical Commissioners Act 1840, s.67 and the National Institutions Measure 1998. No adequate justification or rationale has been given for omitting the reference to the historic, well-known and understood form of words. Local pastoral care and provision of worship and sacraments are the bedrock of the Church of England.

Clause 3(4)(a) SUBSTITUTE ‘or’ in the second line with ‘and’.

- The House of Bishops and the General Synod together should agree the principles and CENS is to develop the strategies to implement those principles.

Clause 3(4)(c)

- OMIT the reference to ‘all those who hold office as a diocesan *or suffragan bishop* (*taken as a group. . .*).

This inclusion of Suffragan Bishops elevates the College of Bishops to a much more significant place in the structure and organisation of the Church of England without an adequate explanation or rationale.

It is not a ‘governance’ question but one which affects the polity of the Church of England and is a fundamental change from the three Houses which balance the interests of (Diocesan) Bishops, clergy and laity. As drafted, the suffragan and special interest bishops who have been chosen (most often) by the Diocesan Bishop will form what might be described as magisterium of people chosen by the Diocesan Bishops without reference to the statutory principles and procedures which are in place via the Crown Nominations Commission. Further, the greater imbalance of power will aggravate the trust deficit that prevails and undermine a successful implementation of the governance reforms.

Clause 3(4)(d)

- Is it for CENS to develop policies on matters of political interest and implement those policies? There have always been a range of views on political matters within the Church. The Archbishops, Bishops and any member of the Church has the liberty of his or her own political views and is able to express them.

#### Clause 3(4)(g)

- There should be some constraints or parameters on making grants at a national level. At a minimum, there should a duty to develop and then to report against agreed criteria, especially in relation to para-church organisations.

#### Clause 3(4)(h)

- INSERT after the word 'secretariat' the words 'or other support services.' This would make it clear that further services could be developed and made available.

#### Clause 3(5)

- DELETE Clause 3(5). CENS itself should not have the power to vary its own charitable objects.

#### Clause 3(7)(b)

- There is no agreed understanding of 'a Church ethos' or the 'principles of the Church of England'. The Revision Committee might wish to review the lively discussion of 'a Church ethos' on Mumsnet to see the confusion that exists.

#### Clause 3(7)(c)

- OMIT There is no justification for excluding a parochial church council as a 'charity with a Church ethos'. If a PCC doesn't have a Church ethos, who does?

### **Clause 4 Governance and Nominations Committee**

The Appointments Committee of General Synod is respected and trusted by General Synod. It has the experience and expertise and its members are elected. It should be invited to serve as a Nominations or Appointments Committee to CENS.

There should be an independent Governance Committee which reviews CENS and synodical procedures (which for this purpose should include the Legal Reform Committee) and reports to Synod at least annually. The key criteria should be that those who serve on the Governance Committee have no other role on or in relation to CENS. This Governance Committee should report to General Synod at least annually and have an obligation to make special reports should the circumstances require.

CENS will obviously be a Charity. The consequence is that members of CENS must act in the best interests of the Charity but the best interests of the Charity may not be co-extensive with the best interests of the House of Laity or the Convocations. Some way must be found which enables those members of General Synod, whether elected or co-opted, to speak and act in the best interests of their constituents. The Revision Committee is urged to consider these issues and to discuss with the Charities Commission whether and how

these issues can be resolved.

### **Clause 5 Audit and Risk Committee**

A Joint Audit and Risk Committee for the Church Commissioners and CENS should be established. Its members should be independent.

### **Clause 20 Committee of Enquiry**

#### Clause 20(1)

- OMIT the word 'grave' in line 3.

The fact that General Synod must pass a resolution to initiate a Committee of Enquiry should suffice. Otherwise, the hurdle may be too high and the procedure will not be used.

#### Clause 20(5)

OMIT 'three-quarters' and substitute '60%'.

75% is too high a bar and will result in the procedure not being use even where it would be desirable to do so.

### **CENS Board and other Committees**

The *Illustrative CENS Committee Structure Diagram* on page 22 of the National Church Supporting Policy includes a 'Grants Committee' which of course will be necessary. In some form, the membership of this Committee (paying particular attention to conflict of interest), its responsibilities, accountability, and grant-making policies should be subject of an annual report and these requirements should be set out in the Measure.

## Rebecca Chapman, Southwark, 414

I have three detailed proposals for amendments which are set out here.

I have also included what I hope are some constructive comments on areas which I think are currently good, and where I would encourage the committee to resist potential proposed changes.

For ease of reading, I have included for each proposed amendment a summary of the aim or purpose, alongside my reasons for the amendment and then only at the end have I listed the formal 'legislative' proposals amendment (and any consequential ones that would be desirable or necessary). The Appendix then lists in a tabular format the complete list of my proposed amendments organised by clause within the Measure.

### Order Powers

*Proposed amendment:* To remove entirely (or at least impose a sunset clause on) the perpetual order powers which are currently inherently embedded within the Measure, and which allow further changes to the Measure or Schedule 1 to be made by Order. I'd suggest that it revert to the default of the Measure and Schedule only being amendable by Measure.

*Why:* The principle of this amendment would be to ensure that potential future changes to the Measure and the Schedule are considered fully by General Synod in the same manner as they are doing with this Measure.

From a philosophical perspective, I believe that Synod should be making less use of Order Powers, and not more. Synod is principally a legislative body and should be more comfortable with legislative work. Order powers should therefore be used only for those elements of legislation for which they are well-suited and designed, and not as a generic 'catch-all' to avoid the potentially lengthy but important work of First Consideration and then Revision.

If those elements which need changing are minor in nature, then they can be dealt with using a Miscellaneous Provisions Measure, or a Legislative Reform Measure as appropriate – there is no significant benefit to being able to make amendments of this nature through Order powers.

If those elements which need changing are major (for example, changing the charitable objects; amending the membership of CENS) then it should be considered as seriously as this Measure and should surely take the requisite level of legislative time and scrutiny.

The argument will be made that Order powers can come before the Synod anyway, and so there is no loss of scrutiny / ability to reject or amend these. Whilst this is true on the



face of it; it is, by design, not the same process. Should a substantial change be proposed through an Order, then potential Amendments to an order do not have the same opportunity to be considered carefully by a Revision Committee – leaving Synod in the unfortunate role of ‘approve or deny’ rather than ‘discuss and improve’ which is what it should be able to do. This is particularly noticeable in Clause 3 (6) which states that a draft order to change the charitable objects may not be laid before General Synod without having the approval of the Charity Commission to that variation. However, this means that any proposed amendment from the floor of Synod to such an Order (even a perfectly legitimate one that would be desired by all) would likely be rejected as not having been approved by the Charity Commission. By contrast, changes made by Measure have the time and scope to be considered at both First Consideration and in Revision Committee and thus proposed improvements or amendments can be considered properly.

Originally, I considered that a sunset clause might be appropriate on the order powers inherent in the Measure, as there is perfectly reasonable and correct utilisation of them in places (e.g. Clause 9 (1)). However, on reflection, the different uses of Order powers are sufficiently separate that actually I believe that the amendments to remove the ones listed should work. If however, I have missed something, then a principle of order powers having a sunset clause to enable them to be used appropriately in the ‘set-up’ phase would seem to work, without instilling the powers perpetually through the Measure.

I would also note that I have suggested the removal of the Statutory Instrument powers for the Mission and Pastoral section, from a perspective of logical consistency. However, I am less aware of the legislative detail in this area, and I would not want a legitimate reason for the SI usage here (if there is one) to prevent consideration of these amendments throughout the remainder of the Measure.

#### *Proposed Legislative Changes*

<b>Proposed Amendment</b>	<b>Reasoning</b>	<b>Area of Concern</b>
Delete Clause 2 (4)	This removes the statement about Schedule 1 being amendable by order by CENS.	Order Powers
Delete Clause 3 (5)	This removes the ability for CENS to amend Section 3 by order.	Order Powers
Delete Clause 3 (6)	Consequential on deletion of 3 (5). If order powers are not available, then prior approval of the Charity Commission is not required. If amendments are proposed through Measure, then there is opportunity for Charity Commission consideration to be taken into account at Revision stage.	Order Powers

Amend Clause 6 (4) to 'The General Synod may, by Measure, amend this section so as to add, vary or remove a function of the committee.'	Remove the ability to amend Section 6 (Mission and Pastoral Adjudication Committee) by Statutory Instrument.	Order Powers
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### **CENS Membership**

*Proposed amendment:* To me, it seems out of keeping with the rest of the Governance Measure that both Archbishops remain as members of CENS in an ex-officio capacity. I would propose to simply reduce the number of members of CENS from 15 to 13 by removing the archbishops as members and making no other changes to the membership.

I suspect that there are multiple revisions being proposed to amend the membership of CENS, and I feel strongly on principle that whatever changes are proposed, the archbishops should not be members of CENS. However, I would like to highlight that this is in no way a reflection on the current Archbishops – but is an issue of principle given their respective roles.

*Why:* I have multiple reasons for this proposal:

- With the Archbishops on CENS there are 2 classes of Member – those who are subject to term limits and to either election or appointment, and those (the Archbishops) who are not. This is inequitable.
- Whilst the current Archbishops might have excellent experience and skills within a charitable board setting, this may not necessarily always be the case. Having ex-officio positions means that people are (by definition) present because of who they are, rather than because of the skills and perspectives that they bring.
- There is a potential danger that by being ex-officio members of the CENS board, this affects the selection criteria for either Archbishop. It is (at least theoretically) possible to envisage a scenario where someone is pastorally, spiritually, ecumenically, the person most suitable to an archiepiscopal vacancy, but who also, for whatever reason, is not suited to the role on a large national, charitable board. Either that theoretical person is not put forward for a vacancy for which in all other aspects they are suitable, or they are a member of the board when not suited to it.
- If one (or both) Archbishops were then genuinely the most suitable person from the House of Bishops to be on the board, they would not be restricted from being elected from that body as one (or theoretically both) of the two members in (c) – but they would then be subject to the same term limits and requirement for re-election as all other elected members.
- From a practical and logistical perspective, I believe that it does the Archbishops a disservice to put them onto the Board of CENS ex-officio – there are many other

things that they could and should be doing with their limited time. The current role of Archbishop is, from observation both from a distance and having worked as part of the support staff for two Archbishops, overly large, encompassing far too competing factors on one's time. I feel that we should be encouraging the Archbishops to do only those things which only they can do – and to free them up from things that others could do, best utilising the whole membership of the church.

- The Archbishops being present ex-officio potentially dilutes the power / independence of the Chair – there is a danger of the Chair being deferential to the Archbishops rather than being genuinely independent.
- The argument has been made previously that the Archbishops need to be members for legal reasons, the suggestion / implication being that otherwise they would be 'de-facto' trustees. This argument can only rest on the assumption that the Archbishops would be present within board meetings and involved in detailed board level discussions, or that staff would seek Archepiscopal opinion / approval rather than that of the CENS CEO, but I don't believe that this assumption is valid. Given the actions listed in Clause 3 (4) of the Measure, CENS is principally involved in the 'how' rather than the 'what' – there is no need for Archbishops to be involved in the detailed oversight of ensuring delivery of actions from CENS of principles or strategy which they have set through the House of Bishops.

The only potential change in approach is that the Archbishops may in future need to bring principles for CENS to implement through the House of Bishops, rather than directly to CENS, but that strikes me as being a good thing to ensure national buy-in and support from across the House of Bishops, and to aid in discussion of principles and approaches.

#### *Proposed Legislative Changes*

<b>Proposed Amendment (All SCHEDULE 1)</b>	<b>Reasoning</b>	<b>Area of Concern</b>
In Clause 1 (1) – Amend 15 to 13	Reduce the number of members of CENS from 15 to 13	CENS Membership
Delete Clause 1 (2)(a)	Remove the Archbishop of Canterbury from the CENS Membership	CENS Membership
Delete Clause 1 (2)(b)	Remove the Archbishop of York from the CENS Membership	CENS Membership
In Clause 1 (6) Remove "(but not either of the Archbishops)"	Minor consequential removal of unnecessary restriction if Archbishops not on CENS ex-officio	CENS Membership

In Clause 10 (1) – Amend eight to seven	Minor consequential amendment to reduce the quorum requirement given the reduction in membership numbers	CENS Membership
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### **Use of Appointments Committee / Governance and Nominations Committee Membership**

*Proposed amendment:* The Measure and Schedule as it currently stands appears to ignore the existence of the Appointments Committee of the Church of England. This is a committee which is principally elected from Synod (one Bishop, three Clergy, three Laity all elected from amongst their respected Houses, plus a Chair appointed by the Archbishops’, and two members of the Archbishops’ Council appointed from amongst themselves). The Appointments Committee has as its mandate to “make such appointments, or such recommendations for appointment, to synodical bodies as the Synod or the Archbishops’ Council may require.”<sup>12</sup> I would like the Measure to make more use of this Committee.

*Why:* From my experience as a member of it, I feel that the Appointments Committee is a committee which works well, perhaps unusually so. It would benefit from being supported and developed, not sidelined and marginalised which will likely be the inevitable consequence of not utilising it here. As a committee it works well across the breadth of the church and aims to discern the right balance of people for various roles within the life of the church. Committee meetings are constructive, the trust within the group (and I hope trust in it from outside) is unusually high, and the range of people, perspectives and experience within the group is excellent. Time is spent not only reactively appointing to roles when requested, but proactively reflecting on who has outstanding skills to offer that could be utilise, and succession planning for future appointments.

There are 2 different ways in which I think that the Appointments Committee should be utilised in the Measure:

1. The first is for it to be involved in, and consulted with, specifically during the initial set-up phase, for the first appointments. This is fully in keeping with its remit and ensures that Synod has, through its appropriately delegated body, oversight and contribution to the initial appointments to CENS, prior to the Governance and Nominations Committee coming into existence.
- My proposal would be that the Appointments Committee are ‘consulted with’ by the archbishops for the first appointment of the Chair of CENS. This ensures that the archbishops maintain the responsibility for appointing the Chair of CENS, but

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<sup>12</sup> Standing Order 126 (8) - <https://www.churchofengland.org/sites/default/files/2024-07/standing-orders- updated-jul-24.pdf>

that they benefit from the wisdom and input of the Appointments Committee prior to doing so, and is in keeping with the statement in para 64 of GS2360P that “The ... Appointments Committee would continue to be consulted by the Archbishops on a number of trustee appointments...”<sup>13</sup>

- I would also propose that the Appointments Committee are responsible for the first appointments under sub-paragraph (2)(g), whilst still having consulted with the first person appointed as chair under (2)(f). This releases the archbishops from an unnecessary burden and ensures that an existing body with appropriate skills and expertise, which is accountable to and elected/appointed from Synod, is utilised.

*Proposed Legislative Changes (Initial)*

<b>Proposed Amendment (All SCHEDULE 1)</b>	<b>Reasoning</b>	<b>Area of Concern</b>
In Clause 1 (3) – Amend to include the phrase ‘after consultation with the Appointments Committee’ at the end.	Requirement to consult with the Appointments Committee prior to first appointment.	Gov&Noms (Initial)
In Clause 1 (4) – Replace ‘Archbishops of Canterbury and York acting jointly’ with ‘Appointments Committee’	Appointments Committee to appoint initial non-elected, non-chair members instead of Archbishops.	Gov&Noms (Initial)
In Clause 1 (8) – Replace ‘the Archbishops must’ with ‘the Appointments Committee must’	Consequential amendment that in 1 (4) to replace Archbishops with Appointments	Gov&Noms (Initial)

2. The second is for it to be involved in some ongoing manner with the Governance and Nominations Committee of CENS. It strikes me that there is danger of over-duplication and whilst a specific Governance and Nominations Committee is appropriate and in keeping with charity governance guidance, I propose that the make-up of this committee makes better utilisation of the Appointments Committee.

Originally, I had considered proposing that the Governance and Nominations Committee simply be constituted of the Chair of CENS plus the Appointments Committee. I would still wish this to be considered as a proposed amendment in case there are other amendments which reduce the scope of the Govs and Noms Committee or the number

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<sup>13</sup> <https://www.churchofengland.org/sites/default/files/2024-06/gs-2360p-national-church-governance-supporting-policy-v2.pdf>

of sub-committees of CENS into which they should be inputting, but I suspect that it is unpalatable given the extensive nature of the role of the Govs and Noms Committee as it is currently envisioned.

As an alternative therefore, I would propose that the two persons elected from Synod to the Govs and Noms committee are replaced by two persons appointed by the Appointments Committee from amongst themselves. This is similar to the way in which members of Archbishops’ Council are currently appointed to Business Committee or Appointments Committee; reflects the will of Synod without resorting to additional specific elections to sub-committees and ensures the presence on the Govs and Noms committee of members of Synod who have an interest, and experience in ensuring discernment of members to specific roles

*Proposed Legislative Changes (Ongoing)*

<b>Proposed Amendment</b>	<b>Reasoning</b>	<b>Area of Concern</b>
In Clause 4 (2) – Delete (b), (c), and (d) and replace with “(b) the members of the Appointments Committee.	Replace non CENS Chair members with the members of the Appointments Committee	Gov&Noms (Ongoing)
Delete Clause 4 (4)	Consequential on amendment to 4 (2), no longer required	Gov&Noms (Ongoing)
Delete Clause 4 (5)	Consequential on amendment to 4 (2), no longer required	Gov&Noms (Ongoing)
<b>ALTERNATIVELY</b>		
In Clause 4 (2), delete (c) and replace with ‘(c) two persons appointed by the Appointments Committee from amongst themselves’	Replace those members of Synod elected to the Govs & Noms Committee with members of the Appointments Committee, appointed from amongst themselves	Gov&Noms (Ongoing)
In Clause 4 (4) replace ‘election’ with ‘appointment’	Consequential on amendment to 4 (2) (c), replace election with appointment	Gov&Noms (Ongoing)

**Other Comments / Proposed Amendments**

**Section 6 & 7** – In principle, I am uncomfortable with the transfer to CENS of Mission and Pastoral Adjudication Committee and believe that it is more appropriate for it to remain within the remit of the Church Commissioners. Whilst I recognise the work done to ensure that it runs at ‘arms-length’, including the very clear separation of membership, it is still the case that the same body ultimately has the potential to act as judge and jury, and the independence of the adjudication would sit well within the Church Commissioners, which also fits with the continued links to the State (certain members

being appointed by the Crown or Secretary of State for example).

**Section 8** – I believe that it would be appropriate for the framework described in Section 8 to also be laid before the General Synod for its information. This is somewhat different to the budget which needs to be laid before the Synod for approval.

### **Section 20 – Committee of Inquiry**

Whilst this is a very good concept in principle, I think that it could benefit from slight adjustments to improve it. In 20 (2) the presence of ‘may’ in the introduction suggests that it is in the gift of the Chair of the House of Laity to decide if such a resolution should be moved. This might be reworded to clarify that on receipt of the requisite numbers of Synod requesting it, the Chair is obligated to move a resolution.

I feel that the bar for Synod to initiate such a motion is too high at 60 members, and would suggest that this should be the same 25 member rule that is in place for debating amendments, voting by Houses, etc.

I also consider that the bar for the motion to pass is too high at ‘three-quarters’, and whilst I recognise that a slightly higher hurdle than a straight 50% might be desirable, I would propose a 2/3 limit across the whole of the Synod.

I would also like to suggest that such a motion should be a counted vote of the whole Synod, and is designated a procedural vote such that a vote by Houses is not permitted.

**Schedule 1 – Section 3 - Term of Office** – I believe that the three-year term of office is a good idea, and would resist any amendments to move it to a five-year term. However, should an amendment to a five- year term be put forward and considered, I would encourage consideration of ‘stepped’ terms initially, so that there is not the situation where half the committee is refreshed at the same time, especially when it is new-ish.

**Schedule 1 – Section 7 – CEO** – I fully agree with the separation of the CENS CEO and Secretary General of the General Synod / Secretary of the House of Bishops and would very strongly resist any amendments which might seek to move back on this very good principle of independence.

### **Appendix – Ordered list of proposed amendments, with summary reasoning.**

<b>Proposed Amendment</b>	<b>Reasoning</b>	<b>Area of Concern</b>
Delete Clause 2 (4)	This removes the statement about Schedule 1 being amendable by order by CENS.	Order Powers
Delete Clause 3 (5)	This removes the ability for CENS to amend Section 3 by order.	Order Powers

Delete Clause 3 (6)	Consequential on deletion of 3 (5). If order powers are not available, then prior approval of the Charity Commission is not required. If amendments are proposed through Measure, then there is opportunity for Charity Commission consideration to be taken into account at Revision stage.	Order Powers
<b>Option (A)</b> In Clause 4 (2) – Delete (b), (c), and (d) and replace with “(b) the members of the Appointments Committee.	Replace non CENS Chair members with the members of the Appointments Committee	Gov&Noms (Ongoing)
<b>Option (A)</b> Delete Clause 4 (4)	Consequential on amendment to 4 (2), no longer required	Gov&Noms (Ongoing)
<b>Option (A)</b> Delete Clause 4 (5)	Consequential on amendment to 4 (2), no longer required	Gov&Noms (Ongoing)
<b>Option (B)</b> In Clause 4 (2), delete (c) and replace with ‘(c) two persons appointed by the Appointments Committee from amongst themselves’	Replace those members of Synod elected to the Govs & Noms Committee with members of the Appointments Committee, appointed from amongst themselves	Gov&Noms (Ongoing)
<b>Option (B)</b> In Clause 4 (4) replace ‘election’ with ‘appointment’	Consequential on amendment to 4 (2) (c), replace election with appointment	Gov&Noms (Ongoing)
Amend Clause 6 (4) to ‘The General Synod may, by Measure, amend this section so as to add, vary or remove a function of the committee.	Remove the ability to amend Section 6 (Mission and Pastoral Adjudication Committee) by Statutory Instrument.	Order Powers
In Clause 20 (2) – replace ‘chair may do so’ with ‘chair will do so’	Ensure obligation on Chair of Scrutiny to move a motion for resolution when suitably requested	Inquiry
In Clause 20 (2)(b) – amend 60 to 25	Reduce requirement to request resolution on Committee of Inquiry to 25 members	Inquiry
In Clause 20 (5) – amend “three-quarters” to “two-thirds”	Reduce super-majority required for Committee of Inquiry to 2/3 from ¾	Inquiry
<b>PROPOSED AMENDMENTS TO SCHEDULE 1</b>		
In Clause 1 (1) – Amend 15 to 13	Reduce the number of members of CENS from 15 to 13	CENS Membership
Delete Clause 1 (2)(a)	Remove the Archbishop of Canterbury from the CENS Membership	CENS Membership
Delete Clause 1 (2)(b)	Remove the Archbishop of York from the CENS Membership	CENS Membership



In Clause 1 (3) – Amend to include the phrase ‘after consultation with the Appointments Committee’ at the end.	Requirement to consult with the Appointments Committee prior to first appointment.	Gov&Noms (Initial)
In Clause 1 (4) – Replace ‘Archbishops of Canterbury and York acting jointly’ with ‘Appointments Committee’	Appointments Committee to appoint initial non-elected, non-chair members instead of Archbishops.	Gov&Noms (Initial)
In Clause 1 (6) Remove “(but not either of the Archbishops)”	Minor consequential removal of unnecessary restriction if Archbishops not on CENS ex-officio	CENS Membership
In Clause 1 (8) – Replace ‘the Archbishops must’ with ‘the Appointments Committee must’	Consequential amendment that in 1 (4) to replace Archbishops with Appointments	Gov&Noms (Initial)
In Clause 10 (1) – Amend eight to seven	Consequential amendment to reduce the quorum requirement given the reduction in membership numbers	CENS Membership

## Adrian Greenwood, Southwark, 415

### INTRODUCTORY REMARKS

I am making this lengthy and detailed series of comments and proposals having taken a close interest in this matter since its inception with the Vennells Report, when I was a Trustee of Archbishops Council. I spent my entire employed career working in the charity sector (for a charitable housing association, mostly as Director/CEO) and since retirement I have served (and still am) as Chair of two charities and as a member of others. I also served as the Convenor of the Diocesan Lay Chairs Forum from 2013 – 2023 inc.

I have used the slogan '*simpler, humbler, bolder*' to assess the draft legislation. In summary, the proposals could be described as 'bold' except in relation to the proposed Synodical Scrutiny Committee which strikes me as almost toothless. But the proposals strike me as far from 'simple' (particularly in the overlapping roles of the Governance & Nominations Committee and the Appointments Committee of GS) and, it seems to me, they weaken hugely the vital link between CENS and Synod – especially in relation to elections. And, finally, there are elements which are not particularly 'humble', given the injunctions to 'attend to power' and to 'avoid deference', particularly in relation to the role of the Archbishops in setting up and populating the membership of the new organisation. Accordingly, I have made some bold counter proposals.

While I welcome the broad thrust of the proposals and the legislative framework, my comments on the details are intended as a positive contribution both to subject some of the legislative proposals to further scrutiny and reflection and to seek to improve others. I look forward to discussing them all in person with the Revision Committee in due course.

### DETAILED COMMENTS & AMENDMENTS/PROPOSALS

1. Clause 3 (3) (a) - lines 28/9 – I'm aware that the phrase '**pastoral, evangelistic, social and ecumenical**' is used in the PCC (Powers) Measure 1956 to describe the whole mission of the Church of England. When did the phrase originate and how/where else has it been used? – or was it first coined and used in the legislation in 1956? Has it been used in any subsequent legislation since 1956? My question/challenge is – is there a more up to date phrase which might be used? In particular, what about referring to the 5 Marks of Anglican mission, which have established much currency since the 1990s? These 5 Marks include care for the creation and challenging structural injustice, both of which are high priorities for the current Archbishops' Council and national strategies approved by GS; these activities are not explicitly covered by the phrase used in Clause 3 (3) (a).
2. Clause 3 (3) (a) – proposed charitable Objects of CENS – having made the specific point above about the phrase of 'pastoral, evangelistic, social and ecumenical' might I ask how the proposed Objects compare to the existing Objects of the Archbishops Council? Are there any significant differences that the members of the RC and Synod should be aware of?
3. Clause 3 (3) (a) – might I also suggest that consideration be given to the 'classic' language of the 'promotion' or 'advancement' of religion, see clause 3 (7) (b) – so perhaps – '(a) promoting/advancing the Christian religion through the whole mission

and ministry of the Church of England, including in response to Anglican Marks of Mission’?

4. Clause 3 (3) (b) – lines 2/3 – I realise that the phrase ‘**a Church ethos**’ is defined in Clause 3 (7) (b), but has it been used in other legislation, or is this a new concept? Might there be a better phrase to achieve the desired outcome? It seems very vague.
5. Clause 3 (4) (a) – lines 5/6 – the phrase ‘**principles set by**’ the HoB or GS is novel, I would suggest; the word ‘principles’ is repeated in Clause 3 (4) (b) and Clause 3 (7) (b); presumably ‘principles set by.....’ include ‘decisions made by’ and ‘guidance issued by’, even ‘Regulations’. What else might be covered by this phrase? Will the HoB and GS henceforth have a new category of business, namely ‘to set principles’ for the CENS? Otherwise, there may be disputes as to what and what isn’t a ‘principle set by.....’. And what place will the ‘historic formularies’ hold – the Articles, the Creeds and the Canons etc. etc. ?
6. Clause 3 (4) (f) – line 19 – I propose that the word ‘Christian’ be inserted before ‘learning’;
7. Clause 3 (6) – lines 26 -28 – is not this Clause the wrong way round? Surely, before a variation in the charitable Objects is sought to be registered with the Charity Commission, it should first be laid before General Synod for approval/confirmation? Otherwise, it seems to me, that General Synod will have no role in the consultation around varying the Objects but will simply be acting as a ‘rubber stamp’ of a fait accompli;
8. Clause 3 (7) (b) – lines 32/3 – are the ‘**principles of the Church of England**’ recognised to be contained in any authoritative document(s)? If so, which? 39 Articles? Book of Common Prayer? Creeds & Canons? Otherwise, who will determine what these principles are?
9. Clause 3 (7) (b) – I am also perturbed by the possible unforeseen consequences of legislation which suggests that ‘a Church ethos’ might encompass principles which are not for ‘the advancement of the Christian religion’;
10. Clause 3 (7) (c) – lines 35/36 – is it wise or sensible to specifically exclude PCCs from the scope of the charitable objects of CENS?
11. Clause 4 (1) – line 38 – the word ‘advising’ is broad and, perhaps, deceptively, harmless; in practice, **will the Governance & Noms Committee have a veto over appointments** to the CENS Board and its committees? Should not the role and powers of the Governance & Noms Committee over such appointments be made much clearer and specific? Can the ‘advice’ be considered and then rejected/ ignored – with or without a stated reason being given?
12. Clause 4 (1) (b) – line 41 and Clause 4 (1) (c) – line 43 – both these sub-clauses extend the remit of the Governance & Noms Committee to the ‘**committees**’ of CENS. Given that there may be as many as 8 committees, probably more in practice, not to mention ‘sub-committees’ and ‘working’ or ‘task groups’ does this not threaten to over - complicate the recruitment and appointments process? Would it not be **simpler** for the Governance & Noms Committee to recommend all appointments to the CENS Board and, at the same time, to put in place advice on good practice for the recruitment and appointment to all the committees. sub-committees and task groups, such advice to include regular monitoring and reporting of membership and effectiveness?

13. Clause 4 (2) ( c ) and ( d ) – lines 2 -4 (Governance & Noms Committee) – I would like to propose that the **2 independent members in ( d ) are deleted** (which also means that Clause 4 (5) falls away) and that instead **four members are elected from General Synod**; two from the House of Laity elected by the House of Laity and 2 from the House of Clergy elected from the House of Clergy. ALTERNATIVELY, that 2 are directly elected by the 2 Houses of Synod and 2 are appointed by the Appointments Committee of Synod, both being Synod members. If this proposal is accepted by the Revision Committee, there would need to be consequential amendments to Clause 4 (4).
14. Governance & Noms Committee – omission. There is no parallel duty on the Governance & Noms Committee to **produce an annual report** as there is for the R & A Committee – see Clause 5 (9) – I would like to propose that this requirement is replicated for the G&NC.
15. Clause 5 (3) (b) and ( c ) – lines 1 – 3 (Risk & Audit Committee) - I would like to propose that the **2 independent members in ( c ) are deleted** (which also means that Clause 5 (7) falls away) and that instead **four members are elected from General Synod**; two from the House of Laity elected by the House of Laity and 2 from the House of Clergy elected from the House of Clergy. ALTERNATIVELY, that 2 are directly elected by the 2 Houses of Synod and 2 are appointed by the Appointments Committee of Synod, both being Synod members. There would need to be consequential amendments to Clause 5 (6).
16. Clause 7 (7) – lines 40/41 – is this a **right of veto** over the ‘CENS 6’? – Clause 7 (1) ( c ). This specific power for the Governance & Noms Committee to advise on appointments being made by CENS is not used elsewhere.
17. Clause 8 (5) (b) – line 31 – are the words ‘**principles set out by**’ the best or correct words/phrase to be used in this context? – see also Clause 3 (4) (a) and (b) – [see point 5 above](#).
18. Clause 8 (8) – lines 39 & 40 – I would propose that the report of the review is required to be laid before Synod as, for example in Clause 5 (9)
19. Clause 17 (2) – I would like to propose that the **entire Clause is deleted**; I consider it **seriously inequitable** that 4 Officers of the Synod should be banned from serving as Trustees of CENS whilst the other two continue *ex officio*. If the respective Houses want these people to serve as Trustees of CENS, they should be free to elect or appoint them. What does the provision as drafted say about the Church as the ‘whole people of God’ (with the lay people forming 98% of the Church) when the 4 senior officials of the clergy and laity on General Synod are ‘pigeon-holed’ in this way? This amendment touches directly on Clause 19 (5) (a) to ( d ) – [see item 23 below](#) .
20. Clause 18 – I am surprised that there is no duty on each of the national Institutions to refer their Diversity Charters to the Governance & Nominations Committee nor a corresponding duty on the G & N Committee to advise the National Institutions on their Diversity Charters - maybe an addition to the duties listed in Clause 4 (1)?
21. Clause 19 (2) (Synodical Scrutiny Committee) - I would like to propose that a third function is added, namely ‘ ( c ) the progress made by each National Institution towards achieving the objectives set out in its Diversity Charter’.
22. Clause 19 ( 3 ) – I would propose that there is a reciprocal duty imposed on each National Institution to co-operate with the Scrutiny Committee through invitations to

their meetings and the supply of Reports, Minutes and other relevant information on a timely basis.

23. Clause 19 5) (a) to (d) – I consider that each of these sub-clauses should be removed and replaced by ‘ (a) **3 members of the House of Laity** elected by the House of Laity, with at least one from each Province;’ ‘ and ‘ (b) **3 members of the House of Clergy** elected by the House of Clergy, at least one from each Province’;
24. Clause 19 (6) – the whole Clause to be replaced by something like – ‘The chair of the committee to be elected by and from the membership of the committee, but so that the bishop elected under 5 ( ) above may not be the chair’;
25. Clause 19 (8) – this annual report should be laid before Synod as with other reports;
26. Clause 20 (2) – I propose that the resolution may be moved by any member of the Synodical Scrutiny Committee, not just the chair – as agreed by the Committee;
27. Clause 20 (5) – delete ‘three quarters’ and replace with ‘**60%**’; can it also be made clear that this is to be a ‘**counted vote of the whole Synod**’, not by a show of hands or by Houses;
28. Clause 20 (6) (b) – **if my amendment at 23 is accepted** (i.e. that there are a total of 7 members of the Scrutiny Committee in total) than I would propose that the words ‘appointed by the Appointments Committee’ are replaced by ‘**elected** by and from the Houses of Clergy and Laity, voting by House, two from each House’. If the number of the Scrutiny Committee remains at 5, then I would propose that the whole sub-clause is deleted and replaced with the words – ‘(b) 6 persons elected by and from the Houses of Clergy and Laity, voting by Houses, 3 from each House’;
29. Clauses 20 (7) – (9) – I propose that at some point in the process the Report of the Committee of Inquiry and the response from the National Institution is **laid before Synod**, as with other reports; I am content to discuss at greater length with the Revision Committee when this might best be done – e.g. Clause 21 (2);
30. Clause 21 (3) – we need to make clear that such a request may be made by a **simple majority on a counted vote of the whole Synod**;

#### SCHEDULE 1

1. Section 1 (2) (a) & (b) – I propose that **only one of the ABC or ABY** becomes a Trustee of CENS; they can chose between themselves and swap from time to time (but not meeting to meeting); in the event of the unavailability of the one, the other one may deputise;
1. Section 1 (2) (d) & ( e) – I propose that in each case the number **two be increased to three**, with the qualification that at least one should come each Province;
2. Section 1 (20 (g) – I propose that the number **six is reduced to five**;
3. Section 1 (3) – I propose that the **first appointment of the new chair is made by the Appointments Committee** of General Synod **following an open recruitment process**; and confirmed by General Synod – Section 1 (7);
4. Section 1 (4) – I propose that the first appointments under 1 (20 (g) are made by the **Appointments Committee** and that Section 1 (8) is amended consequentially;
5. Section 2 (1) – having read Rule 83 (2) of the CRRs it should be made explicit here that the **Chair must be a lay person** i.e. not in holy orders;
6. Section 2 (3) – this will need to be amended consequentially **if the amendments above** are accepted; I propose that the word ‘**elected**’ is inserted before ‘members’

in line 14; I don't think the reference to '2(3)' in the second line is correct and/or makes sense – please check;

7. Section 2 (4) – delete the words “( c ) to (g)’ ; to comply with what it states on page 16 of GS2360P (i.e. no reference to the ABs here)
8. Section 3 – the Measure prescribes term limits of 3 years with a maximum of 3 consecutive terms making 9 years in total; I recognise that this is common in many charities; but in my experience 3 years is not very long to make an impact; I would therefore propose that the pattern revert to the current system of **terms of 5 years** with a maximum of two, making 10 in all;
9. Section 7 – I would propose that the **CEO must be able to fulfil the eligibility criteria of the Chair** (section 2 (1)) or of the appointees (Section 2 (2));
10. Section 7 – I would propose that the **CEO must be a lay person** – see item 36 above
11. Section 7 (4) – I would propose that the **first appointment of CEO is made by the Appointments Committee** following an open recruitment process; as also in point 34 above.

## Paul Waddell, Southwark, 418

Some amendment suggestions for the revision committee:

1). Within Schedule 1 (CENS) I would like to suggest an improved structure, with the **removal of the Archbishops of York and Canterbury from sitting on CENS**. They will remain trustees, and by their nature have significant influence (also retaining their appointment of the chair and the first additional members).

The advantages for that are two-and-a-half-fold. Firstly, it releases the two important figures from this part of their jobs, allowing them greater freedom to focus on their diocesan, national and international roles. Secondly it creates a distance by which they maintain reputational independence, as we've seen from recent safeguarding issues, their involvement in the Archbishops' Council has caused reputational damage to the office holders. It also gives them enough independence to intervene as trustees where problems have arisen.

My recommended rejig would see the total number of members remain the same, with an additional member from all three houses (B,C &L), and a reduction by one of the number of additional members. I could see an argument for simply increasing the number of Bishops by two, as this rather widens the episcopal talent pool and experience. You could suggest that there be equality and diversity limits within this larger group (GMH and number of women for example).

Principally, I don't believe the archbishops need to be in the room.

2). **There to be should a fixed end date for the measure's order powers**. Whilst understandable (if not ideal) in this project's infancy, we should use a fuller and *amendable* legislative procedure for making changes. Miscellaneous provisions allows us to do little dull things without too much effort, and more important stuff should go through a proper process. This allows for better refinement, and develops a two-way trust that we're seeking to embed and encourage in our structures.

3). **Space for ex-officio appointments to be made to the Synodical Scrutiny Committee should be made.**

The suggested scrutiny committee (19) is small and nimble, but given the scope of issues that this body will scrutinise there should be space for specialist knowledge where it is lacking from the original members, in order that the right questions are asked.

4). **Robust wording around what is able to be reported from SSC meetings to Synod should be included.**

In order to encourage trust, it should be clear what is expected in a report to synod, so that wider scrutiny is possible.

5). **The Committee of Inquiry - wording in section 20 (2) should be changed from 'the chair may do so either' to replace the word may with 'will'**, to remove the interpretation that this is at the chair's discretion.

6). Counterintuitively, **in section 20 (2) (B), the threshold of sixty members is too low.** I'd double it, or at least get to 100, as it's open to political and factional abuse. You could encounter motions regularly just getting a rotation of the same usual faces banging on about certain issues (usually sexuality) which is not only unedifying, but clogs up Synod's busy schedule. Serious issues would have no problem getting to higher numbers of signatures.



**Clause 3(3)(b): CENS' charitable objects**

*(b) enabling and enhancing the efficiency and effectiveness of the other National Institutions, diocesan bodies and charities with a Church ethos.*

The second proposed 'charitable object' of CENS is worded as if it were a policy or objective, and is more appropriate to a strategy document than to legislation. The four “e-words” at the beginning of the text lack clarity and might inadvertently constrain the activities of CENS, if anyone were minded to base a challenge on them.

The final phrase '...with a Church ethos', together with subsections (7)(b) and (c), is not clear in meaning or extent, other than specifically excluding Parochial Church Councils through subsection (7)(c). This exclusion is at odds with the reference to actions in support of parishes in subsection 3(4)(d). All the bodies listed in 3(3)(b) are included with others including parishes in subsections 3(4)(c) and (d), and therefore it would be preferable for 3(3)(b) to be simpler in order to avoid conflict between 3(3) and 3(4).

It may be no easy task to define whether a charity has an 'ethos based on the principles' of the C of E [subsection (7)(b)]; and I am not clear why CENS might wish to support a charity outside the C of E, if this is the intention.

I suggest a revision to simplify (3)(b) and improve its compatibility with subsections (4)(c) and (d) [and also consequential revisions to clause 3(7) below]:

**Proposed revision: substitute new 3(3)(b):**

(b) supporting other institutions, bodies, charities and office-holders, within the Church of England.

**Clause 3(4)(a) and (b): actions to fulfil charitable objects**

*(a) developing strategies for implementing principles set by the House of Bishops or the General Synod for encouraging and enabling the work and mission of the Church;*

*(b) monitoring and reporting on the implementation and impact of the principles referred to in paragraph (a);*

The wording of these first two 'actions which CENS may take to fulfil its charitable objects' is in my view unnecessarily complex, and it is difficult to discern from the text what specific actions are intended in (a) other than a planning process: “developing strategies”.

The references to to “principles set by the House of Bishops or the General Synod” begs two questions: which body (or bodies) sets the national strategies; and does the word “principles” include more specific proposals by other national bodies; for example, “the agreed vision and strategy” for the C of E referred to in paragraph 54b of the policy document GS2360P. It would be best to agree later how each body defines its own policy documents and plans; and how they may influence the other bodies under the new structure; and avoid pre-judging this in the wording of the Measure.

The word “principles” seems inadequate for the role of the Bishops and Synod in influencing CENS, and the idea of “implementing principles”, and monitoring their impact, seems

uncomfortable. It would be more natural to implement plans and proposals.

I suggest replacement of “strategies” and “principles” with “plans” and “proposals”, and a simplification of the subsections:

**Proposed revision: substitute new 3(4)(a) and (b):**

- a) development and implementation of plans in accordance with proposals set out by the House of Bishops or the General Synod for furthering the work and mission of the Church
- b) monitoring and reporting on the actions carried out under paragraph (a);

**Clause 3(7)(b) and (c): definitions of bodies supported by CENS**

*(b) a charity has “a Church ethos” if its ethos is based on the principles of the Church of England, whether or not it has the advancement of the Christian religion as a charitable object, but*

*(c) a parochial church council is neither a diocesan body nor a charity with a Church ethos.*

If my proposed revision to clause 3(3) above is accepted 3(7)(b) would be redundant. Subsection (c) appears in conflict with clause 3(4)(d).

**Proposed revision: delete subsections (b) and (c) in clause 3(7).**

**Clause 4(2): Governance and Nominations Committee**

*(2) The membership of the committee consists of —*

*(a) the chair of CENS,*

*(b) two other members of CENS appointed by CENS,*

*(c) two persons elected by and from the House of Clergy and the House of Laity taken together so as to form a single electorate, and*

*(d) two independent persons appointed by CENS*

After the first establishment of CENS, Schedule 1 gives the Governance and Nominations Committee (GNC) the role of nomination of the chair and six members. Under clause 4(2) the GNC's membership of 7 will include three members of CENS, and two people appointed by CENS. Clause 4(1)(b) appears to give the GNC the responsibility of nominating its own two independent members, and perhaps also the two members from CENS in 4(2)(b)? These internal powers of appointment by CENS and the GNC should include formal external scrutiny.

I propose that independent persons to be appointed by CENS to the GNC should be nominated by CENS for confirmation by another body. I suggest below the Scrutiny Committee, noting however that for the Mission and Pastoral Committee the Appointments Committee is given a role.

Schedule 1 states the quorum of CENS, but I cannot find in the Measure a quorum for the Committee. I propose inclusion of a quorum of 4 in a new clause 4(8); the GNC would then need to gain the agreement of at least one of the independent and General Synod members in addition to the three from CENS.

**Proposed revisions: amend paragraph 4(2)(d) and add new clause 4(8):**

*4(2)(d) two independent persons **nominated by CENS and approved by the Scrutiny Committee.***

4(8) The quorum at a meeting of the committee is four.

## **2. Clause 8: payments by the Church Commissioners**

*8(2) CENS must, in good time before the beginning of each financial year, submit to the Church Commissioners a framework setting out —*

*(a) CENS' policies and priorities for that financial year, and*

*(b) how, in seeking to give effect to those policies and priorities, CENS proposes to exercise its power to make grants.*

...

*8(5) In making a determination under subsection (1)(a), the Church Commissioners, having analysed the framework —*

*(a) must weigh CENS' priorities in the framework against the Commissioners' other financial responsibilities, and*

*(b) must have due regard to the principles set out by the House of Bishops or General Synod for encouraging and enabling the work and mission of the Church of England.*

The use of the word “policies” in clause 8 raises some of the same concerns as “strategies” in clause 3. The exact meaning of these words in my view is not sufficiently clear, and “policies” implies an approach rather than a set of activities for the year ahead. In my view “plans” would be a better term in the context of clause 8(2).

For the reasons set out for clause 3(4) above I propose a similar revision to subsection 8(5)(b), replacing the word “principles” with “proposals”. In addition I propose the replacement of “or” with “and”: this should be an obligation on the Commissioners to have regard to both the House of Bishops and the General Synod, which could not be satisfied in relation to only one of the two bodies. (By contrast, clause 3(4)(a) is permissive so “or” seems acceptable.)

**Proposed revisions: substitute “plans” for “priorities” in subsections 8(2)(a) and (b) and 8(5)(a); and amend subsection 8(5)(b):**

*8(5)(b) must have due regard to **proposals** set out by the House of Bishops **and** General Synod for **furthering** the work and mission of the Church of England.*

## **Clause 11(3): Transfer of functions relating to Cathedrals**

*(3) A day appointed under this section for the transfer of functions under the Cathedrals Measure 2021, or functions otherwise relating to cathedrals, must be no later than three years after the commencement of section 2.*

The purpose of clause 11(3) appears to be to allow additional time for the transfer of

functions relating to Cathedrals from the Commissioners to CENS. This provision appears unnecessary as clause 11 already gives the Archbishops power to set dates without any apparent constraint on timing. The wording in 11(3) "...no later than..." does not in itself extend the date of transfer; it would need to be phrased "...no earlier..." to achieve that. Does clause 11(3) serve any purpose?

### **Clause 19: Synodical Scrutiny Committee**

This welcome provision gives a large and important role to a small number of people: the Chair and Vice-Chair of the House of Laity, and the two Prolocutors, and a member of the Standing Committee of the House of Bishops. The several existing roles of these people are potentially already demanding, and I suspect there will be two difficulties:

1. Busy people will find it hard to devote the time and energy required for the scrutiny of the NCIs; and to attend informal meetings and possibly even the proposed minimum of two formal meetings per year.
2. It will be difficult for the few members of the Committee as constituted to develop sufficiently wide knowledge of the activities of the NCIs, and of the people working in the NCIs below the most senior level, for scrutiny to be effective.

My suggestion is to provide a power for the Scrutiny Committee to establish sub-committees, the purposes of which would be to:

- a. allow more time than the parent committee would find possible, to develop understanding of the work of the individual NCIs, and through that to carry out the detailed work of scrutiny;
- b. involve other members of the Synod, who may have both particular interests and expertise in specific areas of work, and also more time available than the members of the parent committee.

These sub-committees would facilitate continuing scrutiny of the NCIs, and be able to develop their expertise.

I have tentatively drafted here an additional clause proposing sub-committees:

#### **Proposed revision: add new clause 19(8A):**

19(8A) The committee shall establish sub-committees to assist it to carry out its function. Sub-committees shall have membership comprising at least one member of the committee; and in addition to members of the committee, no more than four other members of General Synod appointed by the Appointments Committee.

### **Schedule 1 Paragraph 1: membership of CENS**

Paragraph 1 proposes that CENS would have the power, after first establishment, to appoint its own chair, and up to 6 other members, with only the chair to be subject to Synodical approval. This is almost half the maximum membership of 15, and if the Archbishops and the elected Bishops, and perhaps other elected members, were to find it hard to devote the time needed, CENS meetings might on occasion largely comprise its own appointees. Some external approval of their appointment is desirable.

With a quorum of 8 [in paragraph 10(1)] CENS is likely to need to appoint most of the 6

members allowed in 1(2)(g), to help ensure that its meetings are quorate. The quorum and the maximum number appointed by CENS could perhaps each be reduced by 2. However I think it better to leave CENS with the flexibility of adding up to 6, but require all its appointees to be subject to approval. This could be by Synod but I have suggested the quicker course of reference to the Scrutiny Committee.

**Proposed revision: add new paragraph 1(7A) to Schedule 1:**

1(7A) An appointment under sub-paragraph (2)(g) takes effect only if the Scrutiny Committee has approved the appointment.

Schedule 1 Paragraph 3(1) and (2): term of office

*(1) Each member of CENS elected under paragraph 1(2)(c) to (e) is to hold office for such period not exceeding three years as CENS decides; and each election is to be conducted in accordance with the Standing Orders of the General Synod.*

*(2) Each member of CENS appointed under paragraph 1(2)(c) to (g) is to hold office for such period not exceeding three years as is specified in the instrument of appointment.*

Sub-paragraph 3(1) gives CENS the power to set a term of less than three years for elected members, and does not state whether this is to be done before or after election. GS2360P omits the words “less than” in the table on page 17 following paragraph 44.

I can find no explanation why CENS should have the power to determine the length of elected positions, or when the power would be exercised. I suggest therefore that this power should be omitted from the Measure, leaving it to be considered with the necessary future amendments to General Synod's Standing Orders.

Sub-paragraph 3(2) may have included the elected members [categories (c), (d) and (e)] unintentionally, as the reference to “appointment” appears to apply only to categories (f) and (g) in paragraph 1(2). I propose a change to rectify this.

**Proposed revisions: amend paragraphs 3(1) and (2):**

*(1) Each member of CENS elected under paragraph 1(2)(c) to (e) is to hold office for **a period not exceeding three years**; and each election is to be conducted in accordance with the Standing Orders of the General Synod.*

*(2) Each member of CENS appointed under paragraph **1(2)(f) to (g)** is to hold office for such period not exceeding three years as is specified in the instrument of appointment.*

Schedule 1 Paragraph 11(1): Remuneration of Chair

*(1) CENS may pay the chair such remuneration, allowances and compensation for loss of office as CENS may determine.*

The term of office of the Chair will be known at the time of appointment, and therefore compensation for loss of office seems unnecessary. Is it envisaged that it may be needed in the event of early termination?

**Dr Nick Land, York, 437**

I welcome the broad approach of the Governance Measure - but have significant concerns that the proposed Governance proposals have the effect of reducing the accountability of the Executive to General Synod - whilst risking the exacerbation of the current distortion around episcopal and clerical dominance of the governance structures.

**Proposed Changes Regarding Membership of CENS.**

Currently the overall membership of CENS can have a majority of its members being ordained with 2 Archbishops, 2 Bishops, 2 Clergy plus up to 2 of the remaining 7 places. The committee should have an absolute majority of its members as being Lay (not a majority excluding the Archbishops). This will help reduce the Governance distortion caused by the disproportionate number of ordained members in the Church's governance structures.

The meeting burden on the Archbishops is already extraordinary and makes it difficult for them to have the kind of reflective spiritual leadership the church requires. Therefore only one of the Archbishops should be voting members of CENS (the other could have attendance/speaking rights if required). The voting membership could rotate between them.

This would allow an additional elected or appointed member.

The Chair of CENS should be a Lay Person.

**Proposed Changes with regard to Synodical Scrutiny Committee**

I have ample experience both as an Executive Directive supposedly scrutinised by such a body and as a Chair of such a body seeking to hold a Board to account. As currently set up the scrutiny function is ridiculously weak and it will be easy for National Church Institutions to evade and ignore it.

**Suggested improvements**

1. To do this task the Synodical Scrutiny Committee requires the right to relevant information. They should have a right to all the papers and minutes of the bodies.
2. They should have the right to attend meetings as observers in order to evaluate how well the NCI boards are functioning. Most value of the committee will be derived by informal discussion of the members with the NCI chairs to help them reflect on the functioning of their boards - good chairs will welcome this.
3. The currently proposed 'Committee of Enquiry' is effectively toothless and will take far too long to establish, carry out, report and obtain an NCI response. Possible solutions include allowing the SSC to directly establish a committee of enquiry where there are urgent concerns without having to wait for the next general synod and time to be found on the agenda to consider the issue. This could perhaps require 4/5 (80%) members of the SSC to agree in order to reduce the risk of partisan misuse.

In any event the % required by GS to establish a Committee of Enquiry should be reduced to 2/3 (from the currently proposed 80%.

Dr Nick Land (York 437)

**Sean Doherty, Universities & TEIs, 450**

I'm sure you are aware that Bishop Andrew encouraged Synod members to write in with any comments regarding the draft Governance Measure following its discussion at Synod. Thank you for this invitation and I am slightly guessing about who to email so apologies if you need to forward this on!

This is a complex but very thorough piece of work and we all owe you a debt of gratitude!

I have a minor suggestion I would like the revision committee to consider please. It relates to the appointment of the independent Chair of CENS. Obviously the first Chair is due to be nominated by the Archbishops acting jointly. After that, the chair will be nominated by the Governance and Nominations Committee. However, that committee is itself chaired by the Chair!

I suggest we need a more open and independent process for this nomination which does not involve the outgoing Chair. At Trinity College, where I work, we have recently appointed a new chair of trustees following a process of open advertisement for expressions of interest, as well as approaching possible candidates and encouraging them to express an interest.

During that process, it was really helpful for the outgoing chair not to be involved in our Nominations Committee, because by definition the process involved discussing the charity's present needs and strategic context, and an element of reviewing the work and performance of the outgoing chair – not with any sense of critique (the outgoing chair had done a great job!), but being able to have an open discussion helped us work out what we needed going forward.

Of course, the G&N committee can appoint a subcommittee to do this work, without the involvement of the outgoing Chair. But I think it would be wise to find a way to ensure that some independence or separation is required/safeguarded, although of course the outgoing chair should be consulted and will probably end up chairing the meeting that makes the final decision.

Just a thought and with thanks for your consideration.



## Submissions from non-Synod members

### **Oliver Iliffe, Salisbury, Non-Synod member**

Having reviewed the draft National Church Governance Measure, I am very concerned to note that this significantly widens the limitation of objects which currently applies to the application of Commissioners' funds granted to the Archbishop's Council (which the Measure intends to abolish).

Firstly, the abolition of the Archbishop's Council has the effect of also repealing s.2(3) of the National Institutions Measure 1998 ("NIM 1998") which constrained the application of grants by the Commissioners to the Archbishop's Council to the purposes for which such funds could have been applied by the Commissioners prior to the establishment of the Archbishop's Council. Please would you confirm whether equivalent wording to s.2(3) will be included in the revised version of the draft Measure and, if not, have you been advised of the reason please?

Secondly, the CENS charitable objects are drafted so widely that funds for which (under NIM 1998, s.2(3)) "the cure of souls" should have been given the highest priority can now be applied to "charities with a Church ethos" (s.3(3)(b)). "Church ethos" is then loosely defined as an "ethos .. based on the principles of the Church of England, whether or not it has the advancement of the Christian religion as a charitable object" (s.3(7)(b)). Astonishingly, the Measure specifically provides that "a parochial church council is neither a diocesan body nor a charity with a Church ethos" (s.3(7)(c)). These changes have the remarkable effect of preventing grants to CENS being applied to parish ministry while permitting wide discretion to CENS as to what amounts to a "Church ethos" by removing perhaps the most important hallmark of what a "Church ethos" might be (namely "the advancement of the Christian religion"). Have you been advised how CENS will determine what amounts to a "Church ethos" in practice and why PCCs are excluded from this definition please?

Finally, the proposed introduction of a compulsory "Diversity Charter" by s.18 includes a requirement for diversity defined by reference to the "protected characteristics" of the Equality Act 2010 (s.18(6)) - one of which is religious belief. This introduces the absurd possibility that the "National Institutions" might have to include members of other religions. Regardless of whether this is the intent, the mere importation of the protected characteristics from the Equality Act 2010 is likely to effect an implied repeal of legislation which protects the Church of England from discriminating on grounds of religious belief in making appointments to the National Institutions. Is it your understanding that members of National Institutions will still be required to be in communion with the Church of England and, if so, please can you advise how can this be ensured if diversity is defined with regard to the protected characteristics set out under the Equality Act 2010?

I very much look forward to hearing further from you regarding these important changes.

## **DRAFT NATIONAL CHURCH GOVERNANCE MEASURE – PROPOSED AMENDMENTS**

### **Introduction**

The draft National Church Governance Measure (“NCGM”), if passed unamended, will result in (i) constitutional changes to the Church of England and the Church Commissioners, (ii) an unacceptable concentration of power in the hands of the House of Bishops and the archbishops and their respective appointees, and (iii) unacceptable conflicts of interest in decision making critical to all levels of church governance and funding. A briefing note is attached at Appendix 1 which examines these concerns in more depth.

The following amendments seek to prioritise and apply the following paramount principles:

- (a) the continuance of the Church of England in its status as the Church established by law within current constitutional norms and conventions (for further analysis, see para 4.1 of Appendix 1 below);
- (b) the preservation of accountability to Parliament in relation to funds held and key functions performed by the Church Commissioners (for further analysis see paras 4.1 and 4.3 of Appendix 1 below);
- (c) the application of proper oversight and clear lines of accountability regarding the charitable objects of the Church Commissioners (for further analysis see para 4.2 of Appendix 1 below);
- (d) the identification and proper scrutiny of each function to be transferred to CENS from the Church Commissioners to at least the standard required under National Institutions Measure 1998 (“NIM 1998”) (for further analysis see para 4.3 of Appendix 1 below);
- (e) the preservation of the principle of dispersed authority and the principle of equal representation of bishops, clergy and laity on decision-making bodies (for further analysis see paras 3.3 and 4.8 of Appendix 1 below);
- (f) the avoidance of actual and potential conflicts of interest by decision makers, through the application of normal standards of good governance and, where applicable, respect for fiduciary duties (for further analysis see para 4.3 of Appendix 1 below);
- (g) the application of basic transparency and accountability to the principal committees and decision-makers of CENS and other National Institutions (for further analysis see paras 4.3 and 4.5 of Appendix 1 below); and
- (h) the reservation of decision-making roles to those who can demonstrate that they are communicant members of the Church of England.

### **Clause 1**

Clause 1(1): omit “of the Church of England”

Clause 1(2): omit “or National Church Institution”

Add subclause “(4) This purpose of this section is to designate bodies as National Institutions solely for the purposes of this measure shall not be construed so as to define whether an institution forms part of the Church of England or not”.

**Explanatory Note:** “National Church Institution” is not a defined term in the draft measure (despite being in the heading of this clause). This clause should not purport to define the institutions which constitute the Church of England. If that is what is intended, it should be stated plainly, given the constitutional importance of this question.

## **Clause 2**

Clause 2(4) omit entirely

**Explanatory Note:** CENS should not be able to amend its own constitution by order (see footnote 29 at Appendix 1 below). The proposed constitution should be properly considered and debated now and not amended, piecemeal, once the attention of Synod has moved on to other matters.

## **Clause 3**

Clause 3(3)(b) omit entirely.

**Explanatory Note:** This subclause is only needed for activities which do not fall within clause 3(3)(a). As such, it proposes to permit activities and, by implication, the application of Church of England funds in the furtherance of objectives which were formerly not properly part of the mission of the Church of England. This would represent a fundamental change which is not contemplated by the Explanatory Notes accompanying the draft measure or the Governance Reports which have preceded it.

Clause 3(4) substitute:

“CENS may fulfil any functions currently fulfilled by the Archbishops’ Council.”

**Explanatory Note:** According to the Explanatory Notes, this subclause purports to be a “non-exhaustive list” and therefore has no useful governance purpose. Accordingly, the starting point ought to be those functions previously exercised by the Archbishops’ Council and any further functions should only be added after proper Synodical debate and scrutiny.

Clause 3(5) omit (see above) and substitute:

“CENS may only apply the funds of the Church Commissioners to charitable objects for which the balance in the Church Commissioners’ general fund was available immediately before the coming into force of section 2 of the National Institutions Measure 1998 and in applying or distributing those sums CENS shall have particular regard to the requirements of section 67 of the Ecclesiastical Commissioners Act 1840 relating to the making of additional provision for the cure of souls in parishes where such assistance is most required.”

**Explanatory Note:** The arrangements contemplated by the draft measure should not allow the expansion, by stealth, of the charitable objects of the Church Commissioners in respect of funds placed at the discretion of CENS. The Explanatory Notes (para 16) purport to preserve the status quo in this respect and if any more fundamental change is proposed it should be openly stated and debated.

Clause 3(6) omit (see above) and substitute:

“The Church Commissioners shall have power to grant funds towards the administrative expenses of CENS in respect of its fulfilment of functions originally transferred to the Archbishops’ Council pursuant to the National Institutions Measure 1998 and the functions expressly transferred by the Church Commissioners to CENS pursuant to this measure

provided that the amount of administrative expenses so discharged is calculated, and certified by CENS and its auditor not to exceed the proportion of total annual funds distributed by CENS under its charitable objects that all other funds advanced by the Church Commissioners to CENS bears to the total of the funds so distributed by CENS.”

**Explanatory Note:** This is a fair compromise for the Church Commissioners to contribute to the cost of exercising functions formerly undertaken by them but ensures that Church Commissioner funds are not used to subsidise functions that were never at any time functions of the Church Commissioners. This reflects the principle and intention expressed by the Supporting Policy at para 40.

Clause 3(7) omit entirely.

**Explanatory Note:** The clauses are not needed if subclauses 3(3) to (4) are amended as above. Furthermore there is no justification in any of the governance reviews or the Supporting Policy for excluding parochial church councils.

#### **Clause 4**

Clause 4(1) add at the end “and must make a written report of its advice and the response of CENS to such advice to the General Synod at least annually”

**Explanatory Note:** Otherwise there is no transparency with regard to the committee’s activities.

Clause 4: add new subclause (1A):

“The remuneration of the chief executive officer of CENS must be approved by the Governance and Nominations Committee.”

Clause 4, add new subclause (1B):

“The Governance and Nominations Committee shall determine role descriptions for vacancies on the board of CENS and its committees.”

**Explanatory Note:** These amendments reflect the Supporting Policy, para 64.

Clause 4(2) substitute:

“(a) two persons elected by and from the House of Bishops;

(b) two persons elected by and from the House of Clergy; and

(c) two persons elected by and from the House of Laity.”

**Explanatory Note:** Committee membership should reflect the principle of equal representation of bishops, clergy and laity within the Church of England. It is not appropriate that any institution should be able to appoint members to committees overseeing the institution in question, this would create a conflict of interest for those members.

Clause 4(3) substitute:

“The committee shall elect a chair from among its members annually who, in the event that any vote taken by the committee is tied, may have a casting vote.”

**Explanatory Note:** Appointing the Chair of CENS to the governance committee creates an actual conflict of interest. The Chair of CENS should, instead, be accountable to the committee.

Clause 4(4) after “(2)” omit “(c)”

**Explanatory Note:** It makes no sense to prevent candidates from standing for two places out of a total of seven on conflict of interest grounds while allowing the remaining majority of the committee to take up positions regardless of any conflict of interest. Basic governance standards require conflicts of interest to be avoided for all members.

Clause 4(5) substitute:

“A person is not eligible for election under subsection (2) if that person is also a member of a governing body of or otherwise owes fiduciary duties to:

- (a) a National Institution;
- (b) a national Church body;
- (c) any other body which benefits from funding provided by CENS; or
- (d) any other body which provides funding to CENS;

unless such body is a diocesan board of finance or a parochial church council and funding is provided to or by that body in common with other such bodies.”

**Explanatory Note:** This would apply basic standards of governance to the committee members which would otherwise be absent.

Clauses 4(6) and (7) omit

**Explanatory Note:** These provisions serve no useful purpose. If the Committee is to have further roles and duties these should be included in clause 4(1) together with the other roles set out at para 64 of the Supporting Policy and which have been omitted from the draft measure.

Clause 4(6) substitute new subclause:

“The Church Commissioners must appoint one additional non-voting member to the committee to act as an observer.”

**Explanatory Note:** To ensure transparency and compliance with their charitable objects the Church Commissioners should have an observer on the committee. This accords with the principle recommended by the National Church Governance Project Board (“NGPB”) (see para 113 GS 2307).

Clause 4(7) substitute new subclause:

“CENS shall ensure that each committee member is provided with such information in CENS’ possession as that member may require in the exercise of their functions.”

**Explanatory Note:** Committee members must be provided with the information necessary or desirable for oversight. Curiously, this principle is recognised for the audit and risk committee (clause 7(8)), but not for this committee.

## Clause 5

Clause 5(1)(a) substitute:

“to appoint an external auditor for CENS”

**Explanatory Note.** This reflects the Supporting Policy, para 61. This subclause should also include the other roles set out at para 61.

Clause 5(3) substitute:

- “(a) two persons elected by and from the House of Bishops;
- (b) two persons elected by and from the House of Clergy; and
- (c) two persons elected by and from the House of Laity.”

**Explanatory Note:** See note to clause 4(2) above.

Clause 5(4) substitute:

“The committee shall elect a chair from among its members annually who, in the event that a vote taken by the committee is tied, may have a casting vote.”

**Explanatory Note:** CENS should not have the ability to appoint the chair of the committee responsible for reviewing auditing arrangements of CENS.

Clause 5(5) omit (see above) and substitute:

“The committee must appoint and CENS must remunerate an advisor who has a recent and relevant professional background in finance and governance”

**Explanatory Note:** The committee should have access to independent professional advice in the discharge of its duties.

Clause 5(6) substitute:

“A person is not eligible for election under subsection (3) if that person is also a member of a governing body of or otherwise owes fiduciary duties to:

- (a) a National Institution;
- (b) a national Church body;
- (c) any other body which benefits from funding provided by CENS; or
- (d) any other body which provides funding to CENS;

unless such body is a diocesan board of finance or a parochial church council and funding is provided to or by that body in common with other such bodies.”

**Explanatory Note:** This would apply basic standards of governance to the committee members which would otherwise be absent.

Clause 5(7) omit (see above) and substitute:

“The Church Commissioners must appoint one additional non-voting member to the committee to act as an observer.”

**Explanatory Note:** To ensure transparency and compliance with their charitable objects the Church Commissioners should have an observer on the committee. This accords with the principle recommended by the NGPB (see para 113 GS 2307).

Clause 5(8) substitute:

“Each relevant National Institution shall ensure that each committee member is provided with such information in that National Institution’s possession as that member may require in the exercise of their functions.”

**Explanatory Note:** Committee members must be provided with the information necessary or desirable for oversight.

### **Clauses 6 and 7**

Omit entirely.

**Explanatory Note:** Neither GS 2239 nor GS 2307 unconditionally recommended the transfer of the Church Commissioners functions under the Mission and Pastoral Measure 2011. This function is best retained by the Commissioners on grounds of (i) independence from the episcopal roles under that measure from which it hears appeals, (ii) the existing practice and expertise which the Church Commissioners currently have and (iii) the safeguard that the Church Commissioners have both a fiduciary duty and charitable object towards applying funds for the cure of souls and supporting parish clergy. All these governance benefits would be lost or severely impaired by the proposals. GS 2315, para 22 recognised that the independence of the Church Commissioners was one of the strengths of the current mission and pastoral framework. Transferring this role to CENS, which will be under the policy direction of the House of Bishops, would be a significant backward step in terms of the independence, accountability and transparency of the role as currently exercised. For further analysis see para 4.4 of Appendix 1 below.

### **Clause 8**

Clause 8(1) add at the end:

“provided that the proceeds of such payments shall not be applied or distributed by CENS for any purpose other than one for which the balance in the Church Commissioners’ general fund was available immediately before the coming into force of section 2 of the National Institutions Measure 1998 and in applying or distributing such proceeds CENS shall have particular regard to the requirements of section 67 of the Ecclesiastical Commissioners Act 1840 relating to the making of additional provision for the cure of souls in parishes where such assistance is most required.”

Clause 8(4)(a) insert after the second word “year”, “and the charitable objects of the Church Commissioners”

Clause 8(5) omit entirely.

Clause 8(8) add at the end “and, in particular, whether payments received from the Church Commissioners have been applied in accordance with the proviso to subsection (1) above.”

Add clause 8(10) “The Church Commissioners shall continue to manage their assets for the advancement of any purpose for which they held those assets immediately before the coming into force of section 8 of the National Institutions Measure 1998, and in so doing they shall have particular regard to the requirements of section 67 of the Ecclesiastical Commissioners Act 1840 relating to the making of additional provision for the cure of souls in parishes where such assistance is most required.”

**Explanatory Note:** These amendments are necessary to ensure that the charitable objects of the Church Commissioners and the safeguards which existed under the NIM 1998, are not quietly dropped or otherwise blurred as a result of the proposed measure.

### **Clause 9**

Add new clause 9(5):

“The power conferred by section 9(1) shall cease upon the expiration of 12 months from the commencement of this measure”.

**Explanatory Note:** Clause 9(2) could potentially split the transfer of functions for different purposes over a significant period of time, defeating the purported purpose of the draft measure of simplifying church structures by leaving two institutions running in parallel. This power should therefore be time-limited.

#### **Clause 10**

Add clause 10(5): “The power conferred by subsection 10(2) shall cease upon the expiration of 12 months from the commencement of this section”.

**Explanatory Note:** See explanation for clause 9(4) above.

#### **Clause 11**

Substitute entire clause with corresponding provision in NIM 1998:

- “(1) Subject to the following provisions of this section the Archbishops of Canterbury and York acting jointly may, after consultation with any body significantly affected, by order transfer to the CENS any function previously exercisable by—
- (a) the Church Commissioners other than—
    - (i) the payment of costs incurred by a bishop under the Clergy Conduct Measure 2024 as referred to in section 63 of that Measure;
    - (ii) the payment of costs incurred by a bishop under the Ecclesiastical Jurisdiction Measure 1963 as referred to in section 58(a) of that Measure;
    - (iii) the functions relating to the management and ownership of, and the making of distributions from, the Church Commissioners’ assets;
    - (iv) the functions under the Church of England Pensions Measure 2018;
    - (v) the functions under section 28(1) of the Cathedrals Measure 2021 (payment of stipend of dean and residentiary canons);
    - (vi) the functions relating to any liability of the Church Commissioners to repair the chancel of a church;
    - (vii) the functions under section 8 of this Measure (funding of CENS); and
    - (viii) the following functions under the Episcopal Endowments and Stipends Measure 1943:
      - (A) the payment of a stipend to each person holding the office of diocesan or suffragan bishop;
      - (B) the payment of costs incurred by a bishop in defending proceedings brought against the bishop in the bishop’s corporate capacity or in dealing with threats to bring such proceedings;
      - (C) the payment of costs incurred by a bishop in bringing, or considering whether to bring, proceedings in the bishop’s corporate capacity
  - (2) Any such order must identify the function to be transferred and may contain such incidental, consequential and supplemental provisions as may be necessary or expedient for the purpose of giving full effect to the order, including provisions—



- (a) for the carrying on and completion by or under the authority of the CENS of anything commenced by or under the authority of the Commissioners before the date on which the order takes effect;
  - (b) for such adaptation of the statutory provisions relating to any such function transferred as may be necessary to enable it to be exercised by or on behalf of the CENS;
  - (c) for the substitution of the CENS for the Commissioners in any instrument, contract or legal proceedings made or commenced before the date on which the order takes effect.
- (3) Before making any such order which relates to the functions of the Church Commissioners under the Dioceses, Pastoral and Mission Measure 2007 or the Mission and Pastoral Measure 2011 the Archbishops shall obtain the consent of the Prime Minister and the Church Commissioners.
- (4) An order under subsection (1) above may be varied by a subsequent order made thereunder.
- (5) A draft of any order proposed to be made under subsection (1) above shall be laid before the General Synod and if it is approved by the General Synod, whether with or without amendment, the draft order as so approved shall be referred to the Archbishops.
- (6) Where a draft order is referred to the Archbishops under subsection (5) above then—
- (a) if it has been approved by the General Synod without any amendment, the Archbishops shall make the order;
  - (b) if it has been approved by the General Synod with amendment, the Archbishops may make the order but, in the case of any order which relates to the functions of the Church Commissioners under the Dioceses, Pastoral and Mission Measure 2007 or the Mission and Pastoral Measure 2011, shall not do so without further consultation as required by subsection (3) above.
- (7) An order under subsection (1) above which relates to the functions of the Church Commissioners under the Dioceses, Pastoral and Mission Measure 2007 or the Mission and Pastoral Measure 2011 shall not come into operation unless and until it has been approved by resolution of each House of Parliament.
- (8) In its application to the diocese in Europe, this section has effect as if—
- (a) a reference to the Episcopal Endowments and Stipends Measure 1943 included a reference to section 4 of the Diocese in Europe Measure 1980,
  - (b) a reference to a diocesan bishop were a reference to the bishop of the diocese in Europe, and
  - (c) a reference to a suffragan bishop were a reference to a suffragan bishop appointed to assist the bishop of the diocese in Europe.
- (9) In its application to the Isle of Man, this section has effect as if a reference to the Episcopal Endowments and Stipends Measure 1943 included a reference to section 1 of the Church Commissioners (Miscellaneous Provisions) Measure 1975.

**Explanatory Note:** The proposed power is far too wide, does not require the functions to be specified and, as a result, represents a deterioration in the level of scrutiny offered to General Synod when compared to the position under NIM 1998, s.5. The proposed power also omits consultation with the Prime Minister and Church Commissioners in relation to functions to be transferred. The proposed revision reflects the safeguards placed on the transfer of functions which were included in NIM 1998, s.5 and requires any functions to be transferred to be identified to allow Synod the opportunity to consider, debate and amend any order.

**Clause 12 – omit on account of proposed new clause 11 above**

### **Clause 13**

Clause 13(3) add “other than where such property, rights or liabilities are enjoyed or incurred by the Church Commissioners”.

**Explanatory Note:** This provision might otherwise be used to transfer Church Commissioners’ property to CENS. The Supporting Document refers to an intention to transfer “See Houses and Heritage Assets” (para 95) to CENS for potential disposal. These disposals should be undertaken by the Commissioners to avoid conflicts of interest arising. The Commissioners’ role as asset managers puts them in a much better position to manage the disposal of these assets than CENS. Furthermore, See Houses that are to be retained as See Houses should remain in the ownership of the Commissioners where the Commissioners remain responsible for expenditure on those See Houses.

### **Clause 14**

Clause 14(1) omit “supplementary”.

**Explanatory Note:** This allows too much discretion in amending what may be substantive provisions in existing legislation. Substantive consequential amendments flowing from NIM 1998 were set out in Schedules 4 and 5. Any supplementary amendments should be set out in a schedule to this draft measure as a matter of constitutional propriety (see paragraph 4.1 and footnote 29 of Appendix 1 below).

Clause 14(3) omit entirely.

**Explanatory Note:** This is a very odd provision and is only necessary if there are undisclosed legislative plans to confer new functions on Church Commissioners (note that order-making powers should only be included where they are “essential” per Sir David Lidington, see footnote 29 at Appendix 1 below). These plans should be disclosed and included in this measure, if necessary, or otherwise (if there are no such plans) this clause should be omitted as unnecessary.

Clause 14(5) and (6) omit entirely.

**Explanatory Note:** CENS is seeking to use an exemption which applies principally to Government departments (including the Church Commissioners). This is not a right currently enjoyed by the Archbishops’ Council. This underlines the constitutional implications of this draft measure, in that CENS is seeking to step into the Church Commissioners’ shoes but without being accountable to Parliament in the same way as the Church Commissioners.

### **Clause 15**

Clause 15(1) substitute:

“the First and Second Church Estates Commissioners;

three persons elected by and from the House of Bishops;

three clerks in Holy Orders (but not in episcopal orders), neither of whom need be a member of the House of Clergy, elected by the members of that House;

three lay persons, neither of whom need be a member of the House of Laity, elected by the members of that House;

seven persons, of whom three are nominated by His Majesty and four by the committee of the Commissioners which advises them on governance and nominations, at least one of whom is a barrister in England and Wales, or a solicitor of the Senior Courts of England and Wales, who has been qualified as such for at least the preceding seven years.”

**Explanatory Note:** The NGPB preferred a Board composition that comprised an equal number of elected Commissioners and appointed Commissioners. The above amendment would achieve that, with 9 elected members and 9 appointed members (paras 110-116 GS 2307). Given the roles of the archbishops as members of CENS, they should not also be Church Commissioners on conflict of interest grounds, especially given the new arrangements for funding negotiations under clause 8 and the obvious extra conflict of interest which would arise. The proposed constitution in this subclause would otherwise also have the effect of significantly reducing the proportion of clergy and lay representation on the Board of the Commissioners.

Clause 15(2) omit.

Clause 15(3) omit.

Clause 15(4) substitute words “In that section, for subsection (2) substitute” up to and including “(b)” with:

“The Board shall elect a chairman and a deputy chairman from among its members for a term of five years but”

Clause 15(5) omit and substitute:

“The changes proposed by this section shall only take effect upon the consent of each of His Majesty, the Prime Minister, the Lord Mayors of the City of London and the City of York, the Vice Chancellors of the Universities of Oxford and Cambridge.”

**Explanatory Note:** This clause makes important constitutional changes and affects the rights of third parties in relation to appointments. It is therefore constitutionally proper to require the consent of these parties before any changes are made to the composition of the Church Commissioners.

## **Clause 17**

Clause 17(3) omit the words “present and voting”.

**Explanatory Note:** This avoids manoeuvring at barely quorate meeting. A decision of this kind should be taken at a properly attended meeting.

Clause 17(4) substitute the words “an elected member” with “a member”; substitute “section” with “subsection (3)” and add the words “or appointment” after the word “election”.

**Explanatory Note:** The same standard should apply to appointed members as to elected members.

### **Clause 18**

Clause 18 generally insert the words “and Unity in the Faith” after “Diversity” (and “and unity in the faith” after “diversity”).

**Explanatory Note:** This initiative should not be used to introduce secular managerialism into the National Institutions. The ethos of the National Institutions should be distinctively Christian and the Charter should reflect this fundamental point. This is recognised by the Supporting Policy (para 24) but entirely absent from the legislative drafting.

Clause 18(2) add at the end:

“and (c) encouraging members in their discipleship of Jesus Christ in the unity of faith in Him; provided that all such objectives are compatible with the doctrine of the Church of England”

Clause 18(6) substitute for the words after “individuals”:

“as disciples of Jesus Christ in the unity of faith in Him”

Clause 18 add new subclauses:

“(7) Members or committee members of National Institutions must make a written declaration that they are communicant members of the Church of England and habitually attend and are in good standing with a church of the Church of England.”

(8) A National Institution must publish the name of the church which the member or committee member has declared they habitually attend and remove a member or committee member of that National Institution if it becomes apparent that the declaration made by that member under subsection (7) is untrue, that the member is no longer in good standing or that the member no longer attends a church of the Church of England.”

**Explanatory Note:** The proposed Charter should emphasise unity in Jesus Christ, otherwise this will become a vehicle for importing the so-called “culture wars” into the Church of England. There should be an express requirement that decision-makers of the National Institutions are church-going Christians of the Church of England and this should also be objectively verifiable.

### **Clause 19**

Clause 19(2) add new subsection:

“and (c) the conduct of its members.

**Explanatory Note:** There is otherwise no Synodical oversight in relation to misconduct.

Clause 19 add new subclauses:

(11) The committee must consider and investigate allegations of misconduct including in particular:

- (a) dishonesty or lack of integrity; and
- (b) acting in a situation in which that member has an actual or potential conflict of interest;

and make recommendations to the General Synod in respect of any sanctions it considers appropriate, including whether that member should be removed as a member or committee member of the National Institution, which sanctions shall only apply if approved by the General Synod and, if so applied, section 17(4) shall apply to this section and be construed accordingly.

**Explanatory Note:** Rhetoric about improving trust and accountability must be matched by real powers to address misconduct in National Institutions and hold the relevant persons externally accountable. Without this, these reforms are toothless.

## **Clause 20**

Clause 20(1) add at the end:

“or has applied funds for a purpose not permitted by its charitable objects or otherwise in contravention of a certificate as to the application of funds given under this Measure.”

**Explanatory Note:** This is needed to ensure financial propriety and consistency with the purpose of this clause.

Clause 20(2) omit the words “may do so” and add:

In subclause (a) at the beginning “may do so” and

In subclause (b) at the beginning “must do so”

**Explanatory Note:** There is no point allowing General Synod to convene a committee which then has discretion to refuse to begin an inquiry requested by 60 Synod members.

Clause 20(4) after “Houses” insert the words “and may be amended by Synod”

**Explanatory Note:** Otherwise the chair of the committee has sole discretion over the terms of reference.

Clause 20(5) substitute the words “at least three-quarters” with “a majority”

**Explanatory Note:** It should not be as hard to pass a resolution under this section as it is to suspend the standing orders of Synod. Setting the threshold this high, so as to thwart a majority of Synod members wishing to pass such a resolution, would merely feed the suspicion that this clause is “window-dressing” and designed so as to be unusable in practice.

Clause 20(6) substitute subclause (b)

“a barrister in England of Wales who has been qualified and practised as such for at least the preceding seven years, and who is a communicant member of the Church of England, to be appointed by the Chair of the House of Laity and remunerated by the National Institution in question on the terms agreed with such barrister by the Chair of the House of Laity.”

**Explanatory Note:** The committee needs sufficient legal professional investigative capacity to reach meaningful findings.

## **Clause 21**

Clause 21(2) insert after “accounts for that year”:

“(which shall be audited by a person appointed by that National Institution with the approval of the General Synod being a person eligible under subsection (2) of section 144 of the Charities Act 2011 to carry out an audit under that subsection)”

**Explanatory Note:** This is to ensure at least the level of accountability which exists in relation the Archbishops' Council currently.

#### **Clause 24**

Clause 24(5) omit entirely.

**Explanatory Note:** This allows a general power of amendment by the archbishops whereas no equivalent power was deemed necessary in the previous governance reforms comprised in the National Institutions Measure 1998. There is no explanation of why this power is needed now, having not been needed in 1998. See footnotes 28 and 29 below for further detail on why powers of this kind are problematic and the need for them to be justified to Synod.

#### **Schedule 1**

##### **Paragraph 1**

Paras 1(2)(d) and (e) substitute "four" for "two"

Omit paras 1(2)(f) and (g)

Para 1(3) substitute "The members shall elect a chair from among their number."

Para 1(4), (5) and (8) omit entirely.

**Explanatory Note:** All members should be elected with, perhaps, an exception for the archbishops to be members *ex officio*. Other amendments below reflect this principle.

Para 1(9) substitute "The First Church Estates Commissioner has, by virtue of that office, the right to attend meetings of the members of CENS as a non-voting member or may appoint a delegate to attend in his place"

**Explanatory Note:** This is needed to reflect the principle of equal representation of bishops, clergy and laity and to allow the Church Commissioners to have an observer at members meetings. The attendance of the First Church Estates Commissioner as a non-voting member was recommended by the NGPB (see para 113 GS 2307) and this recommendation has been ignored.

Para 2 omit entirely.

Para 3(1) omit "(c) to (e)".

Para 3(2) to (7) omit entirely.

**Explanatory Note:** If the archbishops can be members of CENS indefinitely, then so should others, especially where those members are subject to re-election.

Para 4(5) omit "(c) to (e)"

Para 5(1) omit "(c) to (e)"

Para 5(2) and (3) omit.

Para 6(5) and (7) omit

**Explanatory Note:** This makes the chain of accountability too long.

Insert new subparagraph (8):

“Any committee established by CENS under subparagraphs (1) and (2) above must consist entirely of members elected from the General Synod with equal representation of bishops, clergy and laity who must elect a chair from their number (who is to have a casting vote) in default of which the decisions of any such committee shall be void and have no effect.”

Insert new subparagraph (9):

“Paragraph 10(1) is to apply to any committee established by CENS under subparagraphs (1) and (2) above”.

**Explanatory Note:** The Supporting Policy reveals that a number of other important committees will be established (paras 65 to 71). Without these amendments there will be no external accountability in relation to the work of these committees and no equal representation of bishops, clergy and laity.

Para 7(3) substitute for “members” for “chair”.

Para 7(5) substitute “The appointment of the chief executive officer is to be made by the members of CENS and shall take effect only if the General Synod has approved the appointment.”

Para 8(1) omit subpara (a)

Para 8(2) omit subpara (a)

Para 8(3) omit entirely.

**Explanatory Note:** Functions should not be delegated to a single member, on accountability grounds, and committees should not delegate functions to subcommittees. The committees should remain responsible for the functions they perform (especially where these are statutory). Where functions are delegated to the CEO and other staff, they can be held accountable in the usual way.

Para 9 substitute “charities” for “individuals”

Para 10(1) add at the end “provided that if the members present who are elected by one House of the General Synod are twice the number of the members present who are elected by another House, then the most junior members of the former House shall be recused until this proviso is not met and that any decision made in breach of this paragraph shall be void and of no effect”.

**Explanatory Note:** This is to avoid any one House having a majority at any meeting.

Para 10(2) omit the words “or a defect in a member’s appointment”.

Para 10(3) add at the end “provided such procedures have been approved by General Synod”.

**Explanatory Note:** Required in the interests of transparency and accountability.

Para 11(1) add at the end “provided that the other members shall be paid such remuneration, allowances and compensation for loss of office to at least two-thirds of the value of that paid to the chair.”

**Explanatory Note:** Membership of CENS is an important role and all members should be remunerated. Currently power is concentrated in the chair, who is appointed rather than elected under the constitution.

Para 11(2) add at the end “and must publish to the General Synod any such remuneration and allowances which, when combined, amount to an annual sum of more than £75,000 per annum and where any compensation for loss of employment is provided to be in excess of the minimum amount required by law from time to time”

**Explanatory Note:** This is required in the interests of transparency.



## APPENDIX 1

### BRIEFING NOTE – DRAFT NATIONAL CHURCH GOVERNANCE MEASURE

#### 1. Purpose

The purpose of this note is to summarise aspects of the current governance of the Established Church with particular reference to funding provided by the Church Commissioners, and to examine the changes proposed under the draft National Church Governance Measure (“NCGM”) in this context, especially with respect to who controls that funding and the purposes for which it can lawfully be applied. It is not intended to be legal advice but, rather, invites discussion and further critical analysis of the issues arising to assist all interested parties, in taking a robust, focussed position.

Readers are invited to read the relevant documents referred to in this note and to draw their own conclusions. While the Explanatory Notes to the draft NCGM may make anodyne reading, these proposals should be taken very seriously indeed as they will fundamentally change the charitable objects, clergy and lay representation, ethos and culture of the Church of England and the Church Commissioners with potential long-term consequences for the constitutional position of the Church of England as the Established Church.

#### 2. Executive Summary

In 1965, there were 11,411 stipendiary clergy in England and 82 diocesan and suffragan bishops<sup>14</sup>. In 2020, there were 7650 stipendiary clergy<sup>15</sup> and 108 diocesan and suffragan bishops<sup>16</sup>. Over the last 50 years, therefore, the number of bishops in the Church of England has **increased** by a third and the number of stipendiary clergy has **declined** by a third. Most of this decline has occurred in the last twenty years<sup>17</sup> and has accelerated rapidly in recent years. By contrast, the funds expressly set aside by Parliament to support parish clergy have nearly doubled in value from £5.3 billion in 2010 to £10.1 billion in 2021<sup>18</sup>. Since 1998, the Archbishops’ Council has been responsible for applying these funds on behalf of the Church Commissioners and the paramount question in addressing the draft NCGM should therefore be how the proposed changes address what has become a fundamental imbalance at the heart of the Church of England and whether they can be made to rebalance in favour of parishes. The stakes are high. On current trends of church closures and consequent congregational decline, we will see a national Church increasingly dominated by bishops with access to vast and growing wealth which should properly have been spent on preventing that decline by providing for the cure of souls by parish clergy.

The analysis contained in this briefing note strongly suggests that:

- (a) the main purpose, or one of the main purposes, of the draft NCGM is to enable the House of Bishops to direct the spending priorities of the Church via a new body, Church of England National Services (“CENS”), as they see fit (see para 4.2 below);

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<sup>14</sup> Whitaker’s Almanack 1965, pp.478-484.

<sup>15</sup> <https://www.churchofengland.org/sites/default/files/2021-07/ministry-statistics-2020-report-final.pdf>

<sup>16</sup> <https://www.churchofengland.org/about/leadership-and-governance>

<sup>17</sup> By the time of the Turnbull Report, there were approximately 10,000 parish clergy (para 2.23).

<sup>18</sup> <https://www.churchofengland.org/media/press-releases/church-commissioners-reports-strong-financial-returns-2021-133>

- (b) the purposes for which central funds can be applied will, in future, extend beyond the Church of England (see para 4.2 below);
- (c) the centuries-long requirements relating to financial provision by the Church Commissioners (and their predecessors) for parish ministry and the cure of souls is at risk of being abandoned, with the available funds of the Church Commissioners being put at the disposal of CENS (see para 4.2 below);
- (d) the archbishops and bishops, their appointees and unelected officials will be given much greater power and representation on decision-making bodies than they currently have (see paras 4.7 and 4.8 below); and
- (e) the Church Commissioners role under the Mission and Pastoral Measure 2011, including hearing appeals in relation to pastoral schemes to merge parishes and close churches, will be transferred to CENS despite the NGPB recognising a strongly-held belief in a previous consultation<sup>19</sup> that this function should remain in the hands of the Church Commissioners and the more cautious approach recommended by the NGPB on this question (see para 4.4 below).

Other significant concerns, including the constitutional position of the Church of England and Church Commissioners (para 4.1 below), the creation of actual and potential conflicts of interest and lack of accountability and independence (paras 4.3 to 4.5 below) and the secularisation of Church of England institutions (para 4.6 below) are discussed further below.

In summary, this draft legislation represents a radical departure from the settlement agreed by the General Synod in 1998 under the National Institutions Measure and, in certain important aspects, does not properly reflect the recommendations of the Governance Review Group (“GRG”) and the National Church Governance Project Board (the “NGPB”) under GS 2239 and GS 2307, respectively (see paras 4.1 to 4.6 below).

### **3. Context and background**

In order to understand the current position, it is necessary briefly to review the reform of church governance implemented following the Turnbull Report<sup>20</sup> in 1995 (and the more recent governance reviews to which the draft NCGM purports to respond), the status and purpose of the Church Commissioners and the constitutional context of the Church of England. These are considered, in turn, below.

#### *3.1 The governance reviews*

The bringing forward of the draft NCGM to the General Synod in July 2024 follows two consecutive governance reviews initiated by the House of Bishops in 2019. The Governance Review Group (“GRG”), proposed in September 2021 that a new body, Church of England National Services (“CENS”) should be set up to replace the Archbishops’ Council. This report (GS 2239<sup>21</sup>) was presented to the General Synod in February 2023. In February 2022, the National Governance Project Board (“NGPB”) was set up to continue the work of the GRG

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<sup>19</sup> GS Misc 1312.

<sup>20</sup> “Working as One Body: The report of the Archbishops’ Commission on the organisation of the Church of England” Rt Rev Michael Turnbull, 1995 (the “Turnbull Report”).

<sup>21</sup> <https://www.churchofengland.org/sites/default/files/2022-02/gs-2239-governance-review-group-3.pdf>

and brought forward another report (GS 2307<sup>22</sup>) in June 2023. The proposals are acknowledged to be the first major review of church governance since the late 1990s, when the Archbishops' Council was established pursuant to the National Institutions Measure 1998 ("NIM 1998") in response to the Turnbull Report to consolidate the Central Board of Finance, the General Synod's Standing and Policy Committees, and the Advisory Board of Ministry.

The logic of the governance reform in 1998 was to simplify the role of the Church Commissioners, which had sustained large financial losses in prior years, so that they could concentrate on their financial management function. Additionally, requirements for funding were to be directed through a single body, the Archbishops' Council, which would bring together and prioritise those funding requirements. Consequently, a requirement was placed on the Archbishops' Council to certify that funds provided by the Church Commissioners would only be applied for purposes which were permitted immediately prior to the NIM 1998<sup>23</sup>. It was acknowledged by the Turnbull Report that if the Archbishops' Council failed to discharge the obligations being transferred to it from the Church Commissioners in the same way as the Church Commissioners were bound to, the Archbishops' Council would be breaking the law<sup>24</sup>. The role of the Church Commissioners is explored in more detail below. However, the point to have in mind is that, in 1998, the roles being transferred from the Church Commissioners to the Archbishops' Council were not changed, and the Archbishop's Council is expected to perform those funding roles in the same way as the Church Commissioners had previously performed them. As a result, NIM 1998, s.2 was included to ensure that the Church Commissioners were able to continue to have the information needed to remain accountable to Parliament in relation to funds advanced to the Archbishops' Council under that measure<sup>25</sup>.

So far as the financial performance of the Church Commissioners is concerned, these reforms have proved successful. The funds held by the Church Commissioners have almost doubled in value over the last ten years, with consistent returns of around 10% per annum being achieved. There is therefore no imperative whatsoever to remove further functions from the Church Commissioners on the same grounds as before. Moreover, the independence of the Church Commissioners from the Church of England has been recognised by GS 2307 as one of their strengths<sup>26</sup>, and this should not be lightly passed over when the purported purpose of the draft NCGM is to address a perceived lack of openness and accountability<sup>27</sup> within the Church of England itself.

### 3.2. *The Church Commissioners*

To understand the broader historical context, it is necessary to consider the origins of the Church Commissioners and the endowment held by them in trust for the Church of England. The Church Commissioners were established in 1948 pursuant to the Church Commissioners Measure 1947, by the amalgamation of two bodies: the Governors of the Bounty of Queen

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<sup>22</sup> [https://www.churchofengland.org/sites/default/files/2023-06/gs-2307-national-governance-review-synod-july-2023-final\\_0.pdf](https://www.churchofengland.org/sites/default/files/2023-06/gs-2307-national-governance-review-synod-july-2023-final_0.pdf)

<sup>23</sup> NIM 1998, s.2(3) and para 8.19 of the Turnbull Report.

<sup>24</sup> Turnbull Report, para 8.18.

<sup>25</sup> Ibid, para 8.19.

<sup>26</sup> GS 2307, para 74.

<sup>27</sup> GS 2360, para 9.

Anne for the Augmentation of the Poor Clergy<sup>28</sup> (known as “Queen Anne’s Bounty”) and the Ecclesiastical Commissioners<sup>29</sup>.

In brief, Queen Anne’s Bounty comprised, *inter alia*, tithes that were appropriated by the state from the time of Henry VIII and which were settled in trust for the Church by Queen Anne, grants made by Parliament, tithes on rentcharges transferred from benefices by the Tithe Act 1925 and redemption compensation in the form of Government stock upon the abolition of the tithe by the Tithe Act 1936<sup>30</sup>. Queen Anne’s Bounty was originally established by Queen Anne with the authority of Parliament as a corporation under the control of governors (only one of whom was a churchman) who were to apply the funds in the acquisition of property to augment the livings of incumbents under particular thresholds of income. The Ecclesiastical Commissioners were established as a body corporate by the Ecclesiastical Commissioners Act 1836 as part of a scheme to consolidate income from canonries and sinecure rectories without cure of souls<sup>31</sup> for the purpose of providing for the “the cure of souls in parishes where such assistance is most required”<sup>32</sup> and laying schemes for such before Her Majesty in Council for approval.

The original charitable objects of Queen Anne’s Bounty and the Ecclesiastical Commissioners therefore remain until this day, although they have been supplemented since<sup>33</sup>, and the endowment held by the Church Commissioners should therefore properly be regarded as a perpetual trust established by the nation through Parliament for the benefit of the Church of England<sup>34</sup> – in much the same way as a parishioner might set up a trust for the benefit of her local parish church. **It should therefore be a matter of moral and constitutional concern if the General Synod were to use its legislative powers to appropriate the assets or income of the Church Commissioners to the ownership or use of another body outright or, worse, to authorise an unaccountable body to apply those funds and assets as it sees fit.**

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<sup>28</sup> Established under Queen Anne’s Bounty Act 1703.

<sup>29</sup> Established under the Ecclesiastical Commissioners Act 1836.

<sup>30</sup> “The original assets of Queen Anne’s Bounty relate to the revenue from the First Fruits and Tenths which had been paid by the clergy to Rome before Henry VIII appropriated them, and which Queen Anne handed back to the Church in 1704. The collection of First Fruits and Tenths was abolished in 1926. At the time of amalgamation in 1948, the greater part of the assets of Queen Anne’s Bounty was Government stock passed to Queen Anne’s Bounty on redemption of the tithe in 1936, and which was held for the benefit of more than 10,000 tithe owning incumbents.” Turnbull Report, para 8.2.

<sup>31</sup> The assets of the Ecclesiastical Commissioners were accumulated under the extensive powers given to them in the nineteenth century. They were authorised to take over the endowments of certain sinecures and surplus offices, particularly in cathedrals. These endowments were used to create the common fund for making “additional provision ... for the cure of souls in parishes where such assistance is most required, in such manner as shall ... be deemed most conducive to the efficiency of the Established Church” (Ecclesiastical Commissioners Act 1840, s.67). The Commissioners were also given power to take over some of the bishopric and dean and chapter estates. In return annual sums were secured to the bishop or dean and chapter, so the Commissioners’ acquisition of these estates carried with them corresponding responsibilities. Nearly 40% of the total income of the cathedrals was diverted to the Ecclesiastical Commissioners in the mid-nineteenth century. Much of the Commissioners’ current agricultural portfolio originates from the bishopric and dean and chapter estates. In 1954, £8 million was transferred from the Pensions Board to the Commissioners and clergy pensions became non-contributory and wholly charged on the Commissioners.” Turnbull Report, para 8.3

<sup>32</sup> Ecclesiastical Commissioners Act 1840, s.67.

<sup>33</sup> For example, in relation to the Lambeth Palace library pursuant to The Legislative Reform (Church Commissioners) Order 2021 (S.I. 2021/842), arts. 1(2), 7.

<sup>34</sup> GS 2307, para 60, GS 2239, para 164.

### 3.3. Governance of Established Church generally

The Church of England is sometimes said to be “episcopally led and synodically governed”. However, this is inaccurate, and the position has, instead, been summarised by Mark Hill QC as such:

*“The governance of the Church of England is by means of dispersed authority involving the General Synod, diocesan and deanery synods, and parochial church councils. The composition of each body includes clergy and laity (either elected or ex officio) in the prescribed proportions.”<sup>35</sup>*

These are two very important principles to have in mind when considering any changes to the *status quo*. As further discussed at paragraph 4 below, the proposed changes in the NCGM would concentrate authority in the House of Bishops, giving them a new statutory role, and reduce the role of clergy and laity.

Given that it is the Church established by law, Parliament may legislate for the Church of England. However, since 1919, the Church Assembly and now the General Synod have able to legislate by measure in relation to any matter concerning the Church of England<sup>36</sup>. This process requires measures passed by the General Synod to be submitted to the Ecclesiastical Committee of both Houses of Parliament for consideration<sup>37</sup> after which a draft report is issued to the General Synod legislative committee (but not to Parliament), giving the legislative committee the opportunity to withdraw the measure. If the legislative committee signifies it wishes to proceed, the measure and the report of the Ecclesiastical Committee are put to a resolution of each House of Parliament and, if approved, presented to His Majesty for Royal Assent. Measures may also provide for secondary legislation and delegated powers that can be made and used notwithstanding the fact that they have not been expressly approved by either Parliament or the General Synod.

## 4. Expected position under the draft NCGM

The main feature of the scheme envisaged by the draft NCGM is the creation of a new institution to be known as the Church of England National Services (“CENS”) which is intended to replace the Archbishops’ Council and take on most of the remaining functions of the Church Commissioners. The proposals represent a fundamental change to the way in which the Church of England is funded, constituted and governed. Particular aspects of the proposals and the problems they pose are considered below.

### 4.1 Constitutional implications

There are several indicators that the NCGM is attempting to establish hybrid bodies which seek, on one hand, to benefit from the privileges of being part of the Established Church while at the same time moving assets, functions and charitable objects away from and beyond the current constitutional settlement of which the Church of England forms part and, in the case of the Church Commissioners, outside the scope of proper Parliamentary

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<sup>35</sup> Ecclesiastical Law, 4<sup>th</sup> Edition, Mark Hill QC, para 2.11.

<sup>36</sup> Church of England Assembly (Powers) Act 1919, s.3(6).

<sup>37</sup> Ibid, s.3(3): “the Ecclesiastical Committee shall draft a report thereon to Parliament stating the nature and legal effect of the measure and its views as to the expediency thereof, especially with relation to the constitutional rights of all His Majesty’s subjects”.

accountability. This is a departure from the intentions which underpin the GRG<sup>38</sup> and the NGPB<sup>39</sup>. For instance:

- (a) CENS is to be an institution of the Church of England by statute (i.e. measure) under clause 1 but the archbishops are to assume an order-making power which would apparently allow them to define the institutions of the Church of England by statutory instrument using the annulment procedure – it is submitted that constitutional questions of this kind should be dealt with by measure and not by delegated legislation (and certainly not by using the annulment procedure);
- (b) CENS is to assume almost all the functions of a body (the Church Commissioners) currently accountable to Parliament in relation to those functions, but CENS itself will not be accountable to Parliament;
- (c) the Church Commissioners hold funds which were endowed by the Sovereign and Parliament in perpetuity for the benefit of the Church of England, but the NCGM implies that the funds advanced to CENS will be applied in accordance with policy set by the House of Bishops (clause 3(4)(a)), which currently has no distinct constitutional role under statute<sup>40</sup> or the wider English constitutional settlement, and may be applied to charitable objects beyond those permitted to the Church Commissioners (see further para 4.2 below);
- (d) CENS has been established for the benefit of the Church of England, but has also been established for the benefit of other, as yet undefined objects which will either be determined by CENS itself (clause 3(5)) or the principles set by the House of Bishops (clause 3(4)(a));
- (e) CENS seeks for itself privileges in relation to legal professionals which are confined exclusively to state bodies – which currently expressly includes the Church Commissioners – without being a state body itself (subclauses 14(5) to (6));
- (f) the archbishops and CENS are to be granted an unprecedented number of delegated powers to make further provisions by statutory instrument under the NCGM (eight in total)<sup>41</sup> using the annulment procedure, with the result that there is very little

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<sup>38</sup> See GS 2239, para 164 “We should avoid unwittingly encouraging talk of disestablishment by tampering with these arrangements”.

<sup>39</sup> See GS 2307, Foreword by Sir David Lidington and Bishop Andrew Watson: “In our view, the governance arrangements of the National Church need to be viewed collectively, rather than in isolation from one another, considering the importance of mutuality between the national church bodies and understanding how they relate to other church bodies, Parliament, and the State.”

<sup>40</sup> For instance, there is no formal role for the House of Bishops under the NIM 1998 in relation to the Archbishops’ Council.

<sup>41</sup> Clause 1(3) (power to add or remove body as “National Institution”), 2(4) (power to CENS to vary its own constitution), 3(5) (power to CENS to vary its own charitable objects), 9(1) (power to transfer functions to CENS from Archbishops’ Council and make supplemental provisions), 10(2) (power to transfer functions from ChECS to CENS and make supplemental provisions), 11(1) (power to transfer functions and property from Church Commissioners and make supplemental provisions), 24(3) (power to appoint day for commencement of various provisions) 24(4) (power to make transitional, transitory or saving provisions to other measures). One resolution-making power is given to General Synod: clause 6(4) (power to add, remove, vary function of new MPAC committee). **This appears to be unprecedented in Church legislation – for example, the Ecclesiastical Jurisdiction and Care of Churches Measure 2018, contains two order-making powers for a measure which comprises 100 sections and five schedules.**

detail in the draft measure itself and that crucial detail will be reserved for secondary legislation using such powers – in contrast, the NIM 1998 contained only one order-making power (which is subject to more onerous safeguards) and set out the consequential amendments to other measures in its Schedules: this is a matter of constitutional concern<sup>42</sup> and represents a deterioration in the level of legislative scrutiny and accountability offered to both the General Synod and Parliament when compared to the last major governance reform in 1998.

**As a result, the draft NCGM would:**

- (i) potentially undermine the Church of England’s status as the Church established by law by delegating the identification of the Church’s “National Institutions” to order-making powers on the initiative of the archbishops;**
- (ii) undermine and potentially break the constitutional link between the Sovereign and Parliament and the parish system through the Church Commissioners, by removing their functions with regard to the parish – the Mission, Pastoral & Church Property Committee (“MPCPC”), in particular – and leaving the status of their paramount charitable objects of making provision for parish clergy and the cure of souls in doubt;**
- (iii) feed the perception that the Church of England wants to retain the privileges of its constitutional position and the benefit of the Church Commissioners’ funds without being willing to accept the accountability to Parliament which that entails; and**
- (iv) blur the constitutional lines between the Church of England and the Church Commissioners to such an extent that the Church Commissioners may no longer be meaningfully exercising their trustee role but exist merely as an asset manager and payment agent for CENS.**

#### *4.2 Charitable objects*

Under the NIM 1998, s.1(1) the object of the Archbishops’ Council is “to co-ordinate, promote, aid and further the work and mission of the Church of England”. In doing so, to the extent it receives funds from the Church Commissioners, it must certify that such funds are applied in such a way as they might have been applied prior to NIM 1998, with particular regard to Ecclesiastical Commissioners Act 1840, s.67 for “making of additional provision for the cure of souls in parishes where such assistance is most required”<sup>43</sup>. The remaining provisions of NIM 1998, provide for the transfer of certain functions from the Church Commissioners to the Archbishops’ Council and for a constitution and audit structure for the Archbishops’ Council.

The NCGM envisages the abolition of the Archbishops’ Council (clause 9) and the transfer of its functions (including those transferred to it from the Church Commissioners in 1998) to

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<sup>42</sup> See: The Legislative Process: The Delegation of Powers (House of Lords, Select Committee on the Constitution) 16<sup>th</sup> Report of Session 2017-2019, paras 15-16. Interestingly, Sir David Lidington (then Leader of the House of Commons) is quoted at para 13 as stating: “[Ministers] should not seek, in a new piece of legislation, to have additional regulation-making powers unless those are essential and can be fully justified to Parliament”.

<sup>43</sup> NIM 1998, s.2(3) and 8.

CENS. It is also envisaged all the existing Church Commissioners' functions which are not expressly retained under clause 12 will be transferred to CENS.

By contrast, the charitable objects of CENS will be (clause 3(3)):

- “(a) furthering the whole mission of the Church of England, pastoral, evangelistic, social and ecumenical;*
- (b) enabling and enhancing the efficiency and effectiveness of the other National Institutions, diocesan bodies and charities with a Church ethos.”*

This represents a substantial widening of the objects formerly held by the Archbishops' Council – to the extent that funds could be used to “enable ... [any charity] with a Church ethos”<sup>44</sup>. NCGM, clause 3(7)(b) goes on to provide that “a charity has “a Church ethos” if its ethos is based on the principles of the Church of England, whether or not it has the advancement of the Christian religion as a charitable object”. Following the drafting then reveals that CENS will pursue its charitable objects by “developing strategies for implementing principles set by the House of Bishops or the General Synod for encouraging and enabling the work and mission of the Church” (clause 3(4)(a)) [emphasis added]. The Supporting Policy goes further by setting out the approval role of the House of Bishops in the “Delegation Framework” at Annex A. In reality, therefore, the expectation is that the House of Bishops will determine how funds are allocated and what amounts to a “Church ethos”<sup>45</sup>. Furthermore, these objects may be extended by CENS using the new order-making power proposed by clause 3(5).

Conversely, despite this significant widening of charitable objects generally, parochial church councils are to be expressly excluded from the extended charitable objects of CENS (clause 3(7)(c)). **This is capricious and unacceptable, especially when diocesan bodies are expressly included.**

Notably absent from the NCGM is anything resembling NIM 1998, s.2. This is despite GS 2307 recognising that accountability to Parliament will be diminished without the certificates which are given under NIM 1998, s.2(3)<sup>46</sup>. As the Turnbull Report recognised<sup>47</sup>, it would represent a breach of fiduciary duty if funds were advanced to CENS without assurances that such funds would be applied in accordance with the charitable objects of the Church Commissioners and proper monitoring of the application of such funds. Notwithstanding the legal implications of the proposals, it would be morally unconscionable and would therefore risk reputational damage for the Church of England if there was an undisclosed intention to subvert the charitable objects of the Church Commissioners by bringing further measures or using delegated powers under the proposed measure, given

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<sup>44</sup> It also purports to define the “mission of the Church of England” in a way which NIM 1998, s.1 did not.

<sup>45</sup> This is the clear implication of the third bullet point and the Delegation Framework set out at Annex A to the Supporting Policy GS 2360.

<sup>46</sup> “In devising any new governance structure these important features need to be recognised and upheld (or, if they are to be interfered with, this should only take place with due care and intentionality). The State will also need to be as confident as before in the Church’s continued ability not only to enjoy the benefits but also to discharge the responsibilities of its established status as effectively as possible for the sake of the country it serves.” GS2307, para 36.

<sup>47</sup> Turnbull Report, para 8.18.



the indispensable role of the Church in developing the law of equity and, in particular, the very idea of the trust (or “use”) itself – as to which see further at Appendix 2.

Despite the insistence on the need for openness, transparency and accountability in GS 2360, the question of whether the Church Commissioners’ current charitable objects will be respected is far from transparent<sup>48</sup>. On one hand, the working assumption of the Supporting Policy, GS 2360, appears to be that the charitable objects of the Church Commissioners will not be changed by the NCGM<sup>49</sup>. However, the same document implies that the non-statutory Grants Committee of CENS will assume oversight of how the Church Commissioners’ funds are applied (para 69). This is expressly referenced, for example, in relation to Cathedral Grants and Churches Conservation Trust Grants (para 95). Given that the certification of the application of the Church Commissioners’ funds in accordance with their charitable objects was expressly enshrined in the NIM 1998 when Church of England governance was last reformed and, further, that the charitable objects of CENS are considerably wider than those of the Archbishops’ Council, **the assumption by CENS of responsibility for oversight in respect of the charitable objects of the Church Commissioners would create an obvious and serious conflict of interest and breach of fiduciary duty unless it is intended that the charitable objects of the Church Commissioners are to be changed to be in alignment with those of CENS**. This discrepancy raises the obvious question of how this conflict of interest is to be resolved or, alternatively, whether there is an undisclosed intention to change the charitable objects of the Church Commissioners. The conflict of interest could be resolved, simply, by adopting the same approach as NIM 1998 and providing non-voting, Church Commissioner oversight on CENS committees. However, the possibility of an undisclosed intention to change the charitable objects is more troubling, given that it would evidence just the sort of lack of transparency and openness which the draft NCGM itself is supposed to be tackling. Such a change would likely require a further measure but, while there may be great doubt as to whether any archbishop would ever agree to use order-making powers to change the charitable objects of the Church Commissioners or to replace the certification procedure under NIM 1998, s.2 with anything less robust, it must be noted that the order-making power under clause 9 is potentially wide enough to achieve this when combined with clause 14; and, when combined with clause 23, could be made by the archbishops without Synodical or Parliamentary approval (being subject only to the annulment procedure)<sup>50</sup>. **It is therefore strongly recommended that amendments are sought to the draft NCGM which incorporate provisions at least as robust as NIM 1998, s.2 and 8<sup>51</sup>, to test whether there is**

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<sup>48</sup> In contrast, GS 2307 clearly stated at para 18(b) that “The Commissioners should distribute funding in accordance with their charitable purposes. CENS should provide the Commissioners with annual assurance that the funding has been used for these purposes and progress towards the desired outcomes has been achieved”. See also Recommendation 5.

<sup>49</sup> See paras 40 and 75.

<sup>50</sup> Notwithstanding this possibility, there is a significant conflict of interest in putting such an order making power in the hands of the two most powerful members of CENS – CENS being the organisation which would stand to benefit from such a move. In this context, it should be noted that CENS will, nevertheless, assume a power to transfer “property, rights or liabilities held, enjoyed or incurred [by the Church Commissioners]” (clause 13(3)), which the Supporting Document suggests will be used to transfer “See Houses and other heritage assets like Lambeth Palace” to CENS (GS 2360, para 95), in part to allow the “sale [by CENS] of properties that are no longer deemed suitable for operational use”.

<sup>51</sup> Including Church Commissioner membership of CENS, as currently is the case with the Archbishops’ Council.

**an undisclosed intention to vary the charitable objects of the Church Commissioners. A refusal to adopt such amendments would indicate further plans in this area.**

#### 4.3 *Functions and Procedures*

According to the Supporting Policy, “[o]ne of the main aims of this reform is to create a simpler, more understandable National Church governance structure”<sup>52</sup>. However, the risk of merging roles currently undertaken by separate bodies is that there may have been a good governance reason for the separation of functions and powers and merging those roles may therefore give rise to conflicts of interest and other accountability problems. Not enough consideration has been given to the **NEW** accountability risks created by the proposals and there are a series of defects in the functions and procedures of CENS. These include:

- (a) expressly permitting or mandating individuals to take up multiple positions in which those individuals will have actual or potential conflicts of interest (for example, the archbishops will be appointed members of CENS while also remaining Church Commissioners in circumstances where the certificate under NIM 1998, s.2(3) may no longer be given);
- (b) the Church Commissioners will have no way of monitoring the application of funds advanced by it to CENS<sup>53</sup>;
- (c) members or appointees of CENS will chair and otherwise sit on committees which are intended to hold CENS accountable (for example, the Governance and Nominations Committee and the Audit and Risk Committee) or which should otherwise have decision-making independence (for example, the Mission and Pastoral Adjudication Committee); and
- (d) the functions and terms of reference of the Synodical Scrutiny Committee and any Committee of Inquiry are so vague and discretionary as to be worthless in practice (see further para 4.5 below).

It is submitted, instead, that the following principles should be applied to all committees created pursuant to the draft measure:

- (i) members and committee members should not be appointed or employed by the body they are overseeing;
- (ii) members or committee members should be elected for an expedient term of office with equal representation of bishops, clergy and laity, with all the main committees of CENS (including those listed at GS 2360, paras 61 to 72) being put on a statutory footing;

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<sup>52</sup> GS 2360, para 35.

<sup>53</sup> **This is despite Recommendation 10 of GS 2239, that “The management, stewardship and oversight of the Church’s historic endowment should remain the legal responsibility of the Church Commissioners.” and Recommendation 5 of GS 2307, that “The Church Commissioners should remain a separate charitable entity, with legal responsibility for the management, stewardship, distribution, and oversight of the Church’s historic endowment”. [Emphasis added]**

- (iii) committees should be served by dedicated staff who are able and required to provide the necessary information required or desired by the committee members for the purposes of decision-making;
- (iv) members and committee members should have access to professional advice in the discharge of their functions;
- (v) a chair should be elected by each board or committee from among its members annually;
- (vi) members and committee members must avoid actual or potential conflicts of interest;
- (vii) members and committee members should be communicant members in good standing of a church of the Church of England;
- (viii) committees should report to the General Synod, and CENS (and the other Church bodies) should be accountable to the General Synod.

In addition, amendments are proposed to address instances of misconduct by members and committee members of National Institutions (other than the Church Commissioners, who are accountable to Parliament).

With regard to the Church Commissioners, the draft NCGM if enacted will transfer all the remaining functions which are not expressly retained by the Church Commissioners under clause 12. This is to be achieved by order (which may not even identify the individual functions), executed by the archbishops, which the Business Committee may determine does not need to be laid before Synod for approval (clause 23(5)). This contrasts markedly with the existing power at NIM 1998, s.5, which allows for much greater scrutiny and requires the identification of the function, approval by Synod and, in certain cases, consultation with the Prime Minister and Church Commissioners, and approval by both Houses of Parliament.

**Any provisions allowing for further transfer of functions under the draft NCGM should therefore mirror the provisions at NIM 1998, s.5 as a minimum standard.** The function to be transferred should be identified. The draft order should be put to Synod for approval. If relevant, the Prime Minister and the Church Commissioners should be consulted and the order passed by a resolution of both Houses of Parliament. **It is unacceptable (in light of the purported intent of the draft NCGM) that the proposed provisions at clauses 11 and 12 offer less transparency and accountability than the provisions in NIM 1998 which they are intended to replace.**

#### 4.4 *Mission and Pastoral Measure 2011*

The proposed transfer of functions from the Church Commissioners in relation to their role under the Mission and Pastoral Measure 2011 is deeply troubling. While the possibility of transferring this role was raised by the GRG in GS 2239 and the NGPB in GS 2307, it was heavily caveated<sup>54</sup>. In fact, GS 2307 recognised that there was a strongly held belief in a

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<sup>54</sup> See GS 2307, paras 73-77 and GS 2239 para 179: "The important appellate and regulatory functions currently carried out by the Church Buildings Council, the Church Commissioners' Mission, Pastoral & Church Property

previous consultation<sup>55</sup> that this function should remain in the hands of the Church Commissioners<sup>56</sup> and that the existing committee dealing with these matters had concerns about the separation of functions proposed and lack of accountability to the General Synod and to Parliament<sup>57</sup> and the NGPB therefore recommended that any transfer of these functions should await the outcome of a review of the Mission and Pastoral Measure 2011<sup>58</sup>. This review, by the Church Commissioners (GS 2315), offers as one of its main findings that:

*“There was broad consensus that the following aspects worked well ... Having an independent body, currently the Church Commissioners, to adjudicate between the views of the different parties on contested decisions. The core processes of consultation, publication and adjudication by the MPCPC and appeal to the JCPC worked well in principle. The right to make written submissions in relation to proposals was valued.”<sup>59</sup>*

Given that this is one aspect of the existing mission and pastoral framework that everyone agrees “works well”, one would expect those seeking to rebuild trust would pause to reflect before removing this important quasi-judicial appellate role from the Church Commissioners and placing it into the hands of an entirely new entity under the policy direction of the House of Bishops. The Supporting Policy, however, attempts to present GS 2307 as recognising a “need”<sup>60</sup> for the Church Commissioners’ role to be transferred and exhibits none of the caution expressed by the NGPB on this point. Furthermore, instead of proceeding with the care recommended by the NGPB, the relevant clauses in the draft NCGM appear to have been added in haste, almost as an afterthought. This can be deduced from the discrepancy between the legislative drafting in the measure, which provides for two members of CENS to be members of the Mission and Pastoral Adjudication Committee (“MPAC”, see clause 7(4)(a)) whereas the Supporting Policy states “it is suggested that a trustee of any NCI [which includes CENS] may not also serve as a member of the MPAC”<sup>61</sup> [emphasis added]. **This neatly illustrates the temptation which may already at work to undermine the independence of the proposed MPAC once this role is removed from the Church Commissioners.**

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Committee, and the Cathedrals Fabric Commission need particular care. It is not necessarily the case that these functions should remain exactly where they are today and, as noted above, we recommend that these different regulatory functions can helpfully be grouped together under the proposed new CENS.”

<sup>55</sup> GS Misc 1312.

<sup>56</sup> “The analysis of the consultation undertaken as part of the separate review of the Mission and Pastoral Measure 2011 presented to General Synod in GS Misc.1312 showed that the strengths of the Mission and Pastoral Measure processes are seen to be ‘independent consideration of proposals by the Church Commissioners’ and ‘strong governance through the Commissioners’ Mission, Pastoral and Church Property Committee’. The paper highlights a concern that ‘the independence of the process may not be maintained through the governance review’. There is a strongly held belief that the current governance framework provides all interested parties with a fair and transparent means to voice their views and be heard on a particular scheme.” GS 2307, para 74.

<sup>57</sup> Ibid, para 75.

<sup>58</sup> Ibid, para 77.

<sup>59</sup> GS 2315, para 22.

<sup>60</sup> GS 2360, para 94.

<sup>61</sup> GS 2360, para 72.

Given the lukewarmth of the governance reviews on this point and the haste to bring this role within the scope of CENS and under the influence of CENS trustees, serious questions need to be asked about the motives and imperative for the proposed transfer of this function and whether the instructions given to legislative counsel reflected the Supporting Policy, GS 2360 (and if not, why not).

#### 4.5 Committees

**In general terms, the proposed NCGM will not achieve the main recommendations set out by the governance reviews<sup>62</sup> in terms of the number and complexity of committees.** On the face of it, the NCGM appears to confine the committee structure of CENS to the Governance and Nominations Committee (clause 4), the Audit and Risk Committee (clause 5) and the Mission and Pastoral Adjudication Committee (clause 6). However, Sch 1, para 6 permits CENS to create unlimited further committees any of which may also, on their own motion, establish unlimited further sub-committees. The Supporting Policy has already identified five further non-statutory committees<sup>63</sup>. The scope therefore exists for as much of a self-perpetuating bureaucracy as exists already.

Neither do the committees which are expressly provided for by the draft NCGM reflect the roles purportedly intended for them by the Supporting Policy. For instance:

- (i) the Governance and Nominations Committee is confined solely to giving advice in four specific areas (clause 4(1)); whereas the Supporting Policy, at para 64, sets out 12 separate roles for the proposed committee including making binding decisions (e.g. in approving the CEO's remuneration);
- (ii) the Audit and Risk Committee is confined to considering, reviewing and reporting on matters (clause 5(1)) with the only directing role confined to issuing guidance to the auditor on ensuring that the requirements of GAAP are met (which is surely something an auditor should be better placed to understand in any case), whereas the Supporting Policy, at para 61, sets out eight separate roles including the appointment of the auditor;

In addition to this, the Supporting Policy proposes the creation at least five more committees which will be established by CENS: a Finance and Operations Committee, a Buildings – Policy and Co-regulation Committee, a Grants Committee, a Ministry Development Committee and a Unity Faith and Public Policy Committee. **Of particular concern is the fact that there is proposed to be no statutory regulation or oversight of the work of the Grants Committee, which will be responsible for applying funds advanced by the Church Commissioners.** The composition and terms of reference of those non-statutory committees will be entirely within the discretion of CENS or the relevant committee and with no requirement for external oversight set out in the NCGM. **The “golden thread” of**

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<sup>62</sup> See for example, Recommendation 7 of GS 2239 :“The Church of England National Services Board should be supported by the minimum necessary number of sub-committees to ensure its operation, including Risk, Audit, Nominations and Finance and the minimum possible number of others and only to the extent essential” and recommendation 14 of GS 2307: “The CENS Board should be supported by the minimum necessary number of committees to ensure its operation”.

<sup>63</sup> GS 2360, para 59.

**“transparency, accountability and trust” (GS 2307, para 27) is therefore absent from the fabric of the proposed committee structure of CENS.**

At a higher level, the draft NCGM would create an overarching Synodical Scrutiny Committee (clause 19). The origins of this proposal are found in GS 2307, paras 27 to 35, and are grounded on a perceived lack of trust and transparency when it comes to questions asked by and answers (or lack of them) provided to Synod members by Church decision makers. The proposal was for a committee equivalent to a Parliamentary select committee (GS 2307, para 31). However, unlike a select committee, the Synodical Scrutiny Committee would only have power to require members and the chief executive officers of National Institutions to attend and would have no powers of disclosure. It will therefore be extremely limited in terms of whom it may summon and will have no access to documentary evidence unless it is provided voluntarily. **To be effective, and to fulfil the role recommended by the NGPB, this committee would need to be given power to require the attendance of any employee, officeholder or committee member of a National Institution and disclosure of documents.**

Finally, the NCGM purports to give the General Synod a power to convene a “committee of inquiry” (clause 20(1)). However, this committee may only be convened on the motion of the chair<sup>64</sup> of the Synodical Scrutiny Committee (clause 20(2)), notwithstanding that 60 members of Synod may have requested such a motion, and a resolution for convening a committee of inquiry can only be made with the support of three-quarters of Synod members present (the same threshold for suspending the standing orders of the General Synod). **This effectively means that Synod has no power to convene the committee itself and, even where the chair of the House of Laity exercises discretion to move a resolution, the threshold for approving it is so high as to be unlikely to ever be reached.**

#### 4.6 *Diversity Charter and Church culture*

Clause 18 seeks to introduce a requirement for a “Diversity Charter”. However, despite the NGPB making this recommendation within the context of faith (including church traditions)<sup>65</sup>, the proposal in clause 18 is entirely secular and, by cross-referencing and including the Equality Act 2010 definition of “protected characteristics”, risks subjecting CENS to claims of discrimination by those holding such protected characteristics including those who hold religious beliefs incompatible with Christianity. **By applying these principles to what is proposed to be the principal spending body of the Church of England, the NCGM risks turning the Church of England into a *de facto* secular institution.**

It is proposed that, if the NGPB recommendation is to be implemented on its own terms, it should make clear reference to diversity within the Christian faith with the intention that the charter is compatible with and supports the current doctrine of the Church of England.

#### 4.7 *Constitution of CENS*

Under the NIM 1998, the Archbishops’ Council should comprise 19 members. Of these, 11 are archbishops, bishops or their appointees, 3 are clergy members and 5 are lay members.

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<sup>64</sup> Who is chair *ex officio* as the chair of the House of Laity

<sup>65</sup> See GS 2307, para 93.

CENS, by contrast will have no more than 15 members. Of these, 11 will be archbishops, bishops or their appointees, 2 will be clergy members and 2 will be lay members. **This represents a reduction of the combined clergy and lay representation (drawn, without appointment, from General Synod or the Convocations of York and Canterbury) from 42% to 26%.<sup>66</sup>**

Furthermore, whereas the archbishops may remain members of CENS indefinitely, the terms of other members will be time-limited thereby giving the archbishops disproportionate influence in terms of knowledge and experience.

In order to reflect the principle of equality between bishops, clergy and laity, the membership of CENS would need to comprise the archbishops, *ex officio*, three bishops elected by and from the House of Bishops, five clergy elected by and from the House of Clergy and five laity elected by and from the House of Laity with no limit on the number of terms that a member may serve.

#### 4.8 *Constitution of the Church Commissioners*

Finally, it should be noted that the constitution of the Church Commissioners will be changed by the NCGM under clause 15. Currently the Church Commissioners have 12 members who are either archbishops, bishops or their appointees, 5 clergy members, 4 lay members, 6 Government or Parliamentary office holders (who do not customarily attend), 3 Church Estates Commissioners and 3 appointees of His Majesty.

Under the NCGM, the Church Commissioners would have 4 members who are archbishops and bishops, 2 clergy members, 2 lay members, 2 Church Estates Commissioners, 3 appointees of His Majesty and 4 appointees of its own governance committee. **If the Government and Parliamentary office holders are not taken into account (on the basis of their customary non-attendance), the effect will be to reduce the combined clergy and lay representation from 33.3% to 23.5%.**

**These proposals therefore significantly weaken the representation of the laity and the clergy (from a third to less than a quarter) among the Church Commissioners in relation to an endowment which is held for the paramount benefit of parish ministry. There is no justification for this reduction in representation but, rather, a strong argument in favour of increasing lay and clergy representation.** However, given that the archbishops will also be members of CENS it is submitted that the archbishops should be removed as Church Commissioners (especially since the arrangements proposed under clause 8 require negotiations between the Church Commissioners and CENS) to prevent an actual conflict of interest arising in negotiations. This is consistent with the principle behind clause 17(1).

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<sup>66</sup> Sch 1, para 2(4) provides for a majority of the members (excluding the archbishops) to be lay, but this is only achieved through all but 2 of the members being appointed either by the archbishops or CENS (Sch 1, paras 1(3) to (5)).

## APPENDIX 2

### A brief history of trust law – and why the Church of England should respect it

The concept of equity, of which the trust is a product, finds expression in ancient texts<sup>67</sup> including, principally, the Bible. For example, a textbook for law students on the subject<sup>68</sup>, quotes Psalm 96, verse 10:

*“The Lord reigns.*

*The world is firmly established, it cannot be moved;*

*he will judge the peoples with equity.”*

English common law developed during the time of the Anglo-Saxon kings and was profoundly influenced by Christianity, particularly given that one of its greatest sponsors was King Alfred the Great who was himself a devout Christian, and largely responsible for the expansion of the *curia regis* which standardised the common law through the system of precedent which is still observed today. In 1258, however, the Provisions of Oxford prevented the creation of new categories of writ (for issuing proceedings in relation to legal complaints) without the permission of the King’s Council. The common law therefore became increasingly inflexible in the face of novel legal complaints and was also largely limited in its remedies to awards of monetary damages.

As a result, complainants began to directly petition the King to use his residual prerogative of justice. These appeals were originally heard by the King in Council, but the volume of appeals increased over time and, by the fourteenth century, this appellate jurisdiction had been delegated to the Chancellor.

The Chancellor was almost always a churchman<sup>69</sup> and usually a bishop. Hearings were informal, sometimes being held at the Chancellor’s house and followed procedures which originated in the ecclesiastical courts<sup>70</sup>. Where the common law was found to be inflexible and yielded an unfair result, the Chancellor applied “conscience” to the matter to achieve an equitable result. In 1452, Fortescue CJ, responded to a legal argument in the Court of Chancery “we are to argue conscience here, not the law”<sup>71</sup>. The body of law known as equity was the result.

Foremost among the creations of equity was the trust or “use” as it was originally known. The famous commentator F W Maitland described it thus:

*“If we were asked what is the greatest and most distinctive achievement performed by Englishmen in the field of jurisprudence I cannot think that we should have any better answer to give than this, namely, the development from century to century of the trust idea.”*<sup>72</sup>

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<sup>67</sup> Aristotle also defined equity as “equity essentially is .. the rectification of the law, where the law has to be amplified because of the general terms in which it has to be couched” Nichomachean Ethics Book V, Chapter X.

<sup>68</sup> *The Law of Trusts and Equitable Obligations*, Robert Pearce and John Stevens, 3 Edition.

<sup>69</sup> “the status of the Chancellor as a prominent ecclesiastic made him an apt arbitrator of matters of conscience and justice. It is this idea of conscience which dominates the first phase of the history of Chancery jurisdiction” *Jurisprudence*, Dias and Hughes 1957, p159.

<sup>70</sup> *Equity: A course of lectures* by F W Maitland, revised by John Brunyate, reprint 1969, p5.

<sup>71</sup> Mich 31 Hen VI Fitz Abr Subpoena pl 23.

<sup>72</sup> *Selected Historical Essays*, F W Maitland, p126 or *The Collected Papers*, Cambridge, 1911, p.272.



Maitland finds the origins of the trust in the ecclesiastical courts<sup>73</sup> and, in particular, the setting aside of land for the new order of Franciscan friars which emerged in the early thirteenth century<sup>74</sup>.

Both Queen Anne's Bounty, and the funds of the Ecclesiastical Commissioners established in 1836, are to all intents and purposes trusts set aside for their particular purposes of supporting parish ministry in the Church of England<sup>75</sup>. As a matter of conscience, therefore, their purposes should be respected in the same way now as they have been for the last three hundred years.

This is a responsibility that should be discharged with great care and, we may say in the Church of England, the fear of God. It may very well be remembered that Judas Iscariot was charged with holding the funds of the disciples and Jesus<sup>76</sup> – and that his breach of this trust was the first sign of what he would go on to do.

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<sup>73</sup> "To this we may add that very possibly the ecclesiastical courts (and the Chancellor you may remember was almost always an ecclesiastic) had for a long time past been punishing breaches of trust by spiritual censures, by penance and by excommunication. And so by general consent, we may say, the Chancellor was allowed to enforce uses trusts or confidences" *Equity: A course of lectures by F W Maitland*, revised by John Brunyate, (Cambridge University Press) reprint 1969, p7.

<sup>74</sup> *Ibid* at p25. See also *Jurisprudence*, Dias and Hughes (Butterworths) 1957, p160.

<sup>75</sup> GS 2307, para 60 and GS 2239, para 164-165 and Recommendation 10.

<sup>76</sup> Gospel of John 12:6.

**David Cheyne, Non-Synod member**

I am the retired Senior Partner and former Head of Corporate of a leading City law firm, with an interest in Church matters relating particularly to Rural Churches. I am writing about the draft National Church Governance Measure.

You will have received the Submission prepared by Oliver Iliffe which sets out in admirable detail the issues raised by the draft National Church Governance Measure. I therefore do not propose to reiterate the points raised in that review.

I do however wish to say that the draft Measure does not make it at all clear that if implemented in its present form it would radically change the current rules governing the funding of the Rural Parishes and would leave their funding entirely at the discretion of the Bishops who will take control over the governing body.

Most legislation is so drafted as to be difficult for non lawyers to fully understand the full effect. As a result often they discover that it does not do quite what they thought it was going to do. The proposed legislation is no exception so that most readers are not naturally going to appreciate the level of change involved and that it would be overturning rules dating back over three hundred years to the reign of Queen Anne.

Given that the bulk of the original endowment held by the Church Commissioners originated from rural assets, it is unreasonable not to make it clear that the proposed legislation is removing rights from the churches in the rural areas. The aims of the legislative governance project are stated to include accountability, transparency and trust. Allowing Synod Members to assume that (as the Church Times put it) this measure is intended to achieve no more than an "Administrative tidy up" is clearly at odds with those aims. It fails to give a balanced picture.

For both legal and moral reasons I strongly suggest you adopt the proposals set out in Oliver Iliffe's paper.

Yours sincerely

David Cheyne

## Late submission: The Revd Marcus Walker, London, 168

### **Delete 3 (5)**

CENS may by order amend this section so as to vary its charitable objects or the actions it may take to fulfil them (including by adding or removing a charitable object or an action).

Reason:

Given the sheer scale of the money which will be available to CENS, it is absolutely essential that amending its charitable objectives be subject to the proper and full synodal scrutiny of being passed by measure. This would also remove the danger of people seeing this as a Mission Creep Charter – looking safe now and getting dangerous later when nobody's watching.

### **Delete 3 (7) (c)**

For the purposes of this section— (c) a parochial church council is neither a diocesan body nor a charity with a Church ethos.

Reason:

It is quite egregious that this clause is included. It basically ties the hands of future CENS by the current position of church leadership not to approve of direct, formula-funded, support for poorer parishes. It might be that this policy decision is correct, but it might not be. It would be wise to allow future CENS to disburse Church Commissioners funding directly to parishes, should they wish to – especially as direct grants was how the Church Commissioners operated for decades.

### **Delete clauses 6 & 7**

Neither GS 2239 nor GS 2307 unconditionally recommended the transfer of the Church Commissioners functions under the Mission and Pastoral Measure 2011. This function is best retained by the Commissioners on grounds of (i) independence from the episcopal roles under that measure from which it hears appeals, (ii) the existing practice and expertise which the Church Commissioners currently have and (iii) the safeguard that the Church Commissioners have both a fiduciary duty and charitable object towards applying funds for the cure of souls and supporting parish clergy. All these governance benefits would be lost or severely compromised by the proposals. GS 2315, para 22 recognised that the independence of the Church Commissioners was one of the strengths of the current mission and pastoral framework.

### **If the above does not pass delete 6 (5) (and by implication 6)**

*(4) The General Synod may by resolution amend this section so as to add, vary or remove a function of the committee.*

(5) The power to make a resolution under subsection (4) is exercisable by statutory instrument.

Reason:

This body is going to carry the weight of a lot of the current issues of trust in the Church of England. It will be where many of the highly contested questions of parish mergers and church closures will be properly considered and analysed. What it does and how it works needs to be properly the subject of full synodal process, with revision stages and proper debate. Removing this clause would help reassure people that trust is not being abused here.

### **Clause 7**

This section dramatically skews this committee in favour of those institutions of the church which are inclined towards church closures and mergers. How can CENS, which sets national policies that may encourage rationalisation, conceivably have half of the members of the committee (excluding the chair)? At the moment the Mission and Pastoral Committee is the one part of the process which is trusted by parishioners. Bearing in mind all that is said about power imbalance within the church, ensuring that in this most sensitive of areas there will be true impartiality is essential. May I strongly recommend that CENS does not have appointing power to this committee and that a different route – possibly continuing to use the Church Commissioners – be found?

**Insert new 8 (5) (c)**

must have particular regard to the requirements of section 67 of the Ecclesiastical Commissioners Act 1840 relating to the making of additional provision for the cure of souls in parishes where such assistance is most required.

Reason:

This carries over, word for word, into current legislation that which already exists in the National Institutions Measure 1998. It would be a great demonstration of the willingness to build trust should this be included as it would show that the intention here is to clean up current provision and not redirect massive amounts of funds from its original intention. It would also ensure that monies, set aside by Parliament for a particular purpose, were not being redirected in substantial ways.

**9 (4) Delete “not”**

An order under this section which includes provision under subsection (3)(c) is not capable of being amended by the General Synod in a way which would vary—

- (a) the amount to be paid to CENS by the Church Commissioners under section 8, or
- (b) the proposed application or distribution of that amount.

Reason:

General Synod is effectively a devolved legislature, with authority to act as Parliament. Parliament, and the other devolved legislatures, have the ability to amend budgets; so should General Synod.

**Should the previous amendment be passed, add new 9 (4) (c)**

No amendment under this section shall propose an increase in the amount paid to CENS by the Church Commissioners under section 8

(There may be a better way to do this, of course, which learned counsel might propose)

Reason:

It would be worrying for General Synod to order the Church Commissioners to grant more money than would be financially wise or sustainable.

**Clause 12**

To add the Mission, Pastoral & Church Property Committee to the list of retained functions of the Church Commissioners

Reason:

Neither GS 2239 nor GS 2307 unconditionally recommended the transfer of the Church Commissioners functions under the Mission and Pastoral Measure 2011. This function is best retained by the Commissioners on grounds of (i) independence from the episcopal roles under that measure from which it hears appeals, (ii) the existing practice and expertise which the Church Commissioners currently have and (iii) the safeguard that the Church Commissioners have both a fiduciary duty and charitable object towards applying funds for the cure of souls and supporting parish clergy. All these governance benefits would be lost or severely compromised by the proposals. GS 2315, para 22 recognised that the independence of the Church Commissioners was one of the strengths of the current mission and pastoral framework.

It strikes me as gaining nothing to transfer this over to CENS and risks losing so much goodwill and well-earned trust.

This would trigger amendments elsewhere, most especially in the retention of the Third Church Estates Commissioner.

### **Delete clause 18**

Reason:

This is micromanagement of the various institutions. Each has its obligations under the Equality Act, etc. This is goldplating in a way that will create unnecessary administration bureaucracy during an era of collapse in congregations, financial giving, and vocations.

### **Should the previous amendment not pass, new 18 (7)**

Diversity under this clause includes an obligation to ensure a diversity of political views and of church tradition.

Reason:

The thought underlying this clause has at its root that a diversity of background – especially of race, sex, class (although for the church probably not sexuality) – will improve decision making. This would all be undermined if the diverse groups gathered under this clause had no diversity of thought. Ensuring diversity of church tradition will take the sting out of concerns that one group will become too dominant; ensuring diversity of politics recognises that we are a church for the whole nation and not just for the supporters of any one political movement.