

HOUSE OF LORDS

229th Report

Ecclesiastical Committee

**Care of Cathedrals Measure
Mission and Pastoral Measure
Ecclesiastical Fees (Amendment)
Measure**

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The Ecclesiastical Committee

The Ecclesiastical Committee is a statutory Committee appointed under the Church of England Assembly (Powers) Act 1919.

It comprises thirty members, fifteen of whom are Members of the House of Commons, appointed by the Speaker, and fifteen of whom are members of the House of Lords, appointed by the Lord Speaker. The quorum is twelve.

Appointments to the Committee are generally made early in a Parliament. Unless the Speaker or the Lord Speaker decide otherwise, members appointed by them remain on the Committee for the life of the Parliament.

While its powers are those laid down by the Act, the procedures it has adopted are those of a Joint Select Committee.

Current Membership

HOUSE OF LORDS	HOUSE OF COMMONS
Lord Bilston	Tony Baldry
Baroness Butler-Sloss	Sir Stuart Bell
Lord Davies of Coity	Peter Bottomley
Lord Elton	Ben Bradshaw
Lord Glenarthur	Frank Field
Lord Griffiths of Burry Port	Helen Goodman
Lord Judd	Sir Alan Haselhurst
Lord Laming	Oliver Heald
Lord Lloyd of Berwick	Sharon Hodgson
Lord Luke	Simon Hughes
Lord Newby	David Lammy
Baroness Perry of Southwark	Gordon Marsden
Lord Shaw of Northstead	Patrick Mercer
Lord Walpole	Andrew Selous
Lord Williams of Elvel	Gary Streeter

Remit

The Ecclesiastical Committee examines draft Measures presented to it by the Legislative Committee of the General Synod of the Church of England. It reports to Parliament on whether or not it considers the measures to be expedient.

It generally asks members of the General Synod to assist it in its deliberations. In some circumstances a conference of the Ecclesiastical Committee and the Legislative Committee may be convened.

The Church of England Measure on which the Committee has reported is presented to both Houses in its final form at the same time as the Committee makes its report.

Before the Measure becomes law, both Houses must approve motions that the Measure should be presented to the Sovereign for Royal Assent in the form that it was laid before Parliament.

Once both Houses have passed the necessary approval motions, the Measure is presented for Royal Assent and becomes law.

Publications

The reports and proceedings of the Committee are published by The Stationery Office by Order of both Houses. All publications of the Committee are on the internet at www.parliament.uk

Contacts

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229TH REPORT BY THE ECCLESIASTICAL COMMITTEE

The Ecclesiastical Committee has met and considered the

- Care of Cathedrals Measure
- Mission and Pastoral Measure
- Ecclesiastical Fees (Amendment) Measure

referred to it under the provisions of the Church of England Assembly (Powers) Act 1919.

Care of Cathedrals Measure

1. The Care of Cathedrals Measure consolidates, with corrections and minor improvements, the Care of Cathedrals Measure 1990 and a number of subsequent enactments relating to the care of cathedrals. The Comments and Explanations contain a description of the enactments which have been consolidated.
2. **The Committee is of the opinion that the Measure is expedient.**

Mission and Pastoral Measure

3. The Mission and Pastoral Measure consolidates, with corrections and minor improvements, the Pastoral Measure 1983 and a number of subsequent enactments that have supplemented or amended it, and parts of the Dioceses, Pastoral and Mission Measure 2007. The Comments and Explanations contain a description of the enactments which have been consolidated.
4. **The Committee is of the opinion that the Measure is expedient.**

Ecclesiastical Fees (Amendment) Measure

5. The Ecclesiastical Fees (Amendment) Measure amends the Ecclesiastical Fees Measure 1986. The amendments are largely concerned with the legal framework for parochial fees; but changes are also made to the arrangements for setting the fees payable to ecclesiastical judges and legal officers.
6. The main changes to parochial fees are the replacement of the incumbent's fee by a fee payable to the diocesan board of finance, the establishment of a list of services and other matters in respect of which parochial fees may be prescribed (to which reference will be made instead of to the current statutory definition of 'parochial fees'), power for the Archbishops' Council to prescribe fees (including increases) for a period of up to five years, and provision of an express power to prescribe what costs and expenses are included within the statutory fees.
7. For more information about the Measure, see the Comments and Explanations submitted by the Legislative Committee of the General Synod, annexed to this Report.
8. **The Committee is of the opinion that the Measure is expedient.**

MINUTES OF PROCEEDINGS

Tuesday 30 November 2010

Minutes of proceedings on the Care of Cathedrals Measure, Mission and Pastoral Measure and Ecclesiastical Fees (Amendment) Measure at the meeting of the Ecclesiastical Committee held on Tuesday 30 November 2010 at 4.30pm in Committee Room 4A, House of Lords.

Present:

Lord Bilston	Tony Baldry
Baroness Butler-Sloss	Sir Stuart Bell
Lord Davies of Coity	Peter Bottomley
Lord Elton	Ben Bradshaw
Lord Judd	Frank Field
Lord Laming	Sir Alan Haselhurst
Lord Lloyd of Berwick	Oliver Heald
Lord Newby	Helen Goodman
Lord Shaw of Northstead	Simon Hughes
Lord Walpole	Gordon Marsden
Lord Williams of Elvel	Andrew Selous
	Gary Streeter

Lord Lloyd of Berwick in the Chair.

Mr Peter Milledge, Counsel to the Chairman of Committees, in attendance.

Care of Cathedrals Measure

Mission and Pastoral Measure

Ecclesiastical Fees (Amendment) Measure

The following representatives of the General Synod assisted the Committee in its deliberations:

The Rt. Revd James Langstaff, (Bishop of Rochester)

Revd Moira Astin

Mr Tim Allen

Rt Worshipful Timothy Briden (Vicar-General, Province of Canterbury)

Revd Alexander McGregor (Deputy Legal Adviser to the General Synod)

Mr William Fittall (Secretary General)

The Committee deliberated.

It was moved that the Care of Cathedrals Measure be deemed expedient.

The motion was *agreed to*.

It was moved that the Mission and Pastoral Measure be deemed expedient.

The motion was *agreed to*.

It was moved that the Ecclesiastical Fees (Amendment) Measure be deemed expedient.

The motion was *agreed to*.

The Committee adjourned.

LEGISLATIVE COMMITTEE OF THE GENERAL SYNOD: COMMENTS AND EXPLANATIONS ON THE CARE OF CATHEDRALS MEASURE

INTRODUCTION

1. The Legislative Committee of the General Synod, to which the Measure entitled the Care of Cathedrals Measure has been referred, has the honour to submit the Measure to the Ecclesiastical Committee with these Comments and Explanations. Summary of effect of the Measure.

The Measure consolidates, with corrections and minor improvements, the following enactments: the Care of Cathedrals Measure 1990, the Care of Cathedrals (Supplementary Provisions) Measure 1994, the Care of Cathedrals (Amendment) Measure 2005 and provisions contained in the Dioceses, Pastoral and Mission Measure 2007 and the Church of England (Miscellaneous Provisions) Measure 2010.

2. The Measure was introduced into the Synod for First Consideration in July 2009. The Synod's Business Committee determined that the First Consideration stage of the Measure should be subject to the procedure for deemed approval. That meant that unless 25 members gave notice that they wished the Measure to be debated, it would be deemed to have had First Consideration without debate. No notice of a wish to debate the Measure having been given, it was accordingly deemed to have received First Consideration and automatically committed to a Revision Committee.
3. The Revision Committee for the Measure did not receive any proposals for the amendment of the Measure. However it did make some drafting amendments on the advice of the Synod's legal staff. The Synod itself made some further drafting amendments at the Revision Stage at the February 2010 group of sessions.
4. The Steering Committee for the Measure took the view that a Final Drafting stage was unnecessary and advised the Synod accordingly. The Final Approval stage was taken at the February 2010 group of sessions when the Measure was approved unanimously in all three Houses.
5. The voting on the Measure at the end of the Final Approval stage was as follows –

	Ayes	Noes
Bishops	14	0
Clergy	72	0
Laity	97	0

THE PROVISIONS OF THE MEASURE AND THE MAIN ISSUES CONSIDERED BY THE GENERAL SYNOD

6. The Measure consolidates in a single Measure the Care of Cathedrals Measure 1990 and a number of subsequent enactments that have supplemented or amended it. A brief description of the enactments being consolidated follows.
7. The Care of Cathedrals Measure 1990 made provision for the care and conservation of cathedral churches and their precincts. It provided for the establishment of approval bodies – the Cathedrals Fabric Commission for England and local fabric advisory committees – whose approval is required before alterations and other categories of works can be carried out in respect of a cathedral. It made provision for appeals from the decisions of those approval bodies. It also required the compilation and maintaining of inventories of objects belonging to cathedrals and the preparation of precinct plans.
8. The Care of Cathedrals (Supplementary Provisions) Measure 1994 made provision for enforcement of the controls contained in the 1990 Measure by giving the bishop power to prevent or stop contraventions of those controls and to take steps to restore the status quo where necessary.
9. The Care of Cathedrals (Amendment) Measure 2005 made a number of amendments to the 1990 Measure which extended the scope of the existing controls, extended the duties of the approval bodies and made improvements to the working of the controls exercised by them. It also made other, miscellaneous amendments, relating to the care and conservation of cathedrals.
10. Section 63(5) of the Dioceses, Pastoral and Mission Measure 2007 made a very minor amendment relating to the duty of the Cathedrals Fabric Commission for England to maintain a library jointly with the Church Buildings Council.
11. Section 10(3) of the Church of England (Miscellaneous) Provisions Measure 2010 made amendments to the 1990 Measure to bring works that would materially affect any human remains within cathedral precincts within the controls established by the 1990 Measure and made related amendments.
12. The consolidation Measure, when introduced in the Synod, was – in accordance with the usual practice – accompanied by an explanatory memorandum. The memorandum explained that the Measure had been designated a consolidation Measure by the Business Committee in accordance with the Standing Orders of the General Synod. It further explained that the Measure consolidated a number of existing enactments with corrections and minor improvement and that under the Standing Orders of the General Synod, “corrections and minor improvements” was defined to mean “an amendment of which the sole effect is to:
 - (i) resolve an ambiguity;
 - (ii) resolve doubt;
 - (iii) bring an obsolete provision into conformity with modern practice;
 - (iv) remove an unnecessary provision or an anomaly which is not of substantial importance; or
 - (v) improve the form or manner in which the law is stated:or to make any transitional provision necessary in consequence of an amendment under (i) to (v) above.”

13. The explanatory memorandum was accompanied by a statement from Standing Counsel to the General Synod relating to the corrections and minor improvements that had been incorporated in the Measure. A copy of that statement is appended to these comments and explanations.

CONCLUSION

14. The Legislative Committee invites the Ecclesiastical Committee to issue a favourable report on the Measure. In the event of the Ecclesiastical Committee requiring any further information or explanation, the Legislative Committee stands ready to provide this.

On behalf of the Legislative Committee

Philip Giddings

(Deputy Chairman)

October 2010

DRAFT CARE OF CATHEDRALS MEASURE

Corrections and Minor Improvements

Changes in drafting style

15. The long standing practice has been to draft Measures in broadly the same style as is adopted by the Parliamentary Counsel when drafting Acts of Parliament. In recent times Parliamentary Counsel have endeavoured to adopt a simpler and more direct style of drafting and Standing Counsel has followed this practice. An example of this approach is that it is no longer considered necessary to refer to “section x above or below” or to “Schedule Y to this Measure”. I have adapted the drafting of the Care of Cathedrals Measure 1990 and the amending Measures consolidated in this Measure to accord with the modern practice.

Corrections and minor improvements

16. The principal changes under the heading of “corrections and minor improvements” as set out in Standing Order 47(d) are as follows –
 - There has been some doubt whether the term “precinct”, when used with reference to cathedral churches, includes the land on which the cathedral church is situated, because clause 25(1) (and its predecessor section 13(3) of the 1990 Measure) refers to the land “surrounding” the cathedral church. As a matter of policy, archaeological or human remains situated in or under a cathedral church should be within the scope of the controls imposed by the Measure. Rather than extend the definition of “precinct” to include the land on which a cathedral church is situated, which might not, in all cases, achieve the right result, I have, where appropriate, for example in clauses 2(1)(a)(iii) and (iv) and 3(2)(a) and (3)(c), referred to archaeological or human remains “in or under” the cathedral church;
 - Doubts have been expressed whether the provisions in clause 10 dealing with appeals to the Cathedrals Fabric Commission and those in clause 10 relating to reviews by the Commission of Review of decisions made by the Cathedrals Fabric Commission accurately reflect the intention that such appeals and reviews are final and not subject to any further appeal or review. I have adjusted the wording of clauses 10(4) and 11(5) to make the intention clearer; and
 - Where appropriate I have endeavoured to avoid long passages which appear in the 1990 Measure, as amended, which are difficult to understand, by restating them in tabular form or splitting the passages into different subsections. Examples are in clauses 14 (section 10C of the 1990 Measure) and 24(1) (section 13 of the 1990 Measure). Inventories and precinct plans are now dealt with in different clauses (24 and 25), instead of the present single and rather indigestible section (13).

Sir Anthony Hammond, KCB, QC

Standing Counsel to the General Synod

LEGISLATIVE COMMITTEE OF THE GENERAL SYNOD: COMMENTS AND EXPLANATIONS ON THE MISSION AND PASTORAL MEASURE

INTRODUCTION

1. The Mission and Pastoral Measure consolidates, with corrections and minor improvements, the Pastoral Measure 1983 and Parts 3, 4, 5 and section 61 of the Dioceses, Pastoral and Mission Measure 2007, together with other related statutory provisions listed in Schedule 9 of the Measure.
2. The Legislative Committee of the General Synod, to which the Measure entitled the Mission and Pastoral Measure has been referred, has the honour to submit the Measure to the Ecclesiastical Committee with these Comments and Explanations.

Summary of effect of the Measure

3. The Measure consolidates, with corrections and minor improvements, the Pastoral Measure 1983 and Parts 3, 4, 5 and section 61 of the Dioceses, Pastoral and Mission Measure 2007, together with other related statutory provisions listed in Schedule 9 of the Measure.

Proceedings in the General Synod

4. The Measure was introduced into the Synod for First Consideration in July 2009. The Synod's Business Committee determined that the First Consideration stage of the Measure should be subject to the procedure for deemed approval. That meant that unless 25 members gave notice that they wished the Measure to be debated, it would be deemed to have had First Consideration without debate. No notice of a wish to debate the Measure having been given, it was accordingly deemed to have received First Consideration and automatically committed to a Revision Committee.
5. The Revision Committee for the Measure received a small number of proposals for the amendment of the Measure. As a consequence, the Revision Committee made some drafting amendments.
6. The Steering Committee for the Measure took the view that a Final Drafting stage was unnecessary and advised the Synod accordingly. The Final Approval stage was taken at the February 2010 group of sessions when the Measure was approved with overwhelming majorities in all three Houses.
7. The voting on the Measure at the end of the Final Approval stage was as follows –

	Ayes	Noes
Bishops	13	0
Clergy	72	1
Laity	78	0

THE PROVISIONS OF THE MEASURE AND THE MAIN ISSUES CONSIDERED BY THE GENERAL SYNOD

8. The Measure consolidates in a single Measure the Pastoral Measure 1983 and a number of subsequent enactments that have supplemented or amended it. A brief description of the enactments being consolidated follows.
9. The 1983 Measure (as amended) – and, accordingly, the consolidation Measure – makes provision for the establishment of mission and pastoral committees in each diocese, for the making of schemes and orders to effect changes in benefices, parishes, extra-parochial places and archdeaconries and deaneries, the closure of buildings for regular public worship and for numerous administrative and miscellaneous matters.
10. The consolidation Measure, when introduced in the Synod, was – in accordance with the usual practice – accompanied by an explanatory memorandum. The memorandum explained that the Measure had been designated a consolidation Measure by the Business Committee in accordance with the Standing Orders of the General Synod. It further explained that the Measure consolidated a number of existing enactments with corrections and minor improvements and that under the Standing Orders of the General Synod, “corrections and minor improvements” was defined to mean “an amendment of which the sole effect is to:
 - resolve an ambiguity;
 - resolve doubt;
 - bring an obsolete provision into conformity with modern practice;
 - remove an unnecessary provision or an anomaly which is not of substantial importance; or
 - improve the form or manner in which the law is stated:together with any transitional provision necessary in consequence of an amendment under (i) to (v) above.”
11. The explanatory memorandum was accompanied by a statement from Standing Counsel to the General Synod relating to the corrections and minor improvements that had been incorporated in the Measure. A copy of that statement is appended to these comments and explanations.
12. The amendments made by the Revision Committee included the omission of redundant provisions, updating the drafting of provision for the extension of the Measure to the Isle of Man and changing the short title from “Pastoral and Mission Measure” to “Mission and Pastoral Measure” in order to express the priority that had been given to mission by amendments effected by the Dioceses, Mission and Pastoral Measure 2007. No further amendments were made by the Synod.

CONCLUSION

13. The Legislative Committee invites the Ecclesiastical Committee to issue a favourable report on the Measure. In the event of the Ecclesiastical Committee requiring any further information or explanation, the Legislative Committee stands ready to provide this.

On behalf of the Legislative Committee

Philip Giddings

(Deputy Chairman)

October 2010

DRAFT MISSION AND PASTORAL MEASURE

Corrections and Minor Improvements

Changes in drafting style

1. The long-standing practice has been to draft Measures in broadly the same style as is adopted by Parliamentary Counsel when drafting Acts of Parliament. In recent times Parliamentary Counsel have endeavoured to adopt a simpler and more direct style of drafting and Standing Counsel has followed this practice. In the Pastoral Measure 1983, for example, words such as “aforesaid” and “the said” are used where it is not necessary to do so to avoid doubt. I have, therefore, tried to modernise the use of archaic language of that kind in the draft Measure. Furthermore the drafting style in 1983 used the masculine gender where the context could equally encompass the feminine gender, relying on section 6 of the Interpretation Act 1978. As in other recent Measures, I have used either gender neutral language or the feminine pronoun or adjective, where appropriate.

Corrections and minor improvements

2. The extensive and complex amendments made to the Pastoral Measure 1983 over many years, particularly by the Dioceses, Pastoral and Mission Measure 2007 and the Ecclesiastical Offices (Terms of Service) Measure 2009, have resulted in some minor inaccuracies, inconsistencies and omissions. I have made some changes to remedy these, whilst taking care not to stray beyond the scope of Standing Order 47(d). Examples of this approach are contained in clauses, 3, 7, 12, 17 and 34.

Sir Anthony Hammond, KCB QC

Standing Counsel to the General Synod

LEGISLATIVE COMMITTEE OF THE GENERAL SYNOD: COMMENTS AND EXPLANATIONS ON THE ECCLESIASTICAL FEES (AMENDMENT) MEASURE

INTRODUCTION

1. The Legislative Committee of the General Synod, to which the Measure entitled the Ecclesiastical Fees (Amendment) Measure has been referred, has the honour to submit the Measure to the Ecclesiastical Committee with these Comments and Explanations.
2. The Ecclesiastical Fees (Amendment) Measure amends the Ecclesiastical Fees Measure 1986 ('the 1986 Measure'). The amendments are largely concerned with the legal framework for parochial fees; however, Part 2 of the draft Measure amends the current provisions for the constitution of the Fees Advisory Commission and the making of Ecclesiastical Judges and Legal Officers (Annual Fees) Orders.
3. The main changes to parochial fees are—
 - the replacement of the incumbent's fee by a fee payable to the diocesan board of finance
 - the establishment of a list of services and other matters in respect of which parochial fees may be prescribed (to which reference will be made instead of the current statutory definition of 'parochial fees')
 - power for the Archbishops' Council to prescribe fees (including increases) for a period of up to five years
 - provision of an express power to prescribe what costs and expenses are included within the statutory fees.
4. The remainder of this paper is in three parts. First, in **paragraphs 5 to 16** it summarises the reports and discussions which led up to the introduction of the draft Measure into the General Synod. Second, in **paragraphs 17 to 43** it sets out what the Measure as presented to Parliament provides. Third, in **paragraphs 44 to 144** it summarises the proceedings in the General Synod as the draft Measure was considered, revised and finally approved. The Legislative Committee invites the Ecclesiastical Committee, after having considered the material presented here, to issue a favourable report on the Measure. In the event of the Ecclesiastical Committee requiring any further explanation, the Legislative Committee stands ready to provide this.
5. The remainder of this paper is in three parts. First, in **paragraphs 5 to 16** it summarises the reports and discussions which led up to the introduction of the draft Measure into the General Synod. Second, in **paragraphs 17 to 43** it sets out what the Measure as presented to Parliament provides. Third, in **paragraphs 44 to 144** it summarises the proceedings in the General Synod as the draft Measure was considered, revised and finally approved. The Legislative Committee invites the Ecclesiastical Committee, after having considered the material presented here, to issue a favourable report on the Measure. In the event of the Ecclesiastical Committee requiring any further explanation, the Legislative Committee stands ready to provide this.

BACKGROUND TO THE MEASURE

Parochial fees

6. The amendments to the law relating to parochial fees give effect, so far as legislation is required in order to do so, to the recommendations contained in the report entitled *Parochial Fees: a supplementary report from the Deployment, Remuneration and Conditions of Service Committee* dated June 2008 (GS 1703) ('the DRACSC Report') which followed an earlier report of the Fees Review Group issued in January 2008 (GS Misc 877).
7. The following paragraphs from the DRACSC Report summarised the existing legal position with regard to parochial fees—
8. The law has never given the clergy a *general* right to require fees for the performance of ecclesiastical duties. Parochial fees began as payments made to parochial clergy, initially on a voluntary basis and subsequently in accordance with local custom. In order to establish a legal right to fees an incumbent had to show that a custom had existed in the parish in question from time immemorial that certain fees were payable in relation to the performance by the clergy of occasional offices. Other than what could be shown to be due by legally-recognised custom, it was not lawful (either under canon law or common law) for the clergy to require payment for the performance of their pastoral and sacramental duties. Difficulties could arise where local custom was unclear. The value of customary fees declined as inflation began to affect the value of money from the sixteenth century. New parishes, of course, had no ancient customs relating to fees. Legislation was enacted from the eighteenth century onwards to address some of these problems; however, it was not until the second half of the twentieth century that legislation provided for fees tables to be established on a national basis.
9. The first legislation that provided for nationally applicable fees was enacted in 1962. That was replaced by the Ecclesiastical Fees Measure 1986 which remains in force and under which Parochial Fees Orders continue to be made annually. Unfortunately, the legislative framework contained in the 1986 Measure is substantially defective, and the General Synod's Legal Advisory Commission, having examined the Measure in the light of a number of questions that frequently arise in practice, has called for fresh legislation. Particularly problematic is the definition of "parochial fees" contained in the 1986 Measure: it is difficult to make sense of that definition with the result that the scope of the power to prescribe – and therefore to charge – parochial fees is not as clear as it ought to be.
10. The defects of the current legislation mean (among other things) that –
 - it is not clear whether the 1986 Measure adequately covers funeral services that take place at crematoria rather than in parish churches;
 - it is not clear that fees are payable at all in respect of services taken by non-parochial clergy, and the basis on which such clergy receive fees is not always readily apparent;
 - it is doubtful whether a fee may lawfully be charged at all where no fee is fixed in a fees order (for example for a service of prayer and dedication after civil marriage);

- it is doubtful whether the making of “additional charges” over and above the statutory fees is lawful.
11. There is substantial doubt as to the range of matters in relation to which fees may be prescribed, and as to whether fees are payable at all in some circumstances where they are commonly charged. This doubt leaves some aspects of current practice in relation to fees open to the possibility of legal challenge.
 12. The DRACSC Report accordingly concluded that a new legislative framework for parochial fees was needed and that it should deal with the deficiencies of the current legislation, in particular by making clear the range of matters for which fees may be prescribed and the circumstances in which they are payable.
 13. It also concluded that a new legislative framework should ensure that the legal recipients of parochial fees correspond to the bodies that are in practice already the effective beneficiaries of those fees. In the case of fees payable to parochial church councils there was no difficulty and the position could broadly remain as at present.
 14. What happened in practice was, and is, rather different from the formal legal position whereby fees were legally payable to incumbents. Incumbents either assigned all their fees to the diocesan board of finance (‘DBF’) and received the full stipend, or they declared the amount that they had received in fees and their stipend was reduced accordingly. In either case, it was the DBF (and usually the stipends fund), rather than the individual incumbent, who was effectively the beneficiary of these fees. The DRACSC Report concluded that it would be sensible and logical if the legislative framework reflected this position by providing that what were currently labelled “incumbent’s fees” became fees legally payable to the DBF, even though it might make sense for them to be *collected* locally.
 15. The DRACSC Report made six recommendations as to the content of new legislation as follows—
 - the replacement of the current, defective, definition of “parochial fees” with a definition based upon a list of services and other duties carried out by the clergy and authorised lay persons;
 - that fees continue to be payable to parochial church councils, but that fees currently legally payable to incumbents become legally payable to the diocesan board of finance which currently has the benefit of those fees (subject to transitional provisions);
 - that fees orders be capable of continuing for up to five years, with inbuilt increases;
 - that incumbents, team vicars and priests in charge be given an express power to waive fees (subject to a requirement of consultation with a person appointed by the bishop for that purpose);
 - that fees for the funerals of children under 16 be abolished;
 - that the power to prescribe fees should expressly include the power to specify what a particular fee covers.
 16. Those recommendations were endorsed by the General Synod in July 2008 and provision to give effect to them accordingly included in the Measure as introduced in the Synod in February 2009.

Ecclesiastical judges' and legal officers' fees

17. The Fees Advisory Commission ('FAC') is currently established by section 4 of the 1986 Measure. It currently comprises six members as follows—
 - a judge appointed by the Lord Chancellor,
 - a barrister appointed by the chairman of the Bar Council,
 - a solicitor appointed by the president of the Law Society,
 - a member or officer of the Archbishops' Council nominated by the Council,
 - a Church Commissioner or officer of the Commissioners nominated by them, and
 - a member of the General Synod appointed by the Synod's appointments committee.
18. The functions of the FAC under the 1986 Measure are to make recommendations as to the fees to be paid to ecclesiastical judges and legal officers (i.e. chancellors and diocesan registrars) in respect of their duties of office and to make orders (which take the form of statutory instruments) to give effect to their recommendations.
19. In February 2005 the General Synod received a report from the FAC (GS 1562) containing proposals for the reform of its constitution and functions. That report was subsequently considered by the Archbishops' Council. The Council concluded that the functions of the FAC could be most effectively discharged by a body which included within its membership equal representation of both the users, and the providers, of the legal services to which the fees established by the FAC related.
20. The Archbishops' Council therefore proposed that the 1986 Measure should be amended to provide for the FAC to comprise nine members, of whom a diocesan bishop and a Church Commissioner (or nominated officer) and the chairman of a diocesan board of finance would represent users of the legal services concerned, a diocesan chancellor, a provincial registrar and a diocesan registrar would represent the providers of the legal services and three independent members would be appointed by the General Synod's Appointments Committee. One of the independent members would be the chair of the FAC as reconstituted.
21. On the instructions of the Archbishops' Council, provision to give effect to its proposals was included in the Measure as introduced in the Synod in February 2009.

PROCEEDINGS IN THE GENERAL SYNOD

22. The Measure was introduced into the Synod for First Consideration in February 2009. It was received positively by the Synod and committed to a Revision Committee. It received detailed scrutiny from the Revision Committee and then from the Synod at the Revision Stage in July 2009. The process of revision resulted in a number of amendments being made but these did not result in any alteration to the overall policy of the Measure.
23. A small number of further, technical, amendments were made to the Measure at the Final Drafting stage which was taken at the February 2010 group of sessions of the Synod. The Final Approval stage immediately followed when the Measure received overwhelming majorities in all three Houses.
24. The voting on the Measure at the end of the Final Approval stage was as follows—

	Ayes	Noes
Bishops	22	0
Clergy	99	10
Laity	115	9

THE PROVISIONS OF THE MEASURE

Section 1 – Preparation of Parochial Fees Orders

25. Section 1(1) substitutes new provision for section 1 of the 1986 Measure.
26. Under the substituted provisions the Archbishops' Council will continue to make Parochial Fees Orders subject to the same procedure as at present. That involves the Archbishops' Council laying a draft of an order before the General Synod for approval by it, whether with or without amendment. If the Synod approves a draft order without amendment the Archbishops' Council proceeds to make the order. If a draft order is approved by the Synod with amendment the Archbishops' Council may either make the order as so amended or withdraw it for further consideration. The Statutory Instruments Act 1946 applies to a Parochial Fees Order with the effect that it must be laid before both Houses of Parliament and is subject to annulment in pursuance of a resolution of either House.
27. Where specifically so provided, fees prescribed by Parochial Fees Orders will continue to be payable to the relevant parochial church council ('PCC'). But fees that are currently payable to an incumbent will become payable to the relevant diocesan board of finance ('DBF') instead. (See new subsection (1)¹.) There will therefore cease to be an incumbent's fee; this is, however, subject to transitional provisions that will permit incumbents in office at the time the new provisions come into force to retain their entitlement to fees if they have not already assigned them to the DBF (see section 5(2)).
28. The Archbishops' Council will have power to prescribe parochial fees in respect of any of the matters set out in the list contained in the new Schedule A1 (inserted into the 1986 Measure by section 1(2)) where those duties are carried out by a clerk in holy orders, or by a deaconess, reader or lay worker. (See new subsection (1).) Subject to the approval of the General Synod and Parliament (under the negative procedure for statutory instruments), the Council will have power to amend the list of services and other matters in Schedule A1 by Order. (See new subsection (6).) This will mean that it will not be necessary to resort to a further amending Measure should it subsequently be considered desirable to prescribe fees in relation to a service or other matter not currently listed.
29. The Council will have the power to set any fee at nil should it think fit to do so. (See new subsection (2).) In making a Parochial Fees Order the Council will have power to include within the Order incidental provision, including provision specifying costs and expenses that are included in the statutory fee. (See new subsection (3).) It is envisaged that this power might be used to specify, for example, that heating and lighting are included in the fee.
30. It will be possible for a Parochial Fees Order to prescribe fees for a period or periods not exceeding 5 years in total; and an Order may contain provision prescribing increases in any of the fees over the period of the Order either by reference to an arithmetical formula or a formula related to a published index such as the retail prices index (or a combination of these formulas). (See new subsection (4).)

¹ References to new subsections are references to the subsections of the new section 1 of the 1986 Measure substituted by section 1(1) of the present Measure.

31. If, for any reason, a new Order has not been made before a current Order expires, the fees contained in the current order will continue in force until the new Order is made and comes into force. (See new subsection (5).)
32. Provision is made (in new subsection (7)) for identifying the PCC and DBF to which any fee is payable. Because burials and funerals do not always take place in a church or churchyard, express provision is made to deal with such cases. Where a burial or funeral does take place in a church or churchyard then the fees are payable to the PCC of the parish, and the DBF of the diocese, where that church or churchyard are situated. But where a burial or funeral takes place elsewhere (at a cemetery or crematorium) then the fees are payable to the PCC of the parish, and the DBF of the diocese, where the deceased was on the electoral roll or – where the deceased was not on an electoral roll – where the deceased had his/her usual place of residence. Where the deceased was on more than one electoral roll, fees are shared.
33. In relation to services other than burials and funerals (e.g. marriages) the fees are payable to the PCC of the parish, and the DBF of the diocese, where the service takes place. (See new subsection (7).)
34. Where the parish concerned has a cathedral as its parish church all parochial fees are payable to the corporate body of the cathedral. (See new subsection (8)).
35. The incumbent (or priest in charge) will have a discretion to waive fees in particular cases. (See new subsection (9).) In the case of a fee payable to the PCC the incumbent must consult the churchwardens before waiving that fee. (See new subsection (10).) Provision is made for the rural dean to exercise the discretion to waive fees where there is no incumbent or priest in charge. Corresponding provision is made (in new subsection (11)) for the waiver of fees payable to a parish church cathedral.
36. New subsections (12) to (15) make provision as to the payment of parochial fees that is further to the new provision substituted by section 1(1) of the Measure.

Section 1(2)

37. Section 1(2) of the Measure inserts new Schedule A1 (Table of Matters to which Parochial Fee Relate) into the 1986 Measure.

Section 2 – Amendment of section 2 of the 1986 Measure

38. Section 2 amends the 1986 Measure so that the procedure that currently applies to the making of a Parochial Fees Order (i.e. laying a draft order before General Synod for approval with or without amendment, followed by the Archbishops' Council making the Order – subject to the power of either House of Parliament to annul it) will also apply to the making of any Order (called a 'Scheduled Matters Amending Order') amending the list of matters in respect of which fees may be prescribed set out in the new Schedule A1.

Section 3 – Constitution of Fees Advisory Commission and Ecclesiastical Judges and Legal Officers (Annual Fees) Orders

39. This clause brings into legislative effect the proposals for reform of the constitution and functions of the Fees Advisory Commission ('FAC') that were reported to the Synod as mentioned in paragraphs 11 - 15 above.

40. Clause 3(a) substitutes a new section for section 4 of the 1986 Measure. This will establish a Fees Advisory Commission with a tripartite membership of nine, representing, in equal proportion, users and providers of legal services and an independent element. Users will be represented by a diocesan bishop, a Church Commissioner (or nominated officer) and the chair of a DBF, and providers by a diocesan registrar, a diocesan chancellor and a provincial registrar. The three independent members must include at least one member of the House of Clergy or the House of Laity of the General Synod. The Chair of the Commission will be one of the independent members, chosen by the Commission. A quorum will require at least one member from each of the three groups to be present.
41. Clause 3(b) substitutes a new subsection for section 5(1) of the 1986 Measure, which strengthens the Commission's functions by imposing upon it an obligation keep itself informed of the duties undertaken by registrars and ecclesiastical judges are to be covered by the fees it recommends.

Section 4 – Consequential amendments and repeals

42. Section 4 contains provision for consequential amendments and repeals of other enactments.
43. Section 3 of the 1986 Measure will be repealed since its provisions will be redundant once the provisions of the draft Measure come into force. The definition of 'parish' in section 10 of the 1986 Measure will no longer be required and will therefore be omitted; and the definition of "parochial fees" in that section is replaced with a new definition relating to the list-based provisions of the new Measure.
44. Subsection (2) and Schedule 2 make consequential amendments to other legislation.
45. Subsection (3) amends section 20(1) of the Marriage Act 1949 so that, when licensing a public chapel for marriages, a bishop will no longer be able to include provision in the relevant licence in relation to fees. This is because such chapels come within the general framework of parochial fees under the provisions of the new Measure.

Section 5 – Transitional Provisions

46. Under subsection (1) existing members of the Fees Advisory Commission will continue to hold office until a new member is appointed to fill their place under the amended provisions contained in Part 2 of the draft Measure.
47. Under subsection (2) an incumbent who holds office when the new provisions relating to parochial fees come into force and who has not already assigned his fees to the DBF will be able to retain his entitlement to receive fees if he notifies the bishop in writing within 6 months of section 5 coming into force.
48. Under subsection (3) the Parochial Fees Order that is in force when the new provisions relating to parochial fees come into force (i.e. a Parochial Fees Order made under the old provisions) will continue in force until it is replaced by a new Order made under the new provisions.

Section 6 – Citation, commencement and extent

49. Section 6 makes provision for the citation, commencement and extent of the Measure. These take the usual form for Measures.

Schedule 1 – Schedule inserted as Schedule A1 to the 1986 Measure – Table of Matters to which Parochial Fees relate

50. Schedule 1 sets out the new Schedule A1 which the Measure inserts in the 1986 Measure. Part 1 contains a “Table of Matters to which Parochial Fees Relate” and thus gives effect to the recommendation referred to in paragraph 9(a) above for “the replacement of the current, defective, definition of “parochial fees” with a definition based upon a list of services and other duties carried out by the clergy and authorised lay persons”. Part 2 contains explanatory notes on Part 1.

Schedule 2 – Consequential Amendments

51. Schedule 2 contains amendments that are consequential upon the substantive provisions of the Measure.

MATTERS RAISED BEFORE THE REVISION COMMITTEE AND THE GENERAL SYNOD

Section 1 – Preparation of Parochial Fees Orders

52. The Revision Committee received a number of submissions relating to section 1. For convenience, it considered the submissions in groups, by subject matter. A summary of those submissions, and the Revision Committee's consideration of them, follows.

Group A: Proposals not to replace incumbent's fee with a fee payable to the DBF

53. Proposals to the effect that the incumbent's fee should not be replaced with a fee payable to the diocesan board of finance were received from four members of the Synod.
54. One member proposed that Part 1 of the Measure (Parochial Fees) should simply be left out on the basis that it would be wrong to provide for fees to be payable to the diocesan board of finance. In particular the member considered the arrangements made between those to whom the ministrations of the Church are provided and the minister in question to be contractual in nature and the fee to be a payment for professional services rendered.
55. The Revision Committee was advised that that did not accurately reflect the current legal position. Under the current law, the only clergy to whom parochial fees were legally due were the incumbents of benefices. Unbeneficed clergy (including priests-in-charge, assistant curates and retired clergy with permission to officiate) had no legal right to parochial fees at all and if any fee (or part of a fee) was currently remitted to them, that was lawful only where it took place with the agreement of the relevant incumbent or, where the incumbent had assigned his fees (as would usually be the case), of the relevant diocesan board of finance.
56. The Committee was provided with advice as to the legal history of parochial fees. It was advised that parochial fees had never arisen on a contractual basis, having only ever been payable either on the basis of a legally enforceable custom or, more recently, on the authority of statute. Parochial fees were therefore not (and never had been) in the same legal category as, for example, doctors' or lawyers' fees (which do arise by virtue of a contractual agreement).
57. The same member suggested that making the diocesan board of finance the legal recipient of parochial fees would be a breach of the "right in general law of any person to enter into a contract to carry out services and to receive payment" and of "human rights law".
58. The Committee was advised that it had never been lawful for the clergy to make the celebration of the sacraments or the performance of other ministrations of the Church (such as the solemnizing of matrimony or the burial of the dead) conditional upon the payment of money. Doing so was prima facie simony and amounted to the commission of an ecclesiastical offence. Incumbents were in the past entitled to receive parochial fees only because Canon law gave recognition to local customs regarding such fees where such customs existed. Incumbents were now entitled to receive fees on the authority of statute. But it remained the case that there was no general

legal right on the part of the clergy to enter into contracts with the laity for payment in return for the ministrations of the Church.

59. The Committee was further advised that it was not legally open to the clergy of the Church of England to operate on what amounts to a 'freelance' basis. All clerks in holy orders were bound by the Canons of the Church of England (which form part of the general law). Canon C 8 provided that clergy might officiate in any place only if they had the authority of the bishop of the diocese to do so. That left no scope for independent ministry by clergy of the Church of England. An Anglican clergyman/woman could not, therefore, lawfully claim to be taking a funeral in a private, unofficial capacity, and accept payment for his or her services on that basis, rather than as a clerk in holy orders.
60. Reference was made by the member to a possible breach of "human rights law" if the clergy were not free to contract for the provision of their ministry. When speaking to his proposals he referred to Article 1 of the First Protocol to the Human Rights Convention (which provides a right not to be deprived of one's property without compensation). The Committee received legal advice that making fees payable to diocesan boards of finance rather than to incumbents, in accordance with the Measure, would not amount to a breach of any article of the Human Rights Convention. It was doubtful whether Article 1 of the First Protocol was engaged: it was far from clear that an incumbent's right to statutory fees amounted to "property" and in any event the receipt of a stipend would almost certainly meet the requirement for compensation (assuming it to be applicable). But the matter was put beyond doubt by the transitional provisions in clause 5(2) which would allow any existing incumbent who had not already assigned his fees to the DBF to opt to retain them.
61. The same member also raised what he saw as deficiencies with Part 1 of the Measure. He suggested that the Measure would make it more difficult for retired clergy to receive remuneration for undertaking occasional duties; that it would make it more difficult to waive fees; that the Measure seemed to cover all funerals in crematoria irrespective of whether they were Church of England funerals; and that it was questionable whether funeral directors would be willing to co-operate with the new arrangements in which case the collection of fees would become more difficult.
62. The Revision Committee was advised that the Measure should not make it any more difficult for retired clergy to be remunerated: as the law already stood, retired clergy could only lawfully receive fees with the agreement of the DBF (save in the small minority of cases where fees had not been assigned). It was advised that the Measure, for the first time, provided an express power to waive fees (which incumbents almost certainly do not have at present where they have assigned their right to fees to the DBF). It was advised that the provision in the new section 1(1) – which referred to fees being payable in respect of matters that "relate to duties carried out by a clerk in holy orders or by a duly licensed deaconess, reader or lay worker" – meant that it was only Church of England funerals that were caught by the Measure. The Committee was also informed that the policy behind the Measure had been formulated in the light of consultation with the National Association of Funeral Directors who were in favour of what the Measure would achieve.
63. Another member submitted that the current law should not be amended and that incumbents should simply keep, and not assign, the fees to which they

were currently entitled. He put forward a number of reasons for this suggestion. First that fee income was now a much smaller proportion of the income that goes towards paying clergy stipends than used to be the case; secondly that there would be a saving in respect of National Insurance contributions if individual incumbents simply retained their fees; thirdly that their doing so would save administration time and costs for dioceses; fourthly, that this would remove the need for the draft Measure, thereby saving resources; and finally that incumbents retaining their fees would be consistent with the position of the clergy as office holders.

64. Another member was “far from convinced of the need to change those to whom parochial fees are payable”. He made alternative suggestions as to how any under-recovery of fees might be addressed (on the assumption that that was the mischief with which this aspect of the Measure is concerned).
65. Another member proposed that the reference in the new section 1(1) to ‘a diocesan board of finance’ should be replaced with a reference to ‘the officiating minister’ and that the new section 1(7) should be amended to provide a definition of ‘officiating minister’ in place of the definition of ‘diocesan board of finance’. The effect of that would have been that a fee would be payable to (and belong to) the person who conducted the service to which that fee related.
66. The Steering Committee for the Measure advised the Revision Committee that it did not support any of the proposals for amendment in Group A. Making what were currently incumbents’ fees payable to the DBF was a central plank of the policy behind the Measure and had recently been approved by the General Synod. The Revision Committee agreed and rejected each of the proposals in Group A. Save for the amendment mentioned in the next paragraph, there was no attempt to re-introduce any of these proposals at the Revision Stage in full Synod.
67. When the Measure reached the Synod at the Revision Stage an amendment was moved to substitute “an incumbent” for “a diocesan board of finance” in the new subsection (1). The effect of that amendment would have been to retain the incumbent’s fee instead of making such fees payable to the DBF (as provided for in the draft Measure). After being debated, the amendment was put and lost.
68. Group B: Proposals that the statutory fees should not cover (certain) costs and expenses
69. A number of submissions suggested either that the power to make a Parochial Fees Order should not (as provided for in the draft Measure) contain a power to specify that certain costs and expenses were included in the prescribed fee; or, alternatively, that if any such costs or expenses were capable of being included in a fee, the power should not cover certain, particular matters.
70. The Committee was advised that a parochial church council had never had a power to set ‘fees’ of its own in relation to the occasional offices, over and above the statutory fees contained in a Parochial Fees Order. All parishioners (irrespective of whether they attend the church or not) had certain common law rights. These included a right to be married in the parish church and to be buried in the churchyard. It was not legally open to a PCC or an incumbent to fetter the exercise of those rights by making them conditional upon the payment of money.

71. Statutory fees, by contrast, were payable in relation to marriages and burials precisely because those fees were authorised by statute; if they were not paid it was open to the person to whom they were payable to recover them in court (see section 7 of the 1986 Measure which makes any fee payable under the Measure recoverable as a debt). But ‘fees’ that a PCC sought to impose over and above the statutory fee for a particular service (for example, for ‘use of the church building’) would be unlawful and would not be recoverable.
72. The position in relation to sums payable to organists, choirs, bellringers, flower-arrangers etc. was different. If such sums were charged in respect of genuinely optional items which the parties to a marriage, or the family of the deceased in relation to a funeral, had specifically requested and agreed to pay for then there was nothing to prevent that.
73. What it was not open to an incumbent or the PCC to do was to purport to make charges over and above the statutory fee for items that were simply essential to the exercise of the common law right in question. It would not therefore be lawful for a PCC to impose a charge, for example, for opening the church for a wedding or for ‘use’ of the church building or in respect of wear and tear to its fabric.
74. As to the cost of heating and lighting a church for a wedding, this was not an entirely straightforward issue. In theory it might be possible for a wedding to take place without any heating or lighting of the church – particularly in the summer. It might therefore be arguable that heating and lighting a church were not essential to the exercise of a parishioner’s legal right to marry there and that heat and electric light might be provided only if specifically requested by a couple who had agreed to cover the costs of such provision.
75. The Steering Committee opposed the proposals in Group B on the basis that to accept them would introduce confusion. At present parishes near each other appeared to charge different amounts for apparently the same thing, and this Group of proposals would continue that situation. The view of the Fees Review Group had been that heating and lighting were as much part of the provision of building cost as having the roof on the church building. It was better to have one fee and to know what it covered.
76. The Revision Committee was advised that the new section 1(3) only conferred a power on the Archbishops’ Council: it did not require the Council to include the cost of heating and lighting, or any other expenditure, in the fee. Moreover, it would be open to the General Synod to amend a draft Parochial Fees Order to remove any cost specified as being included in a prescribed fee if it saw fit.
77. The Revision Committee rejected the proposals for amendment in Group B. No attempt was made to re-introduce any of these proposals at the Revision Stage in full Synod.

Group C: Proposals relating to the period for which fees may be prescribed under a Fees Order

78. Proposals relating to the period for which fees may be prescribed under the new section 1(4) were received from two members. They argued that fees should be required to be prescribed each year by the General Synod.
79. The Revision Committee was advised that the policy behind the current drafting was to move away from the current annual Fees Order on the basis

that the time and cost involved in preparing and laying such an Order before the Synod and then before both Houses of Parliament was incommensurate with the benefit gained by Fees Orders being approved annually. The maximum period of five years was settled upon in order to ensure that the Synod should be involved in determining the content of a Fees Order at least once during each quinquennium.

80. The Steering Committee did not support any of the proposals in Group C. It was useful to have a power to provide for inbuilt increases in fees. It would be helpful if the Synod could avoid the need for an annual debate about the level of fees; but it would remain open to revisit a current order should the need arise.
81. The Revision Committee rejected the proposals in Group C. No attempt was made to re-introduce any of these proposals at the Revision Stage in full Synod.
82. However, an amendment was moved at the Revision Stage to substitute “two years” for “five years” in new subsection (4). The effect of that amendment would have been that a parochial fees order could be made to have effect for a period of not more than two years after which time a further order would need to be made. Because 40 members of the Synod did not stand to support the amendment’s being debated it lapsed in accordance with the Synod’s standing orders. A similar amendment was moved to substitute “three years” for “five years”. Again, the amendment lapsed because 40 members did not stand to support its being debated.

Group D: Proposals relating to the making of further Fees Orders during the lifetime of an existing Fees Order

83. Proposals relating to the ability to make a new Fees Order during the lifetime of an existing Fees Order were received from two members. Both proposed that it should be possible for a further Fees Order (which either amended or replaced an existing Order) to be made during the lifetime of an existing Order. That might be necessary because circumstances, or the policy underlying an existing Order, had changed during its lifetime.
84. The Committee was advised that that was already possible under the Measure as drafted. That was because section 14 of the Interpretation Act 1978 provided that where an Act conferred power to make orders or other subordinate legislation by statutory instrument, it implied (unless the contrary intention appeared) a power, exercisable in the same manner and subject to the same conditions or limitations, to revoke, amend or re-enact any instrument made under that power.
85. The Interpretation Act 1978 applied to Measures of the General Synod in the same way as it applied to Acts of Parliament. The position was, therefore, that the power contained in the new section 1(4) already included a power to revoke or amend any Fees Order during its lifetime.
86. The Committee accordingly agreed not to accept the proposals for amendment in Group D. No attempt was made to re-introduce any of these proposals at the Revision Stage in full Synod.

Group E: Proposal relating to the power to make a “Scheduled Matters Amending Order”

87. A proposal relating to the power contained in the new section 1(6) had been received from a member. The new section 1(6) confers power on the Archbishops’ Council to make an order called a “Scheduled Matters Amending Order” that would amend the new Schedule A1 – i.e. the list of services and other matters in respect of which fees may be prescribed by a Parochial Fees Order. The member referred to the power conferred upon the Archbishops’ Council by the new section 1(6) as a “blank cheque” and submitted that the exercise of that power should be limited. He therefore proposed an amendment which would require any exercise of the power to have previously been debated and approved by the General Synod in principle.
88. The Committee was advised that the power contained in the new section 1(6) was not a “blank cheque”. Under the Measure as drafted, a Scheduled Matters Amending Order would have to go through the same procedure as a Parochial Fees Order. That was achieved by clause 2 of the draft Measure which inserted the words “or a Scheduled Matters Amending Order” in various places in section 2 of the 1986 Measure. The effect of those insertions was to apply the same procedural provisions as apply to the making of a Parochial Fees Order to the making of a Scheduled Matters Amending Order. Those procedural provisions included a requirement that a draft of any order was to be laid before the General Synod for approval and that prior to approval it might be amended by the Synod. If the Synod were to amend the draft prior to approving it, then the Archbishops’ Council had the choice of making the Order as amended or of withdrawing the draft. Once made, a Scheduled Matters Amending Order would have to be laid before both Houses of Parliament and would be subject to the negative procedure for statutory instruments. (See section 2 of the 1986 Measure.)
89. The Revision Committee accordingly did not support the proposal. No attempt was made to re-introduce this proposal at the Revision Stage in full Synod.

Group F: Proposals relating to the definition of “parochial church council”

90. Proposals relating to the definition of “parochial church council” in the new section 1(7) were received from a number of members.
91. One proposal involved leaving out paragraphs (b) and (c) of the definition of “parochial church council”. This was argued on the basis that those provisions were “unnecessarily complicated and bureaucratic” and that there was no reason why a parochial church council (‘PCC’) should get a fee at all where a funeral took place at a crematorium (rather than in a church or churchyard which a PCC was responsible for maintaining).
92. Another doubted that a PCC should receive a fee for a funeral service conducted other than in a church or churchyard “where there [was] no link between the church and the deceased” and questioned the appropriateness of using electoral roll membership for the purpose of determining the “allegiance” of a deceased person to a particular parish. Instead, it was proposed that the PCC in such a case “should be that of the church with whom the individual or couple is linked and on behalf of which the service is being held” but that “where there [was] no such PCC then the Measure should not specify one”.

93. A further submission was that it was wrong for a fee to go by default (i.e. under paragraph (c) of the definition of “parochial church council” in a case where the deceased was not entered on any electoral roll) to the PCC where the deceased resided as the funeral service might be taken by the minister of another parish.
94. The Committee was advised that paragraphs (b) and (c) of the definition of “parochial church council” were included in the Measure in order to make it possible to prescribe a fee payable to a parochial church council for a burial or funeral where the service in question did not take place in a church or churchyard. This represented a departure from the current practice in fees orders made under the 1986 Measure where no fee was prescribed as payable to a PCC in such a case.
95. This change was recommended by the Fees Review Group in GS Misc 877 on the basis that “[t]he growth in lay participation in ministry means that in many parishes lay people (some remunerated) are involved in ministry around pastoral services in administrative and pastoral roles”. The Group suggested that in the cases of funerals at cemeteries and crematoria there were “often associated costs for PCCs and this should be recognised in the fees payable to them.” In that light they had further suggested that “there should be ... a fee for the parish when the minister officiates at a crematorium funeral ...”.
96. The Steering Committee informed the Revision Committee that it did not support the proposals for amendment in Group F. It considered that there should be a fee for the PCC in relation to crematorium funerals on the basis that the ministry provided at crematoria was, in one sense, the ministry of the whole parish and not just of the person who officiated at the service. The Steering Committee also took the view that it would be very difficult to give legislative effect to one of the alternatives that had been proposed.
97. The Revision Committee did not accept any of the proposals in Group F. No attempt was made to re-introduce any of these proposals at the Revision Stage in full Synod.

Proposal from the Association of English Cathedrals

98. The Association of English Cathedrals (‘AEC’) pointed out that cathedrals did not have parochial church councils. That being so, and given that parochial fees were applicable in the case of cathedrals that were parish churches, some alternative provision would need to be made in such cases. They suggested that in the case of a parish where a cathedral was the parish church, the body corporate of the cathedral should be the recipient of the fees that would otherwise have been payable to a parochial church council.
99. The Steering Committee supported the proposal from the AEC.
100. The Revision Committee accepted the proposal from the AEC and agreed to amend the Measure. Accordingly, new subsections (8) and (11) were inserted into clause 1(1) of the Measure.

Group G: Proposals relating to the definition of “diocesan board of finance”

101. A number of proposals relating to the definition of “diocesan board of finance” in the new section 1(7) were received. Two were withdrawn at the meeting of the Revision Committee.

102. Of the remainder, one questioned the policy behind paragraph (b) of the definition of “diocesan board of finance”. This was on the basis that “there [were] many cases where the deceased comes from a nursing or residential home located in a diocese other than the one where he or she has lived or where their relations live” and that “it seem[ed] both inequitable and highly bureaucratic to arrange for part-payments to be made to the DBFs of the dioceses in which such homes are situated”.
103. The Committee was advised that for the purposes of the definition of “diocesan board of finance”, part-payments would arise only where a deceased person was a parishioner in more than one diocese and – because the definition of “diocesan board of finance” depended upon the definition of “parochial church council” for the purpose of determining where a person was a parishioner – that would mean only in a case where a person had had his or her name on the electoral roll of more than one parish. It would not arise simply because a person had died in a care home in a different diocese from where he or she normally lived or where he or she went to church.
104. One submission asked “why a different approach was taken in the definitions of “parochial church council” and “diocesan board of finance” respectively with regard to membership/residence of the deceased where the funeral was not conducted in a church or churchyard”.
105. The Committee was advised that that was not the position. In the case of a burial or funeral service which took place otherwise than in a church or churchyard the “diocesan board of finance” would be the DBF of the diocese in which the deceased was a parishioner and for that purpose the parish of which the deceased was a parishioner was the same parish as under the definition of “parochial church council”. That was the effect of the words “and, for this purpose, the parish in question shall be construed in accordance with paragraphs (b) and (c) of the definition of “parochial church council”” at the end of paragraph (b) of the definition of “diocesan board of finance”. However Standing Counsel advised the Committee that the position could be made clearer in this regard and suggested an amendment which was accepted by the Revision Committee.
106. The final words of paragraph (d) of the definition of “diocesan board of finance” (“and “parishioner” shall have effect accordingly”) were inserted by the Revision Committee. The Committee did not, however, accept the other proposals in Group G. No attempt was made to re-introduce any of those proposals at the Revision Stage in full Synod.

Proposal from the Association of English Cathedrals

107. The AEC pointed out that cathedrals were “financially independent from their dioceses” and that the existing practice was not for cathedral clergy to assign fees to the DBF, but for parochial fees to be assigned to the cathedral. It accordingly proposed that fees that would generally be paid to DBFs should, in the case of cathedral parishes, be payable to cathedrals.
108. The Committee was advised that the Measure could be amended to provide that where a service took place in a parish of which a cathedral was the parish church, and in the case of a burial or funeral which took place other than in a church or churchyard and the deceased was a parishioner of a cathedral parish, the body corporate of the cathedral should be the recipient of the fees that would otherwise be payable to a diocesan board of finance.

109. The Steering Committee supported the proposal from the AEC and the Revision Committee accepted it and amended the Measure accordingly. New subsection (8) gives effect to the Revision Committee's decision.

Group H: Proposals relating to the requirement to consult before waiving fees

110. Proposals relating to the requirement of consultation before waiving fees were received from a number of members.
111. Three members proposed that a requirement to consult a person nominated by the bishop before waiving a fee payable to the DBF should be removed from the new section 1(8). Another member proposed the same but with an alternative proposal that the DBF itself, rather than the incumbent etc., should have the power to waive such a fee.
112. The reasons given for the above proposal were that the requirement of consultation was impractical and that it failed to have regard to the fact that it was the parochial clergy who were best placed to determine whether a fee should be waived in a particular case.
113. The Committee was advised that the requirement was included in the draft Measure to reflect the policy of the Fees Review Group that where fees were to be waived there should be a requirement at least to consult a person nominated by the bishop so that a reasonable degree of consistency could be maintained within a diocese with regard to the waiver of fees.
114. The Steering Committee did not support the proposals for amendment in Group H. The new provisions conferred a right on incumbents which they did not have before if they assigned their fees. There were a wide variety of circumstances which arose when the incumbent would want to waive fees. There needed to be a consultation requirement, but the incumbent did not have to accept the advice of the bishop's officer. At the moment some incumbents waived all their fees and some none.
115. The Revision Committee rejected the proposals in Group H.
116. When the Measure reached the General Synod at the Revision Stage an amendment was moved to leave out the words from new subsection (9) that would have required the incumbent to consult a person appointed by the bishop before waiving a fee payable to the DBF. After being debated, that amendment was put and carried. Accordingly, new subsection (9) took its current form which does not contain a requirement for the incumbent to consult before waiving a fee payable to the DBF. A similar amendment was moved in respect of new subsection (10) to remove the requirement to consult the churchwardens before waiving a fee payable to the PCC. After debate that amendment was put and lost. The requirement to consult the churchwardens in the case of waiver of PCC fees therefore remains.

Group I: Proposals relating to the extent of the power to waive fees

117. The Revision Committee received two proposals that the power to waive fees also extend to the reduction of fees.
118. The Steering Committee did not support these proposals. If there were a power to reduce fees this might lead to the statutory fee being undermined if, in some places, the level of fee set in a Fees Order were to be reduced on a regular basis.

119. The Revision Committee rejected the proposal. No attempt was made to re-introduce this proposal at the Revision Stage in full Synod.

Section 3 – Constitution of Fees Advisory Commission and Ecclesiastical Judges and Legal Officers (Annual Fees) Orders

120. At the Revision Committee, one member of the Synod questioned the necessity of the proposed reconstituted Commission. He suggested that a simpler and less resource-intensive method of dealing with legal officers' fees should be adopted, although he did not make any specific proposal as to the form that this might take.
121. The Committee was advised that having considered a number of possibilities (including a body that consisted entirely of representatives of those with an interest in the Commission's work; and, alternatively, a body that was entirely independent), the Archbishops' Council concluded that the functions of the FAC could most effectively be discharged by a composite body which combined both elements – that is, one which included within its membership equal representation for both the users and providers of legal services alongside an independent element. The provision in clause 3(a) gave effect to that conclusion.
122. It was considered important that the FAC should command respect from both those whose professional duties meant that they would be remunerated under the Orders made by it and from those who would have to pay the fees contained in such Orders. The provisions in clause 3(a), by providing for a composite body that included legal practitioners and ecclesiastical judges as well as independent members would assist in achieving that objective and it is not readily apparent how that could be achieved with a substantially smaller Commission.
123. The Revision Committee considered that an independent body was required to make recommendations and orders in relation to legal officers' and ecclesiastical judges' fees. Otherwise fees might fall into disrepute. The Committee considered that the proposed arrangements had been carefully thought out and it supported them.
124. The Revision Committee accordingly rejected the proposal. No attempt was made to re-introduce any of these proposals at the Revision Stage in full Synod.
125. The Ecclesiastical Law Association ('ELA') – the body which represents diocesan registrars – proposed that the draft legislation should be amended to provide that the Chair of the Commission should not be a person who was a member of the General Synod, the Church Commissioners or a Diocesan Board of Finance and should be a judge.
126. The Committee was advised that as the draft Measure stood, a member or officer of the Church Commissioners would already be precluded from being Chair of the Commission, since the category of membership from which the Chair must, under section 4(7), be drawn excluded those eligible for nomination under section 4(1)(b). The same would apply to a chair of a DBF.
127. The Steering Committee was opposed to the ELA's proposal. As matters stood there was no requirement for the chair to be a judge, and to impose such a requirement could give the impression that the interests of legal professionals and the judiciary were paramount. Under the Measure as drafted the interests

of those to whom fees were payable and of those who were required to pay them were evenly balanced.

128. The Revision Committee rejected the proposal from the ELA. No attempt was made to re-introduce this proposal at the Revision Stage in full Synod.
129. A member of the Revision Committee proposed that the category of members provided for by paragraph (g) of the new section 4(1) should – in addition to requiring one member who was a member of the House of Clergy or House of Laity – also require that at least one member of the Commission in this category must not be a member of the General Synod.
130. The Committee accepted that proposal. The words “but not more than two” were inserted into new section 4(1)(g) by the Committee.
131. The ELA further proposed that the new obligation imposed on the FAC in clause 3(b) of the draft Measure – to keep under review the duties of ecclesiastical judges and legal officers – should be qualified by the insertion of a requirement to consult the Archbishops’ Council before any order was made.
132. The Committee was advised that any order made by the FAC was subject to the prior approval of the General Synod under section 5(3) of the 1986 Measure and that it was, therefore, difficult to see any argument for introducing an additional level of consultation.
133. The Steering Committee did not support this proposal and it was rejected by the Revision Committee. No attempt was made to re-introduce this proposal at the Revision Stage in full Synod.
134. New section 5(1) as originally drafted required the FAC to “keep under review” the duties of ecclesiastical judges and legal officers. A number of members of the Revision Committee suggested that those words were unhelpful and might suggest to some that the FAC was being given the power to determine the duties of ecclesiastical judges and legal officers. A member of the Committee proposed that the requirement should be for the FAC to keep itself informed of those duties. In the past the FAC had been criticised for not having regard to the duties that legal officers were required to carry out.
135. The Revision Committee accepted this proposal and amended new section 5(1) substituting “inform itself of” for “keep under review”.

Section 4 – Consequential amendments and repeals

136. Some technical, drafting amendments were proposed to clause 4 by one member at the Revision Committee stage. The Revision Committee was advised that they were not required and accordingly did not accept them.

Section 5 – Transitional Provisions

137. Two members of the Synod proposed to the Revision Committee that incumbents should be able to retain their fees even if they had already assigned them to the diocesan board of finance. One explained his proposal on the basis that “a deed of assignment isn’t irrevocable”.
138. The Committee was advised that that was not the case: a deed was, by its nature, irrevocable. If an incumbent who had executed a deed of assignment wanted to reverse what he or she had done in that regard, that could only be achieved with the agreement of the diocesan board of finance and would need

to be achieved by the DBF re-assigning the fees to the incumbent in question. Once fees had been assigned by deed to a DBF those fees legally belonged to that DBF.

139. The legal position was, therefore, that an incumbent who had executed a deed assigning his fees to a diocesan board of finance has given up the right to those fees and no longer had any entitlement to them. That being so, it would not be logical to permit an incumbent who had already assigned his or her fees to preserve an entitlement to such fees under the Measure.
140. The Revision Committee rejected the proposal that incumbents who had already assigned their fees should be able to take advantage of the transitional provisions to retain them.
141. It was further proposed to the Revision Committee that the default position should not be as in the Measure as drafted (i.e. that existing incumbents would not retain their entitlement to fees unless they gave notice that they wished to retain it) but rather that they should retain their entitlement unless they gave notice that they did not wish to retain it.
142. The Committee accepted this proposal that the default position should be reversed so that existing incumbents who had not assigned their fees should retain their entitlement to fees unless they gave notice that they did not wish to do so and agreed to amend the Measure accordingly.
143. When the Measure reached the General Synod on the Revision Stage an amendment was moved to restore the default position as it had been in the Measure as originally drafted – namely that incumbents should be subject to the new provision made by the Measure unless they had (i) not already assigned their fees to the DBF and (ii) gave written notice to the bishop that they wished to preserve their existing entitlement to receive parochial fees.
144. The mover of the amendment argued that the transitional provision for incumbents as amended by the Revision Committee would result in serious administrative difficulties given that there was uncertainty as to which clergy had in fact executed deeds assigning their fees to the DBF. That would in turn result in legal uncertainty as to the parishes, incumbents and DBFs to whom the new provisions would apply. Moreover, recently-enacted legislation relating to clergy terms of service required an incumbent's statement of particulars of office to set out his or her entitlement to parochial fees and the relationship of the receipt of such fees to his or her stipend. If the transitional provisions remained as amended by the Revision Committee, dioceses would need to carry out a thorough search of their records and the potentially large number of incumbents in respect of whom a deed of assignment of fees could not be traced would – unless they positively opted in to the new provisions – have to be put on a footing whereby their stipends were reduced to take account of parochial fees received by them.
145. The mover of the amendment therefore argued that provision should instead be made for incumbents who had not assigned their fees to opt out of the new provisions should they so wish. The proposed amendment, however, had the effect of giving such incumbents six months – rather than two as originally provided for in the Measure prior to amendment by the Revision Committee – during which it would be open to them to give notice that they wished to retain their entitlement to parochial fees. It also allowed that six month period to begin to run from a date earlier than the substantive provisions of the Measure (in particular section 1) would come into force so

that by the time the new arrangements came into operation it should be clear precisely which incumbents remained under the old system.

146. The amendment was put and carried. (See now section 5(2) of the Measure.)

Schedule 1 – Schedule inserted as Schedule A1 to the 1986 Measure – Table of Matters to which Parochial Fees relate

147. The Revision Committee received a number of submissions – including 10 from cathedrals – arguing that “Memorial service in church” should be removed from the list of matters to which parochial fees relate. Some cathedrals were parish churches and were therefore subject to the parochial fees legislation. It was argued that memorial services in these cathedrals might be on a large scale and could be of regional or national significance and therefore required considerable organisation and expenditure. Another submission argued that statutory fees should not be prescribed at all save in relation to occasional offices in respect of which parishioners were able to exercise legal rights, namely baptisms, marriages and funerals and burials.
148. The Revision Committee was advised that the Fees Review Group had adopted the policy that pastoral services for which the Church of England provided authorised or commended forms of service should, generally, be covered by parochial fees.
149. The Revision Committee rejected the proposals that “Memorial service in church” should be left out of the list of services etc. in new Schedule A1. It also rejected an alternative proposal to disapply the statutory fee for such services in the case of parish church cathedrals. It rejected the proposal that parochial fees be confined to occasional offices in respect of which parishioners had legal rights.
150. The Revision Committee agreed some technical and drafting amendments to new Schedule A1.

On behalf of the Legislative Committee

Philip Giddings

(Deputy Chairman)

12th November 2010

Deliberation

WITH THE ASSISTANCE OF REPRESENTATIVES OF
THE GENERAL SYNOD

TUESDAY 30 NOVEMBER 2010

Present	Lord Lloyd of Berwick (Chairman)	Mr Tony Baldry
	Lord Bilston	Sir Stuart Bell
	Baroness Butler-Sloss	Mr Peter Bottomley
	Lord Davies of Coity	Mr Ben Bradshaw
	Lord Elton	Mr Frank Field
	Lord Judd	Helen Goodman
	Lord Laming	Sir Alan Haselhurst
	Lord Newby	Mr Oliver Heald
	Lord Shaw of Northstead	Mr Simon Hughes
	Lord Walpole	Mr Gordon Marsden
	Lord Williams of Elvel	Mr Andrew Selous
		Mr Gary Streeter

The Committee deliberated, with the assistance of:

Witnesses: RT REV JAMES LANGSTAFF (Bishop of Rochester), REV MOIRA ASTIN, MR TIM ALLEN, RT WORSHIPFUL TIMOTHY BRIDEN (Vicar-General, Province of Canterbury), REV ALEXANDER MCGREGOR (Deputy Legal Adviser), and MR WILLIAM FITTALL (Secretary General)

Q1 *The Chairman:* Bishop, I welcome you to this first meeting of the Ecclesiastical Committee of the new Parliament. Could you start the ball rolling by introducing the rest of your team?

The Bishop of Rochester: Indeed. Thank you very much. I am James Langstaff. I am the almost Bishop of Rochester. I am in transit to get there at the moment. I'm here because I've been chairing the various working parties that lie behind one of the Measures that you've got in front of you today. Moving from my left, we have Moira Astin, who has also been involved in that process. She is a parish priest in the Diocese of Oxford. We then have Timothy Briden, William Fittall, Secretary General of the General Synod, Alexander McGregor, who is one of our legal advisers, and Tim Allen, who has been chairing the revision committee, so we have been involved in various aspects of the work.

The Chairman: Thank you very much indeed. In the normal way, we would now be asking you to introduce the Fees Measure, which is obviously the main Measure for our consideration, but it so happens that one of our Members, Frank Field, has to leave in about 20 minutes. As you probably know, he's a great expert on the care of cathedrals. Since that is a consolidation Measure and is not likely to raise any problems, I wonder if somebody might make a very brief introduction to what that Measure is about.

Mr Field: Before we do, could I declare an interest?

The Chairman: I am very grateful. I think we should all declare our interests. Could anybody who needs to declare an interest do so?

Lord Newby: I am a clergy spouse.

Lord Elton: I am a licensed lay minister.

Mr Field: I chair the Cathedrals Fabric Commission for England.

Lord Walpole: I am vice-chairman of the Cathedral Fabric Advisory Commission for Norwich, as the bishop knows well, as he was my bishop. Are you still my bishop?

The Bishop of Rochester: No longer. I escaped.

Q2 *The Chairman:* Who might explain this consolidation Measure?

The Bishop of Rochester: I think William Fittall is going to begin.

Mr William Fittall: I will just say a word and then Alex McGregor can say a little more. You have two consolidation Measures before you—the Care of Cathedrals Measure and the Mission and Pastoral Measure. These are the first consolidations we have done for quite a long time. They both involve pieces of legislation that have been amended on a number of occasions over the years. We thought it was time to pull them together into one place, because they are used very commonly. As is always the case with consolidation Measures, they involve no substantive change to the law, but they are important, not least because the Care of Cathedrals Measure is the legislation under which the Cathedrals Fabric

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Commission for England is established, of which one of your Members is the chair. Alex McGregor may be able to say another brief word about that Measure.

Rev Alexander McGregor: I won't say very much, but paragraph 2 of the comments and explanations for the Care of Cathedrals Measure sets out the existing Measures that are consolidated by the new Measure. There are a handful of them. We started off in 1990 and we ended up with the latest amendments being made this year by a Miscellaneous Provisions Measure. The Measure that is before the Committee consolidates all those existing enactments into one Measure. It doesn't change the substantive law, but it restates the existing law in the consolidated Measure, subject to corrections and minor improvements. Those are essentially drafting improvements. In a memorandum on the fourth page of the comments and explanations, Standing Counsel to the General Synod has set out what he has done. He explains that he has modernised the drafting in a number of ways to make the Measure easier to read and to resolve one or two ambiguities and doubts that were present in the previous drafting.

The Chairman: Good. Shall we take the Care of Cathedrals Measure first? Are there any questions? Frank Field, have you a question?

Mr Field: I have no questions.

Q3 Lord Shaw of Northstead: As a matter of curiosity, the word "precinct" has been redefined. What is the position of the archaeological and human remains, not just under the ground but under the grounds of the cathedral? Are they involved in this or not?

Rev Alexander McGregor: The redrafting has made it clear that archaeological remains within the cathedral and under the floor of the cathedral are protected by the Measure.

Q4 Lord Shaw of Northstead: What about the ones outside, in the grounds?

Rev Alexander McGregor: They are protected too, both within and outside the walls.

Lord Shaw of Northstead: I see. That wasn't quite clear in the explanation. Thank you.

The Chairman: Any other questions on the care of cathedrals?

Lord Laming: This is not a question, but I congratulate those who have done this work on achieving such remarkable unanimity in the voting in Synod. It is fairly unusual to read that and they deserve considerable congratulations.

The Chairman: I quite agree. It's a thankless task, as I know—I used to be chairman of the Consolidation Committee in Parliament—but it's a very important one.

Simon Hughes: I have just one comment and, with your leave, Lord Chairman, one other observation, if I may. First, I welcome the idea that the Church of England is consolidating its Measures. It is very helpful. It is always frustrating in this place that we have Acts of Parliament that are not consolidated when they should be and the fact that the Church is doing this is very welcome, specifically on an issue like this so that people can go to one place to see the legislation affecting cathedrals. With your leave and with the generosity of other Members, I should like to use this occasion, which I hope is appropriate, to say a public thank you to the recently retired Bishop of Southwark, Tom Butler, who was always interested in these things, and to the very recently departed Dean of Southwark, Colin Slee, whose untimely death occurred last week. He specifically engaged himself in these issues. He lobbied and briefed me, and no doubt other people. They are both, in different ways, a sad loss, and I am sure we all send our real sympathy to Edith and Colin's family. Southwark has suffered a very untimely and sudden loss.

The Chairman: Can I have a proposal involving the Church of England Care of Cathedrals Measure?

All Members: Agreed.

Q5 The Chairman: Can we then turn to the other consolidation Measure? Is there anything that anybody needs to add on that? That was obviously a colossal job. It is one that we in the Committee asked you to do when we were considering the Mission Measure in 2007. Is there anything further to be said about that?

The Bishop of Rochester: No.

The Chairman: Any questions on that?

Q6 Simon Hughes: Just one question, really, on the substance of Part 5. Is it current practice in the Church of England, wherever possible, to develop team ministries and group ministries? I wondered if the Bishop could share with us where the church is up to. I know that there isn't a common view across all the dioceses, but it would be helpful to know whether this is the way the Church is going, whether it is going to use this provision more, or whether it is still likely to want to hold quite a few people as priests in charge rather than incumbents, or has ended its period of not giving people livings.

The Bishop of Rochester: On the last point, of course the advent of common tenure will change quite a lot of that anyway in minimising the difference between those who are in equivalence to freehold incumbencies and those who are priests in charge, so the tenure and the protection will be broadly similar anyway. The basis on which presentation may be

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suspended is clearly quite closely defined. In my humble opinion, some dioceses sail closer to the wind than others in how they use that provision, but with the new common tenure from this coming year, that will be tighter anyway. As far as the team question is concerned, the honest truth is that dioceses vary hugely, partly because of their make-up. Those that are largely rural may have different approaches from those that are largely urban. But it also comes down to whims of Bishops and of diocesan mission and pastoral committees as to the particular models of ministry that are being espoused. Generally, it would be true to say that there is a greater movement towards having clergy working collaboratively in teams of one sort or another, whether formally established or informally constituted.

Q7 The Chairman: Thank you very much. Before I ask for a proposal, I would like to mention the work that our legal adviser has done on this. He has been through this pretty massive document and he is satisfied that it is true consolidation, but for one point. He must have been quite pleased to have discovered this, because it proves how carefully he read it. In paragraph 21(1), certain words have accidentally dropped out at the end. The words “or invite them to express their views” should be added. One can see that when comparing it with the same wording in paragraph 6(1). As I say, it’s a miracle he found that, but he did. The question is how it can be dealt with. I understand that it can be dealt with as a printing error. Is that so?

Rev Alexander McGregor: Yes, that’s right.

Q8 The Chairman: At what stage does that happen?

Rev Alexander McGregor: I spoke to Standing Counsel earlier today about the correction of these printing errors. There are one or two other minor ones relating to punctuation and similar things. They can be corrected before the Measures go to each House, should the Committee issue a favourable report. Normally we would do a careful correction before the Royal Assent copy is submitted, but they can be corrected earlier. As a result of Counsel to the Committee having spotted this, Standing Counsel will see to that.

The Chairman: Subject to that very minor correction, can I have a proposal?

Peter Bottomley: I propose.

The Chairman: Good. Then is that agreed?

All Members: Agreed.

Q9 The Chairman: We now turn to the meatier matters. I shall ask again if one of you could introduce the Fees Measure, in particular telling us why any amendment was necessary in this case.

The Bishop of Rochester: You will see from the weight, as it were, of the comments and explanations document that this Measure has been through a fair amount of scrutiny through the synodical process. It has two main parts to it, one relating to parochial fees and one relating to legal officers’ fees. They are, in a sense, quite separate elements that are brought together in this Measure. As far as the parochial fees element is concerned, for a number of years bodies such as the General Synod’s Legal Advisory Commission have been giving opinions that the present legislation is not up to what is required. It leaves considerable gaps and uncertainties. Paragraph 10 of the comments and explanations (p 17) gives four examples of where the current legislation falls short and leaves things uncertain, such that it is not clear even that current practice, as it is customary, accords with the legal provision that exists, if one pushed it. A lot of this is lost in custom and practice from centuries gone by. So the advice has been for some years that this ought to be looked at. For a number of years people have fought shy of looking at it, and then for some reason I got landed with a working party with the task of looking at it and we have done our best. The statutory definition of parochial fees was one of the uncertainties. The Measure resolves this by means of the schedule, which lays out the services or pastoral ministries for which a fee may be prescribed. A fee therefore becomes a payment relating to any one of those prescribed services. The Archbishops’ Council is given the power to amend that list in decades and centuries to come if liturgical practice changes and new things come in. So the definition of parochial fees is tightened in that way. The Archbishops’ Council continues to have the power to make a fees order and for that fees order to be laid before the Synod and before Parliament. That doesn’t change, except that now it may make a fees order if this measure passes, for up to five years at a time, so it doesn’t become an annual process, which can be quite laborious. There is also a power, in making that fees order, to tighten up the wording of what is specified, so that it is clear to the general public, who are using the services, what is and is not included within the various costs that are specified in the fees. The experience of many people who are on the receiving end of complaints and questions, which surprisingly do come in from time to time, is that there is uncertainty over the extras that get added on. An attempt has been made to give the power to define what is in the fee and to make the basic fee as inclusive as possible of as many of the common elements—of a wedding or a funeral or whatever it is—as one would expect to have there. The aim is to squeeze out the areas of disappointment,

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confusion and misinformation. Then, the really big one, certainly in terms of a headline, is the replacement of what is currently the incumbent's fee, which goes back into centuries of history, by a fee payable to the diocesan board of finance for the provision of ministry. This reflects the reality—even more so under common tenure—that it is the diocesan board of finance, at the end of the day, that has the legal obligation to pay the stipend. Therefore, on the principle that the income ought to go where the cost is borne, that is where this comes from. No longer are the clergy paid locally. When they were, the fee income was part of that local remuneration, but because the costs are borne at that level, that's where the fee should go. That's the philosophical change, in a way, but it reflects the fact that over 90% of incumbent status clergy already, in effect, give up their ownership of their fees by assigning them to the relevant diocesan board of finance. We can respond more to that in questions. The main import of the second section, to do with ecclesiastical judges' and legal officers' fees, is the reconstitution of the Fees Advisory Commission and the clarification or the restating of its membership. There are others here who will be able to respond to any questions about that item. In particular, it now has a tripartite membership, reflecting those who have a valid interest in the work of that commission. As I said at the beginning, you will see from the length of the comments and explanations that a fair amount of synodical work and revision went into this measure. Some amendments were passed and incorporated into the Measure. There are others that were accepted into the Measure. We believe that it is long over time that some effort was made to clarify these matters and this Measure seeks to bring that into legislative form.

Q10 *The Chairman:* I am very grateful. That is extremely clear. Would any of your colleagues like to add anything, or shall we go straight to questions?

The Bishop of Rochester: They are shaking their heads.

Q11 *Lord Judd:* Thank you for the extremely good briefing. It deals with the position of part-time clergy. What is the position of non-stipendiary clergy? In the Church we sometimes get fantastic service from non-stipendiary clergy. My question is really about how much we take for granted from them.

The Bishop of Rochester: Indeed. The legal position is that the fee becomes the property of the board of finance, and it is for the board of finance to decide how it remunerates those ministers who are not in receipt of a stipend. There is not a problem for those who are receiving the stipend; the fee in effect goes into the diocesan stipends fund. At the moment we

are engaged in a second part of this, which we hope will go to Synod next February, which is policy guidance for the Archbishops' Council on how the level of fees might be set under its powers under the Measure. Part of that is guidance to diocesan boards of finance. It relates to remuneration for non-stipendiary ministers, retired clergy and, in some dioceses, readers and lay ministers as well. Our suggestion and guidance to the dioceses, who own the fee, is that such ministers should be offered a remuneration. We will give some guidelines on what that might be, but I hope it will be a realistic and generous recognition of precisely what you say about the really important contribution that such ministers make. Some of those ministers may choose to decline what they are offered or may gift aid it back again, but the guidance will be that they should be offered a remuneration.

Q12 *Lord Judd:* May I just ask a supplementary? When you say that they will be offered remuneration, do you mean fee by fee, or do you mean on some generalised basis?

The Bishop of Rochester: I think the assumption is that it will be fee by fee, so they will submit a return to say they have taken 27 funerals, or whatever it happens to be, and they will then be reimbursed by the diocesan board of finance, in the same way as happens at the moment when such people cover vacant parishes.

Q13 *Helen Goodman:* I am not quite clear why, in Schedule 1, the part on funerals and burials relates only to people over the age of 16. What about children and babies?

The Bishop of Rochester: There is a general waiver of all fees in relation to the funerals of those under the age of 16. Under the present legislation, I think it is only for those in the first year of life, but we have taken the decision to extend it. In other words, all funerals of those under the age of 16 will be free.

Q14 *Helen Goodman:* That's very important, because it interrelates with the way funeral grant operates.

The Bishop of Rochester: Yes. It was the very clear view of the working party and, I think, of the various revision committees, that that was a positive thing for us to do and a very positive message to give. That's why this only applies to those over 16. For those under 16 there are no fees anyway.

Q15 *Peter Bottomley:* Just following that, it is made clear in paragraph 10(e) of the comments and explanations that fees for the funeral of an under-16 should be abolished, if they do exist. So that clears

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that up. I was going to ask another question. The numbers not agreeing at final approval were not great. Given the complexity of what is covered, it is not a surprise to see those numbers. Is there a way of indicating gently whether those opposed, not convinced or not agreeing were what you might call modernists, traditionalists or individualists?

The Bishop of Rochester: As I was, at the time, not a member of the General Synod, I might ask somebody who was whether they have a view on that.

Mr Tim Allen: From the choice of those three, probably the best answer is individualists.

The Bishop of Rochester: It is worth saying that clearly some of those who were not comfortable with the Measure are those who anyway do not yet assign their fees to their diocesan board of finance. The transitional arrangements make it plain that while they retain their present posts, they won't have to. So in that sense, their position is protected.

Q16 Mr Marsden: I have three points to raise. The first relates to what you said in your introduction about the uneasiness that there had been about the lack of precision in the legislation and the possibility of it being challenged. Subsequent reference has been made to the fact that there have, from time to time, been individual comments on fees and all the rest of it. Could you clarify whether there have been any formal challenges to the current position that made the Synod feel that it was particularly defective?

The Bishop of Rochester: We're not aware of any, but where there is uncertainty in the law, that possibility of litigation always exists.

Q17 Mr Marsden: Right, so it's a general tidying-up measure rather than something that was, if not forced, but needed for that reason.

The Bishop of Rochester: Yes, though I think it is fair to say that a lot of the inquiries or complaints that come into the public inquiry line across the road in Church House relate to fees at weddings and things like that, where there is uncertainty, lack of clarity and difference between what happens in place A and place B.

Rt Worshipful Timothy Briden: Perhaps I can add some supplementary assistance on that. I am a member of the Legal Advisory Commission. Quite a lot of the concern about the legal basis of fee charging was manifest through questions that were being asked by diocesan officials, directed to the Legal Advisory Commission, asking what to do in relation to the law as it stood. It was as a result of those deliberations that the Legal Advisory Commission advised that the state of the law was unsatisfactory. That triggered the process that the Bishop of

Rochester has described in bringing this legislation forward.

The Bishop of Rochester: I shall give two specific examples. One of the things that was raised was whether our law as it currently is covers the levying of fees in relation to services at a crematorium at all. Another one is that we make no fee provision—because statutorily we are not able to—for some kinds of services that used not to exist, such as prayers of dedication after a civil marriage. This will now give power to the Archbishops' Council to specify a fee for occasions such as that, which are now more commonplace than once they were.

Q18 Mr Marsden: That's very helpful. The second observation I had was that I think you said that over 90% of clergy currently assign their fees to the DBF. I know this has been touched on in the context of non-stipendiaries, but why do the remainder not do so?

The Bishop of Rochester: The figure that sits in front of me says there are 369 who do not assign their fees. That is about 9%. One of the reasons is that there are those who have an attachment to the traditional role of the incumbent and see it as going with that role that they receive the fees. They don't thereby receive any more money, because it is simply reduced from their stipend in the following year. There is also the fact—you may have different views on this—that because their stipend is thereby reduced by the netting off of their fee income, we don't pay national insurance on that element that is fee income rather than stipend. So you might say that the state suffers as a result. It actually costs the Church less money if they don't assign their fees, but it's a bit untidy.

Q19 Mr Marsden: Right, but other than the reference to national insurance are there no other tax implications for the clergy concerned?

The Bishop of Rochester: I don't think so.

Q20 Mr Marsden: I have one final point that relates in general terms to what you have said. These are clearly measures that have majority approval and are designed to reflect the reality of the situation. The only point that I would make gently on this is that in a previous Parliament the Committee was also brought a Measure that we were told was a tidying-up Measure, which was the Churchwardens Measure, which you may well remember caused slightly more concern when it came to this Committee. I take it that by agreeing to this process, which effectively transfers obligations or responsibilities from the individual to the Archbishops' Council, that does not make any broader general statement about the relationship of the Archbishops' Council or individual Bishops to their parish priests.

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The Bishop of Rochester: I would hope not, no. Because the fee becomes owned by the diocesan board of finance, I hope it will enable dioceses to take more interest in what their clergy are doing and the quality of their ministry on these occasions. We are going to recommend to dioceses that they use some of their income from these fees towards the continual training of their clergy and of lay ministers, particularly in relation to their ministry on these occasions.

Mr William Fittall: To be absolutely clear, there isn't additional power for the Archbishops' Council in relation to the local incumbent. The Archbishops' Council is simply the body that produces the national fees order for the Synod to approve. That will continue. The key change is that the diocesan board of finance will be the recipient of these fees, but, under legislation that you have already agreed in relation to common tenure and the terms of service of clergy, the diocesan board of finance will have the obligation to pay the stipend of the clergy. This may be why a handful of people voted against the legislation in the Synod. In some ways you can see this as the end of the very long process that has been going on over several decades, moving from the model of people who are essentially financed locally from endowments and glebe, with some augmentation from the Church Commissioners, to the model that we have now, where people are essentially paid by stipend from the diocese, which raises the money through the giving of local people. In a sense, it's the end of that process, and that's why for a few people I think this is symbolically important. That's why there were a handful who voted against it.

The Bishop of Rochester: We've had a parish priest on the working parties. I don't think she feels that her position is undermined by this in any way, but she might like to say.

Rev Moira Astin: In some ways I think it is enhanced, because once it is clear that the money is no longer legally mine, I will no longer have the situation where I am at a crematorium and I am given a brown envelope with cash or, usually, a cheque, but now it is usually a cheque that doesn't necessarily have my name written on it, because the funeral director often doesn't know who legally has the right to that money. For example, if my husband were to take a funeral—he is also ordained, albeit as an NSM—legally it would be mine. If the funeral director is being quite correct, they should give him a blank cheque, which doesn't seem to me quite safe. In the future they could give me a cheque made payable to the diocesan board of finance and I can just send it off; it doesn't have to go through my bank account or cause the interesting issues that sometimes occur in clergy money flow, which can happen with fees.

Q21 *Lord Bilston:* It may not be appropriate, but I was wondering if in any of this measure there was any provision for the fees or remuneration for choirboys and girls. I remember leading a strike nearly 60 years ago, when we wanted to increase our stipend from a shilling to two shillings. We had a very recalcitrant clergyman who wouldn't concede that point. I thought it was quite a legitimate increase. So we had to go and sit on the church wall for an hour during the month of March—as you know, the tax issues were very relevant then. I led the choir out to sit on the wall for an hour before the next marriage. We are talking about marriages or funerals. After the hour, the vicar came out and offered us the two shillings and we went back and sang with gusto. I just wondered if there was any provision here to cover the needs of choirboys and choirgirls.

The Bishop of Rochester: I'm sure generations of choristers will be grateful to Lord Bilston for his actions on their behalf, sitting on that wall and holding out. The payments to choirs, bellringers, organists, florists and such like are not covered by the statutory fees. Guidance is offered on such matters by bodies such as the Royal School of Church Music and bodies within Church House are in communication with them about the guidance that they give. Obviously, there are huge variations depending on whether, for example, the organist is a professionally qualified musician or somebody who is doing it out of the goodness of their heart because no one else will, and so on. It is an issue where we are conscious that some transparency is needed. The guidance that we give to dioceses is that the next stage of that process will pick that up, but at the end of the day those are local agreements.

Q22 *Mr Heald:* I just wondered if it was possible to give any idea of the relationship between the average amount that an incumbent would make on fees in a year and the level of the stipend.

Rev Moira Astin: Of course, there is no average incumbent. Rural incumbents probably won't be taking that many, although when they do take a funeral or a wedding it's going to be a much more significant event in the life of the village. As for urban incumbents, thinking for myself, in a normal year I'll do a funeral every other week. I had one patch when I was doing a funeral every week on average—it was more than that for some bits of it. If it's at the crematorium, at the moment the fee towards the stipend is £99. By the end of March in that year I'd had quite a lot of money come into my bank account which I then had to pay out to the board of finance. Fortunately, I'm quite careful with my money, but it was a potential embarrassment. I can see that you could get a situation where people could get behind

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on paying their fees just because they have run their bank account incorrectly or they have bought new shoes for their children, or something, which is why I'd prefer it not to be in my bank account in the first place. Legally, if they are going to write a cheque, it has to go into one of my bank accounts.

The Bishop of Rochester: As a guesstimate, I would say the average is maybe about £2,000 a year or thereabouts, with a stipend of £20,000.

Q23 Mr Heald: So it's not as though the stipend is being reduced to very tiny levels for these incumbents?

The Bishop of Rochester: No, absolutely not.

Q24 Simon Hughes: I have short questions on two subjects that have already been touched on. The first follows Lord Judd's question. Given that we have agreed the Synod's proposal that marriages could happen in places other than where you have the traditional parish connection, with the risk that the black and white timbered Herefordshire church is a more popular venue than the urban red brick church in Hull, and therefore many more weddings may potentially go to the fashionable and fewer to the unfashionable, is the implication that there will still be a sharing out of the money so that there isn't an unfair remuneration for those who just happen to be in a very attractive-looking church? That covers not just the parish priest, but also the other clergy who might be officiating. I have a separate pair of questions about funerals.

The Bishop of Rochester: Others may want to comment, but clearly the diocesan board of finance fee—the ministry fee, as it were—goes into a common pot within the diocese and therefore the fact that a particular parish has loads of weddings won't benefit that particular priest, but will benefit the diocese as a whole. The PCC fee, which is largely unchanged from the present arrangements, is intended as a contribution towards the local costs, not least of the building. Clearly, that stays with the parish concerned, and therefore it is true that those parishes that attract a lot of weddings may benefit if the PCC fee is generous or reasonable, because that will clearly contribute to their income. One thing that will be changing under the guidance that the General Synod may or may not yet accept is that even for those services that take place solely at a crematorium—often in urban places there are a lot of those—the parish concerned will get a fee in addition to the diocese getting a fee. That doesn't happen at the moment, but it's a recognition of the fact that quite often a fair amount of lay energy goes into ministry around funerals, as well as clergy energy, by volunteers and others. The parish therefore will get

something towards that. Those inner urban parishes that may not get many weddings but may get a lot of funerals will get some income that they are not getting at the moment. I speak as one who was an inner-city vicar for a number of years.

Rev Moira Astin: Can I just add a comment on that? You mentioned earlier about team ministries and group ministries. One of the things that is beginning to happen more often over crematorium funerals is clergy grouping together and employing an administrator to be the public face so that the undertakers have someone who they know will be on the end of the phone, but that costs money. That was one of the reasons behind putting that in. Up to now, people have tended to think of the PCC fee as a building fee, but it should be more clearly accepted, as Bishop James said, as recognising the costs in the church at local level as well as at diocesan level. When the money is there, it will be easier to say to people to form co-operatives to make a better service.

Q25 Simon Hughes: Lastly, on funerals, following Helen Goodman's question, I assume that there is no charge for stillborn babies' funerals.

The Bishop of Rochester: Indeed.

Q26 Simon Hughes: May I just lobby that the Church joins us in lobbying to make sure that charges for family funerals by local authorities don't discriminate in the way that sometimes they do if you live just the wrong side of a border? It is not a direct Church matter, but it is a relevant matter and it adds to the cost. Lastly, the other day I went to a woodland funeral in Sussex, but with a Christian aspect. Is that case—it is happening increasingly—or the case of a funeral outside the country covered by a provision? I know someone who has just been asked to take ashes to scatter in Gibraltar.

The Bishop of Rochester: I assume that a woodland funeral is covered if it is officiated by a Church of England minister, because it is as if it was at a local authority cemetery or crematorium—it is at a non-parochial place. I suspect that the overseas one is one of those special cases that would have to be negotiated on a one-off basis.

Q27 Lord Newby: I wanted to know about fees being revised. Obviously, from time to time you need to make sure that the level of the fees keeps up to date with inflation. How does that happen and does it happen in a timely way?

The Bishop of Rochester: At present, an annual fees order has to go before the General Synod and from there to Parliament. That specifies the figures and that is where a sum of money is usually added each year. The current figures have emerged from the mists

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of time. If anybody asked us to justify those figures in terms of actual costs, we would be hard put to do so. Therefore, this year's figures tend to be last year's plus a bit. The new basis that the current working party will be recommending will try to work up from the bottom on a realistic estimate of the costs of providing authorised ministry, buildings and so forth, and then seeing what figure that produces. The Archbishops' Council will have the power to recommend to the Synod a five-year deal on fees, but that can include, for example, a 2% uplift for each of those five years. Clearly, each of those will also come across here as well.

Q28 Lord Newby: Can I just ask a question about them coming across here? I can't ever recollect seeing an annual uprating in fees coming across here.

Rev Alexander McGregor: The annual fees orders are subordinate legislation and take the form of a statutory instrument. They are laid before both Houses under the negative resolution procedure for Statutory Instruments. They don't require a resolution in order to come into effect, but they can be annulled by either House.

Lord Williams of Elvel: I think perhaps I ought to have declared an interest before, in that my stepson is Dean of Liverpool. I would like to talk about cathedrals. It seems to me that there are three categories of cathedral. One, which is mentioned in the text here, is where the cathedral church is the parish church as well as being the cathedral. That is true, I think, in the case of Birmingham, Sheffield and a number of others. The second category is where a cathedral, such as Coventry, has satellite churches and can farm out ceremonies such as marriages and funerals to them. A third category, I think, is Liverpool, which doesn't have any satellite churches at all, although I'd have to check on that. What happens in the case of fees for Coventry? Would the fees for the satellite churches go to the chapter of the cathedral or to the diocesan board of finance? Ditto on Liverpool—when it does marriages do the fees in the cathedral go straight to the chapter and not to the diocesan board of finance?

Rev Alexander McGregor: The statutory provisions in the Measure relate only to parochial fees; that is to say, fees arising where people are exercising their rights as parishioners. That would not cover a wedding that took place in Liverpool Cathedral or St Paul's Cathedral, which are not parish churches. Anyone who marries there does so by special licence, not in the exercise of a right but as a result of a privilege granted by the Archbishop of Canterbury and by the cathedral chapter.

Q29 Lord Williams of Elvel: And the fees would be set by the chapter itself?

Rev Alexander McGregor: Yes, it would be for the chapter to decide those matters in those cases. Where a cathedral is a parish church, irrespective of whether the marriage took place in the parish church cathedral itself or within another chapel licensed for marriages within the cathedral parish, these parochial fees prescribed under the Measure will apply, and they will go to the corporate body of the cathedral.

Q30 Lord Williams of Elvel: The difficult case is Coventry, where you have two satellite churches to the cathedral. The cathedral says, "We'd like you to do this rather than have something in the cathedral". What happens in those circumstances?

The Bishop of Rochester: I think it probably depends on the niceties, which I don't know, of the legal relationship and the status of those other churches, and whether they are governed by one parochial entity or not. The intention with the parish church cathedrals aspect, bringing them within the scope of this measure, is to make sure that people exercising that common law right to have their wedding or funeral in a parish church pay broadly the same fee wherever they happen to be, whether their parish church happens to be a grand cathedral or a tiny little church in the middle of a field. They are citizens of this country and they have the same service wherever they are at the same fee. That is the principle that we have been trying to exercise.

Q31 Lord Elton: I have three very small points. The first one is in Part 3, on page 6, clause 6(3). This deals with the extension of the provisions of the Measure to the Channel Islands and the Isle of Man. The Isle of Man mechanism is clear—it is triggered by an act of Tynwald—but I can't see in the Measure how the extension to the Channel Islands is achieved. There appears to be simply a definition.

Rev Alexander McGregor: It does so indirectly by way of incorporating references to the Channel Islands (Church Legislation) Measures 1931 and 1957. Those Measures provide the mechanism for extending to the Channel Islands. Those mechanisms would be applied or not as the Channel Islands legislatures chose, in order to extend these provisions should they wish to do so.

Q32 Lord Elton: Thank you very much. My second point is in Schedule 1, on page 7. I take it that the intention of the fourth line under Marriages is the same as it would be had the words "in church" been inserted after "dedication".

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The Bishop of Rochester: I see exactly what you say. That may be a very helpful clarification.

Rev Alexander McGregor: It has been drafted as it is because the official name of the service in question is a Service of Prayer and Dedication after a Civil Marriage. That's the official title of that service in the Common Worship book. That title has been kept together as one unit in the drafting, but the legal effect is exactly as you suggest.

Q33 Lord Elton: So possibly a comma after "marriage"?

Rev Alexander McGregor: It could be.

The Bishop of Rochester: We wouldn't wish to give the impression that civil marriages could happen in church.

Q34 Lord Elton: Finally, there is a charge for searches in church registers of marriages for a period before 1 July 1837, but not after.

Rev Alexander McGregor: That's because marriage registers dating from after that date are governed by fees prescribed in the Marriage Act 1949.

Q35 Andrew Selous: I have just two points, if I may. If a family wants to be extra generous after a wedding or a funeral, what's the position? Do they need to do a separate cheque for the excess in person, or do they have to do one cheque and be paid back? How does that work?

The Bishop of Rochester: I think we would always be more than welcoming of generous donations made over and above the prescribed fees. The normal way would be for that to be done by way of a cheque to the parochial church council concerned. It becomes more difficult when families want to give something to the priest concerned, because there are implications in terms of stipend and all sorts of things like that, which I will look to others to respond to. It is probably better to give a bottle of wine.

Rev Moira Astin: That would be exactly it. If anybody ever wants to give me something, I ask for it to go to the PCC. In many ways that benefits me because I am part of that church. That's the community I belong to, so I'm quite happy with that benefit. The bottle of wine or the box of chocolates is always welcome, though.

Q36 Andrew Selous: Thank you very much. Secondly—forgive my ignorance, because there may be practices that I'm not aware of—if someone wants to get married and has a very low income and the fee would be an impediment to them, how do we get round that? We want to encourage people to marry rather than putting barriers in their way.

The Bishop of Rochester: Absolutely. This is one of the areas where the law was uncertain and we have now clarified it. There is an express power to waive fees within the Measure. It is within the gift of the incumbent priest concerned to waive the DBF fee—the ministry fee. In relation to the fees due to a parochial church council, it is in the gift of the incumbent after consulting his or her churchwardens. That is new in the sense that it is explicitly stated for the first time that the right to waive fees exists.

Q37 Lord Judd: In a way, my question relates to the question a moment ago. If there is a lot of confusion in the church about what really happens with the money and all this is intended to clarify and there are going to be guidelines to explain, I'm sure there is much more confusion, insofar as it's thought about, in the public, and I'm sure there's a lot of folklore. I would be very surprised if a very considerable number of people who married in church didn't believe that they were giving something to the clergyman as a sign of appreciation. I think quite a lot of people will be upset to discover that they are not, but are giving it to a board of finance. From this standpoint, I wonder whether, in your guidelines, there is to be some provision for an authoritative summarised paper to be given to people who are being married that explains the situation as it is.

The Bishop of Rochester: You are absolutely right, and there is an awful lot of lack of clarity out there. Because practice differs in different places, it becomes even more confusing. This is partly anecdotal, but one hears alleged instances of churches that charge for putting out the red carpet and others that don't; some that charge you for clearing up the confetti afterwards and others that don't; and so on. That is part of the uncertainty. It would certainly be our intention, particularly once the Archbishops' Council has made the first fees order under the new Measure—if it is supported by your good selves—that the Church House communications team, in collaboration with dioceses, should give some serious thought to some simple, clear, unequivocal communication of the position. When a lot of people approach the church for a funeral, they are not in a fit state to be asking these sorts of questions. They are distressed and they don't ask. When they come for a wedding, they are thinking about all sorts of other things. If we can present it clearly and simply, you are absolutely right.

The Chairman: Thank you very much everybody. I think that completes the questions.

Q38 Peter Bottomley: Just for anyone who reads our record, we ought to note that the power to waive fees is in Part 1, clause 1(9), (10) and (11). I have one other

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question, almost following up what Lady Butler-Sloss contributed. In most legislation in the House of Commons, if there is a Statutory Instrument subject to the negative resolution it can be voted down but still comes into effect. Does the same thing apply to these Measures from the Synod?

Rev Alexander McGregor: Yes, the ordinary Statutory Instrument negative resolution procedure applies to them, as if they were made under the Statutory Instruments Act.

Q39 *The Chairman:* Can we just do the last thing and look at the Measure clause by clause? I hope it won't take us very long. Clause 1(1) is in a sense the crucial one which transfers from the incumbents to the diocesan boards of finance. You gave us the number of incumbents who had not assigned. What is the number of those who have assigned?

The Bishop of Rochester: 3,731.

Q40 *The Chairman:* Compared to the 900?

The Bishop of Rochester: 369 was the other figure.

Q41 *The Chairman:* Any further questions on 1(1)? Paragraph (2) is perhaps not very important. Paragraph (3) is about costs and expenses. Paragraph (4) involves five years instead of one year. Paragraph (6) is quite important. Have we had any questions on that? This is the one that enables the Archbishops' Council to alter Part 1 of the Schedule. This has happened before. It is agreed. Paragraph (7)(b) is the crematorium one. Paragraph (9) is the waiver one, as

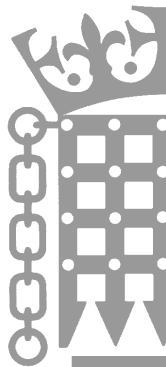
is (10). There is nothing more to be said on (11) to (16). Nothing on Clause 2. We haven't really spent much time on the ecclesiastical judges' and legal offices' fees. I think it is fairly clear what the Measure is doing. It's just reconstituting the body. From there we go to Part 3, which are the consequential amendments and repeals. Clause 5 contains the transitional provisions, which enable an incumbent, if he wants, to hang on to his fee. It has been suggested that six months might not be long enough, or that somehow it ought to be made clear to the incumbent that he's got to do it within six months. Is there anything in that? Perhaps not.

Rev Alexander McGregor: An undertaking was given to the General Synod during the passage of the Measure that all incumbents would receive good notice of the commencement of the six-month period along with their payslips, so that notice could go out in that way.

Q42 *The Chairman:* Then we've got the schedules. We've gone through one or two of the things there. It sounds as though that completes our business. It remains for me to thank you, Bishop, and all your team very warmly indeed for all the help you've given us not only today, but by preparing, as you always do, the magnificent comments and explanations. This year, what you say on the various matters raised before the revision committee is longer than I have ever seen it. It is very helpful to have those matters set out.

Tony Baldry: I move that it is expedient.

All Members: Agreed.



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