



House of Lords
House of Commons
Ecclesiastical Committee

Church of England (Miscellaneous Provisions) Measure

232nd Report

Report, together with formal minutes, written evidence and transcript of the deliberation of the Ecclesiastical Committee

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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

Baroness Butler-Sloss
 Lord Davies of Coity
 Lord Elton
 Lord Glenarthur
 Lord Griffiths of Burry Port
 Baroness Harris of Richmond
 Lord Judd
 Lord Laming
 Lord Lloyd of Berwick
 Lord Luke
 Baroness McIntosh of Hudnall
 Baroness Perry of Southwark
 Lord Shaw of Northstead
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HOUSE OF COMMONS

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 Mr Hon Ben Bradshaw MP
 Mr Frank Field MP
 Helen Goodman MP
 Sir Alan Haselhurst MP
 Sharon Hodgson MP
 Mr David Lammy MP
 Mr Gordon Marsden MP
 Laura Sandys MP
 Andrew Selous MP
 Mrs Caroline Spelman MP
 Mr Gary Streeter MP

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

All correspondence should be addressed to the Secretary of the Ecclesiastical Committee, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number for general enquiries is 020 7219 3152.

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232nd Report of the Ecclesiastical Committee

1. The Ecclesiastical Committee has met and considered the Church of England (Miscellaneous Provisions) Measure referred to the Committee under the provisions of the Church of England Assembly (Powers) Act 1919.
2. The Committee asked representatives of the General Synod a series of questions about the Measure. A transcript of the Committee's proceedings with the representatives of the General Synod is printed with this report. References in this report in the form "Q00" are to that transcript.
3. The Measure, as its title implies, makes a range of changes which the General Synod representatives described as "a mixed bag of very miscellaneous provisions, all designed, in a nutshell, to help and speed up the Church's mission" (Q2).
4. The Comments and Explanations printed with this report give further details of the provisions of the Measure and the background to the Measure.
5. The Committee's questions included a number on section 4 of the Measure. This provision amends the Church Commissioners Measure 1947 in regard to the investment powers of the Commissioners and of the Church of England Pensions Board, including their powers with regard to investment in derivatives. The Committee's questions on this provision, and the Committee's discussions with the representatives of the General Synod, are set out as Q4-8 in the transcript of proceedings appended to this report.
- 6. The Committee is of the opinion that the Church of England (Miscellaneous Provisions) Measure is expedient.**

Minutes of Proceedings

Wednesday 26 February 2014

Minutes of the meeting of the Ecclesiastical Committee held on Wednesday 26 February at 4.15pm in Committee Room 4A, House of Lords.

Present:

Baroness Butler-Sloss

Lord Davies of Coity

Lord Elton

Lord Griffiths of Burry Port

Baroness Harris of Richmond

Lord Judd

Lord Laming

Lord Lloyd of Berwick

Baroness McIntosh of Hudnall

Baroness Perry of Southwark

Sir Tony Baldry MP

Mr Ben Bradshaw MP

Mr Frank Field MP

Sir Alan Haselhurst MP

Mr Gordon Marsden MP

Laura Sandys MP

Andrew Selous MP

Mrs Caroline Spelman MP

Lord Lloyd of Berwick in the Chair.

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

Church of England (Miscellaneous Provisions) Measure

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

The Revd Paul Benfield (Member of General Synod; Chair, Revision Committee)

Mr William Fittall (Secretary General, Archbishops' Council)

Mr Andrew Brown (Secretary and CEO, Church Commissioners)

Ms Saira Salimi (Deputy Official Solicitor, Church Commissioners)

Mr Stephen Slack (Registrar and Chief Legal Adviser to the General Synod, Joint Registrar of the Provinces of Canterbury and York, Chief Legal Adviser to the Archbishops' Council and Official Solicitor to the Church Commissioners)

The Committee deliberated.

It was moved that the Church of England (Miscellaneous Provisions) Measure be deemed expedient.

The motion was agreed to.

The Committee adjourned.

Legislative Committee on the General Synod: Comments and Explanations on the Church of England (Miscellaneous Provisions) Measure

Introduction

1. The Legislative Committee of the General Synod, to which the Measure entitled the Church of England (Miscellaneous Provisions) Measure has been referred, has the honour to submit the Measure to the Ecclesiastical Committee with these Comments and Explanations.
2. The Measure is the eleventh in a series of Miscellaneous Provisions Measures dealing with uncontroversial matters that do not merit freestanding legislation. It is longer than many of its predecessors as a significant number of amendments were added at Revision Committee and Revision Stage.

Proceedings in the General Synod

3. The Measure was introduced into the Synod for First Consideration in July 2012. It was received positively by the Synod and committed to a Revision Committee. The Revision Committee met four times and considered ten proposals for amendment submitted by members of the Synod, and a number of other amendments proposed by the Steering Committee. As a result, a number of amendments were made to the draft Measure.
4. The Measure was returned to the Synod for Revision in July 2013. The Steering Committee made further proposals for amendment which were agreed by the Synod.
5. At Final Drafting, in November 2013, one special amendment was moved by the Steering Committee and the Synod approved a number of drafting amendments.
6. The voting on the Measure at the end of the Final Approval stage was as follows—

	IN FAVOUR	AGAINST
Bishops	18	0
Clergy	74	0
Laity	85	0

No abstentions were recorded.

The Provisions of the Measure

Section 1 – Amendment of the Ecclesiastical Commissioners Act 1840

7. Subsection (1) of this section repeals the proviso to s. 67 of the Ecclesiastical Commissioners Act 1840, which made provision for the Ecclesiastical Commissioners (now the Church Commissioners), in making “additional provision for the cure of souls” to take into account “the wants and circumstances” of the places from which the funds had originally come in determining where to make additional provision. This proviso has not been used for over 50 years: the repeal brings the statute into line with the Commissioners’ actual practice.

8. Subsection (2) makes a consequential repeal of references elsewhere to the proviso repealed by subsection (1).

Section 2 – Amendment of the Burial Act 1857

9. This section amends the Burial Act 1857 by substituting a new section 25. This will have the effect that in those cases where it is currently necessary to obtain both a faculty and a licence from the Secretary of State, or both an approval under the Care of Cathedrals Measure and a licence from the Secretary of State, only a faculty or an approval under the Measure will be required in future. An unnecessary element of dual secular/ecclesiastical control will be removed leaving removals that are subject to ecclesiastical jurisdiction to be dealt with by that jurisdiction alone.

10. Under section 25 of the 1857 Act as it currently stands it is a criminal offence to remove a body or human remains from a place of burial without either a faculty (in the case of a body that is moved from one consecrated place of burial to another) or the licence of the Secretary of State (in any other case).

11. The new section 25 provides for the continued existence of a criminal offence of removing a body or human remains without a specified form of authority. But the forms of authority that are specified are extended so that they are –

- any faculty authorising the removal of a body or remains (and not, as at present, only a faculty authorising removal from one consecrated place of burial to another);
- an approval granted under the Care of Cathedrals Measure 2011;
- a licence granted by the Secretary of State.

Section 3 – Amendment of the Episcopal Endowments and Stipends Measure 1943

12. This section replaces section 5 of the Episcopal Endowments and Stipends Measure 1943, which confers a discretionary power on the Church Commissioners to pay (a) the stipend of a suffragan bishop or a bishop’s chaplain and (b) office expenses. The new provision retains the Commissioners’ discretionary power to pay particular expenses and

also enables them to make a lump sum payment to the bishop, which can then be used for payment of expenses as they arise. Expenses are accounted for by bishops, and the accounts are audited by the Commissioners.

Section 4 – Power of Church Commissioners and Pensions Board to enter into derivative contracts

13. This section is intended to put beyond doubt that the Church Commissioners and the Church of England Pensions Board have power to enter into derivative contracts in relation to the Commissioners’ corporate property and the Pensions Board’s charitable funds.

14. The background is that it has always been considered that both bodies have the capacity to acquire derivatives. However, in 2012 the Commissioners’ and the Pensions Board’s bankers questioned whether either had the capacity to do so. Their view was that a charitable body needs very clear authority to be able to enter into a derivative contract, and that ideally the authority should expressly mention derivatives. This requires legislative amendment as the investment powers of both bodies are governed by statute.

15. The new provisions define “derivative contracts” and related terms by reference to the Corporation Tax Act 2009, rather than creating a separate definition for the Measure. This has the advantage that it will attract any case law about the meaning of “derivative contracts” arising out of litigation about the Corporation Tax Act, which will help to keep it in step with the wider use of the expression.

16. In order to avoid the same issue arising in relation to a different kind of financial instrument in future, the new provisions also include a delegated power for each body to make regulations adding other kinds of instrument to the power conferred by the legislation. Such regulations will be subject to the scrutiny of the General Synod, which will have power to amend them, but will be subject to a shorter procedure than a Measure, so that the change could be made with reasonable speed if necessary. The regulations will be made by statutory instrument subject to the negative resolution procedure in Parliament.

17. The new powers will be subject to the overriding fiduciary duties of members of the Pensions Board and the Commissioners’ Assets Committee, as charity trustees, to act in the best interests of the charity. The powers will also be subject to policies made from time to time by the Church Commissioners and the Pensions Board about the proper exercise of their powers of investment. In an investment context charity trustees are required to act prudently and to have regard to the need to maintain a diverse range of investments. The Charity Commission expressly acknowledges, in its published guidance on charity investments¹, that for a charity with a large portfolio of assets, it may be appropriate to make use of derivative contracts.

18. At present, as a matter of practice, the Commissioners have been using derivatives only to hedge other investments, or to protect themselves against price changes in advance of buying shares, and the Pensions Board intend to use them only to hedge interest rate risks

¹ Charities and Investment Matters: a guide for trustees: CC14 (<http://www.charitycommission.gov.uk/detailed-guidance/money-and-accounts/charities-and-investment-matters-a-guide-for-trustees-cc14/>)

inherent in the loan arrangement for financing the Clergy Retirement Housing Scheme (CHARM).

Section 5 – Amendment of Parochial Church Councils (Powers) Measure 1956

19. Section 5(2) inserts a new section 3A of the Parochial Church Councils (Powers) Measure 1956, conferring a power allowing members of a parochial church council (“PCC”) to receive benefits under contracts with their PCC (notwithstanding the normal rule that charity trustees may not ‘profit’ from their position as such) provided certain conditions are met. Based on a power available to charity trustees generally under the Charities Act 2011, the new power will enable a PCC member, or a ‘connected person’, to be paid for services provided to their PCC under a contract of employment, or a contract for services, if (amongst other matters) the remuneration paid is reasonable and only a minority of the PCC members are benefitting, or connected with a person who is benefitting, under the power. The power will allow PCCs to appoint a member or connected person as an employee, subject to compliance with the specified conditions, without having to obtain prior authority from the Charity Commission to do so.

20. Section 5(3) amends section 7 of the 1956 Measure to allow a minister and PCC greater flexibility in determining the objects to which monies collected in church are to be allocated. As section 7(iv) currently stands, it requires the minister and PCC to determine the particular objects – i.e. the particular destination – for monies collected, whether those be the general funds of the PCC, one of its restricted funds, or another named charity or named charities. It does not, for example, currently make provision to allow the minister and PCC to determine in general that monies collected at a funeral may be allocated to any charity that the family of the deceased may specify. The Legal Advisory Commission, in considering its opinion on collections and funerals observed that it would be helpful if the power were more flexible. The amendment is intended to achieve that.

21. The Charity Commission was consulted about this amendment and is content with it.

Section 6 – Amendment of Ecclesiastical Jurisdiction Measure 1963

22. Section 6 amends the provisions in the Ecclesiastical Jurisdiction Measure 1963 that prescribe the formal qualifications for appointment as the chancellor of a diocese and as Dean of the Arches and Auditor. The relevant provisions currently contained in the 1963 Measure employ statutory legal qualifications that are based on the number of years a person has held the right to appear in certain types of court. Those statutory qualifications are no longer employed in the case of appointments of judges in the temporal courts and they have effectively become obsolete. The amendments, instead of specifying a particular qualification for appointment, provide that a chancellor must at least have the formal qualifications that a person has to have in order to be appointed a circuit judge and that the Dean of the Arches and Auditor must at least have the formal qualifications that a person must have in order to be appointed a Lord Justice of Appeal.

Section 7 – Amendment of Faculty Jurisdiction Measure 1964

23. Section 7 amends a provision contained in the Faculty Jurisdiction Measure 1964 that empowers consistory courts to grant faculties authorising works to monuments that are owned by persons who withhold their consent to such works or who cannot be traced. As the provision currently stands the court is not able to grant such a faculty if the owner of a monument who withholds his or her consent can satisfy the court that he or she is willing and able to remove the monument.

24. This is not considered to result in a satisfactory position because it means that if a court is presented with a case concerning, for example, a dangerous monument which a parochial church council wishes to make safe, the court would be unable to authorise the PCC to make it safe if the owner (i.e. the heir of the person in whose honour it was set up) showed that he was in a position to remove the memorial. In those circumstances the court would have to decide between allowing the memorial to be permanently removed from the church, and retaining it in the church in a dangerous state. The provision that constrains the court in this way is removed by the amendment.

25. The amendment also inserts a new provision which enables the court to grant a faculty authorising works to a monument without requiring the petitioner to seek consent from the owner, or to seek to trace the owner if his or her identity is not already known, if the matter is of such urgency that it would not be reasonable to require the petitioner to take those steps.

Section 8 – Amendment of Overseas and Other Clergy (Ministry and Ordination) Measure 1967

26. Section 8 inserts new provisions into the Overseas and Other Clergy (Ministry and Ordination) Measure 1967.

27. Section 1 of the 1967 Measure currently empowers the archbishop of the province to grant a permission to an individual ‘overseas clergyman’ (this is the defined term used throughout the 1967 Measure, meaning a person of either sex ordained priest or deacon by a bishop of a Church outside the British Isles which is in communion with the Church of England: making the provision gender-neutral would have entailed rewriting the whole Measure). A permission enables the priest or deacon to officiate in the province on the same basis as clergy who have been ordained by a bishop of the Church of England. The power is routinely exercised to enable clergy from other provinces in the Anglican Communion to exercise ministry in England. The grant of a permission under section 1 of the 1967 Measure does not remove the need for the priest or deacon to obtain a licence or permission to officiate from the bishop of the diocese where the ministry is to be exercised where such a licence or permission to officiate would be required by a member of the clergy of the Church of England.

28. Section 8(2) inserts a new provision enabling the archbishop to revoke, in writing, a permission granted to an individual ‘overseas clergyman’ under section 1 of the 1967 Measure for “any cause which appears to him to be good and reasonable”. However the power to revoke a permission will not be available in the case of an ‘overseas clergyman’ who is a freehold incumbent or who currently holds office on Common Tenure. The most

likely, though not the only, situation in which the power of revocation will be exercised is the situation where the ‘overseas clergyman’ has been disciplined under the Clergy Discipline Measure 2003. The provision is subject to the safeguard that the permission may not be revoked unless the ‘overseas clergyman’ in question has been dealt with under that Measure and has had a penalty of prohibition for life, removal from office or revocation of licence imposed on him or her.

29. The power conferred by section 1 of the 1967 Measure is currently limited to granting permissions to individual priests and deacons. It does not provide for the grant of general permissions, for example to specified categories of ‘overseas clergymen’. So, for example, when there is a large number of overseas clergy present in England around the time of the Lambeth Conference, there is no facility for the grant of a general permission to such clergy to celebrate the Holy Communion or to preach if invited to do so by an incumbent. Section 8(3) inserts a new section 1A into the Measure empowering the archbishop of the province to grant general permissions, specifying the category of clergy and the range of ecclesiastical functions to which the permission relates. Such a permission could be for a specified period or could be indefinite. The archbishop would be able to revoke the permission at any time. It will not be possible for an ‘overseas clergyman’ to conduct marriages or publish banns under the authority of such a general permission (an individual permission still being required for that purpose).

Section 9 – Amendment of Synodical Government Measure 1969

30. Section 9 amends the Church Representation Rules, contained in Schedule 3 to the Synodical Government Measure, so that the Chair of the Dioceses Commission, if a lay person, is an *ex officio* member of the House of Laity of the General Synod. (If the Chair is a member of the clergy, equivalent provision is also being made by Canon for *ex officio* membership of the House of Clergy.)

Section 10 – Amendment of Endowments and Glebe Measure 1976

31. This section expands the Commissioners’ powers in order to enable the Commissioners to pay the stipend and expenses of an archdeacon. The present text of subsection (1) enables the payment of stipend only and makes no provision for expenses. This provision was made in response to concern from certain dioceses that the Commissioners pay expenses for suffragan bishops, but not for archdeacons, and therefore a diocese that chooses to appoint an additional archdeacon in place of a suffragan bishop is placed at a disadvantage.

Section 11 – Amendment of Incumbents (Vacation of Benefices) Measure 1977

32. The Incumbents (Vacation of Benefices) Measure 1977 established a process for the removal of a freehold incumbent in circumstances where there has been a breakdown of relations in the parish, or where “by reason of age or infirmity” a priest is no longer able adequately to discharge the duties of his or her benefice. Cases under the Measure are heard by a specially appointed tribunal, which makes a recommendation to the Bishop. The Bishop may, if the tribunal recommends it, dispossess the incumbent of the benefice.

33. There is presently no procedure under the Measure for an appeal. It is regarded as good practice to have an appeal process in any judicial or quasi-judicial process for the purpose of the Human Rights Act 1998, to ensure that if the procedure in a particular case is flawed, the person whose rights are affected by that decision has an opportunity to challenge it.

34. This provision will be of diminishing relevance over time as the 1977 Measure applies only to freehold incumbents and has no application to any office holder on Common Tenure. However, it will continue in effect for as long as there continue to be freehold incumbents (which may be for another thirty years), so it is highly desirable to provide this right of appeal.

Section 12 – Amendment of Patronage (Benefices) Measure 1986

35. Section 12 inserts a new section 16A into the Patronage (Benefices) Measure 1986, so as to provide a new special procedure for the appointment of a priest in charge as incumbent when a suspension of the right of presentation, or restriction on presentation, comes to an end.

36. The purpose of the provision is to remove the need for the application of the full statutory appointment procedure contained in Part 2 of the 1986 Measure where all the interested parties – the patron, the bishop, the parochial church council and the priest in charge – are agreed that the priest in charge should become the incumbent of the benefice.

37. Accordingly, the new section 16A provides for a simplified process. The process is initiated by the bishop giving formal notice to the registered patron, the priest in charge and the parochial church council of a proposal that the priest in charge should be appointed incumbent. It is then open to the patron to present the priest in charge for admission to the benefice if two conditions are satisfied:

- the priest in charge states in writing that he or she is willing to be appointed; and
- the PCC passes a resolution approving the proposal that the priest in charge should be appointed.

38. Any member of a PCC who is the priest in charge, his or her spouse or civil partner, the registered patron or the patron's representative is prohibited from attending any meeting at which a resolution approving the appointment of the priest in charge as incumbent is to be considered.

39. The patron is not under any obligation to present the priest in charge. It remains open to the patron – as at present – to present someone other than the priest in charge. If the patron does not present the priest in charge, the normal statutory appointment process is engaged.

40. Particular provision is made to deal with the situations where (a) the bishop is the registered patron, or (b) the right of patronage belongs to the Crown by virtue of a vacancy in see.

Section 13 – Amendment of Care of Churches and Ecclesiastical Jurisdiction Measure 1991

41. The existing section 17 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (which imposes various restrictions on the granting of faculties that involve the demolition, or partial demolition, of churches) contains a number of cumbersome procedural provisions, some of which are no longer appropriate (such as a requirement for notices to appear in the London Gazette) and others which could be improved. Most of the procedural requirements could be removed altogether from primary legislation (on the basis that the more convenient place for procedural requirements of that nature was in the Faculty Jurisdiction Rules).

42. Section 13(2) therefore replaces section 17 of the 1991 Measure with a simplified provision, omitting a number of procedural constraints currently contained in section 17. The new section retains the concept of partial demolition but defines it in a way that would limit the concept so that it was clear that it did not include the removal of merely ancillary structures (such as boiler houses, lavatories, chimney stacks etc.). The requirement that the bishop's consent had to be obtained before commencing faculty proceedings to authorise demolition or partial demolition is retained.

43. Section 13(3) amends the power contained in section 18 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 that enables the chancellor of a diocese to authorise the emergency demolition of a church. There are doubts as to whether that power is currently exercisable in the way it was intended to be when the 1991 Measure was enacted. The amendment made will ensure that the power is exercisable in any circumstances where demolition of the whole or part of a church is urgently necessary in the interests of safety or health or for the preservation of the church. It will continue to be the case that where the church is listed or is in a conservation area demolition will not be permitted if the safety or health concerns or the preservation of the building can be dealt with by way of repair or temporary support or shelter. Moreover, the works of demolition must be limited to those that are immediately necessary. Those two restrictions are extended by the amendment made in section 13(3)(b) so that they will also apply to unlisted churches that are not in a conservation area.

Section 14 – Amendment of Cathedrals Measure 1999

44. Section 14 inserts a new section 17A in the Cathedrals Measure 1999 to enable the Chapter of a cathedral to pass a resolution to invest its permanent endowment on a total return basis. This section, and the associated new Schedule A1 to the 1999 Measure, reflect the provision for other charities made by the Trusts (Capital and Income) Act 2013 and the Charity Commission regulations to be made under it. There had been some discussion in 2012 with the Law Commission and the Charity Commission of the possibility that provision for cathedrals might be included in the 2013 Act. The Charity Commission had no objection in principle to enabling cathedrals to adopt a total return approach, but the 2013 Act adds two new sections covering total return investment to the Charities Act 2011, which does not otherwise apply to cathedrals, as “ecclesiastical corporations” are excluded from the definition of “charity”. Therefore in the end it was thought better for the Church to make its own provision for cathedrals.

45. Sections 16 and 17 of the 1999 Measure restrict, by implication, the Chapter of a cathedral from spending capital or capital gains and limit them to spending income generated by the cathedral's permanent endowment. There is a risk that restrictions of this kind could lead cathedrals to distort their investment decisions in favour of income-producing assets, which could lead to erosion of the real value of the permanent endowment over time.

46. The effect of a power to invest on a total return basis would be that it would not matter in practical terms, for a cathedral that passed a "total return resolution", whether returns were received as income or capital gains, as both types of return would be available for use for the cathedral's activities or for reinvestment as part of the permanent endowment. Such a power would not alter the Chapter's fiduciary obligation to strike a proper balance between support for the cathedral now and preservation of funds for the future support of the cathedral. However, it would enable greater flexibility in achieving that balance.

47. The draft regulations published under the Trusts (Capital and Income) Act 2013 also made provision for charities to "borrow" up to 10% of their base capital, in addition to the unapplied total return, for expenditure for the charity's purposes, and to repay the funds on a timescale to be agreed by the charity's trustees. This power was omitted from the provision for cathedrals as it was thought to be potentially contentious.

48. The new section provides for cathedrals to adopt a total return approach to their permanent endowment if the Chapter is satisfied that it is in the best interests of the cathedral to do so and passes a resolution accordingly. It also provides for amendment or revocation of such a resolution, and introduces the new Schedule A1 to the Cathedrals Measure 1999, which makes procedural provision for such resolutions. Schedule A1 may be amended by statutory instrument made by resolution of the General Synod (an approach which has a precedent in section 7 of the Synodical Government Measure 1969, which makes similar provision for a schedule containing procedural provisions to be amended by resolution, rather than requiring a fresh Measure.) Such a statutory instrument is subject to the Parliamentary negative resolution procedure.

Section 15 – Tenure of office of vicars general and surrogates

49. At common law the office of vicar general of a province or of a diocese automatically ceases when a vacancy in the archiepiscopal or diocesan see comes to an end, unless the appointment has previously been confirmed by the capitular body of the metropolitan or cathedral church. Section 15(1) provides that the office of vicar general will not automatically cease in those circumstances and brings the position in respect of the office of vicar general into line with the position in respect of the office of diocesan chancellor. The offices of vicar general and chancellor are, as a matter of convention, always held by the same person.

50. The vicar general of each diocese appoints deputies called surrogates who have jurisdiction in respect of the grant of marriage licences that are known as 'common licences'. At common law, the office of surrogate ceases automatically when the vicar general who appointed the surrogate leaves office. That is not a convenient situation and section 15(2) provides that the office of surrogate will not automatically cease in those circumstances.

Section 16 – Amendment of Dioceses, Pastoral and Mission Measure 2007

51. Section 16(2) and (3) amend the powers of the Dioceses Commission under the Dioceses, Pastoral and Mission Measure 2007 so that a diocesan or suffragan see can be renamed by a reorganisation scheme and so that a reorganisation scheme can create new suffragan bishoprics irrespective of whether that scheme abolishes a diocesan bishopric. These lacunae in the powers of the Commission became apparent during the drafting of the scheme creating the new diocese of Leeds (to be known as the diocese of West Yorkshire and the Dales).

52. Section 16(4) amends the constitution of the Dioceses Commission contained in Schedule 1 to the 2007 Measure so that the Chair of the Commission need not be appointed from among the existing members of the General Synod.

Section 17 – Power for chancellor to determine fees

53. Section 17 puts beyond doubt that the chancellor of a diocese has the power to prescribe the fees that are payable to the parochial church council or diocesan board of finance where a faculty is granted for the introduction of a monument in a church (or for an additional inscription on such a monument), or for the reservation of a grave space, or for the construction of a vault. Chancellors have customarily prescribed the fees payable in those situations but a question has arisen as to the basis of their power to do so. The Ecclesiastical Fees Measure 1986 (as amended by the Ecclesiastical Fees (Amendment) Measure 2011) already made provision for the chancellor to prescribe the fees payable in other comparable situations. This new clause should ensure that there is no lacuna in the chancellor's powers.

Section 18 – Power for General Cemetery Company to dispose of whole or part of Kensal Green Cemetery

54. The statute 2&3 Will. IV c. cx is a private Act of Parliament "*for establishing a General Cemetery for the Interment of the Dead in the Neighbourhood of the Metropolis*". The General Cemetery Company, which was established under section 1 of the Act and which owns and operates Kensal Green Cemetery, has been involved in discussions with the Bishop of London concerning plans to lease the consecrated cemetery chapel to a charity which would then restore and maintain it. Section 5 of the Act presented a difficulty, however, in that it made it unlawful for the Company to "*sell or dispose of any Land which shall have been consecrated and set apart for the burial of the dead*". As the chapel is consecrated and contains vaults for burial, the prohibition on sales and disposals imposed by section 5 applies to it.

55. Section 18 of the Measure enables the Company to sell or dispose of (e.g. lease) any such land if the disposal is authorised by a faculty granted by the London Consistory Court. Any such sale or disposal would be on such terms and subject to such conditions as the court determined. There is a partial precedent for this approach in the provisions contained in section 68 of the Mission and Pastoral Measure 2011 which empower consistory courts to grant faculties authorising the leasing of parts of churches.

Section 19 – Provision relating to Christ Church, Oxford

56. Section 5 of the Ecclesiastical Commissioners Act 1840 annexes a (residentiary) canonry at Christ Church, Oxford to the Lady Margaret’s Professorship of Divinity in the University of Oxford. The Dean and Canons of Christ Church, following consultation with the Theology Faculty Board of the University, wished it to be possible for the Lady Margaret’s Professorship to be held either by a residentiary canon or by a lay canon.

57. Section 2(3) of the Church of England (Miscellaneous Provisions) Measure 1995 already provides for the Regius Professorship of Ecclesiastical History – to which another canonry of Christ Church was annexed by section 6 of the 1840 Act – to be held by a residentiary canon or a lay canon.

58. Section 19 replaces the existing section 2(3) of the 1995 Measure with a new subsection that refers to both the Regius Professorship of Ecclesiastical History and the Lady Margaret’s Professorship and provides for each of them to be held either by a residentiary canon or a lay canon.

59. Under section 2 of the 1995 Measure, a lay canon must be a communicant member of the Church of England, or a member of a church to which the Church of England (Ecumenical Relations) Measure 1988 applied and who is entitled lawfully to take part in public worship in accordance with the forms of service and practice of the Church of England.

Section 20 – minor and consequential amendments

60. This section gives effect to Schedule 2 to the Measure, which contains minor and consequential amendments and amendments which clarify ambiguities in the law.

Section 21 – citation, commencement and extent

61. Section 21 provides for the citation of the Measure and its commencement and extent.

Schedule 1 – Schedule A1 to Cathedrals Measure 1999

62. Schedule 1 contains the new Schedule A1 to the Cathedrals Measure 1999. This schedule makes provision relating to the records, annual report and accounts of a cathedral which has passed a total return resolution.

Schedule 2 – minor and consequential amendments

63. *Paragraph 1* repeals section 1(2) of the Ecclesiastical Commissioners Act 1840, which required the appointment of the First and Third Church Estates Commissioners to be published in the London Gazette. The appointment of those Commissioners is now published online, and they also appear on the Charity Commission register as “charity trustees”, so the requirement for publication in the Gazette has become otiose.

64. *Paragraph 2* amends section 17 of the New Parishes Measure 1943 to reflect the fact that diocesan boards of finance, rather than the Church Commissioners, now have power to acquire land for purposes set out in section 13 of that Measure (following amendments

made by the Church of England (Miscellaneous Provisions) Measure 2010), and therefore they need a corresponding power to dispose of such land.

65. *Paragraph 3* makes a number of amendments to the Church Commissioners Measure 1947, enabling the Commissioners to make minor changes in their own governance and organisation.

66. *Paragraph 3(2)* amends section 4 of the Measure to enable notices and agendas for general meetings of the Church Commissioners to be sent out by electronic means as well as by post.

67. *Paragraph 3(3)* alters the arrangements for the appointment of a deputy chairman to chair the Commissioners' Board of Governors in the absence of the Archbishop of Canterbury. The present provision in section 5(2) of the Measure provides for annual election by the Board of a deputy chair: the new provision will enable appointment of a deputy for a period of up to five years, saving administrative time. Members of the Board will continue to elect a deputy from among their members if both the Archbishop and the appointed deputy chairman are absent from a particular meeting.

68. *Paragraph 3(4)* amends section 6 of the Measure for the following purposes:

- It renames the Audit Committee the 'Audit and Risk Committee'.
- It imposes a new duty on that Committee to review the risks, including financial risks, to which the Commissioners are exposed.
- It amends the definition of 'actuary' to reflect the fact that there is now a single professional body covering England and Scotland (the Institute and Faculty of Actuaries), rather than a separate body for each.
- It slightly expands the powers of the Commissioners to make provision in Standing Orders for delegation to chairs of Committees, their deputies and officers.

69. *Paragraph 3(5)* expands the meaning of 'signature' in section 9 of the Measure to include electronic signatures.

70. *Paragraph 3(6)* removes the requirement for nominated Commissioners to be appointed for a period of whole years beginning on 1 April.

71. *Paragraph 3(7)* amends Schedule 1 to the Measure, which makes provision for election of Commissioners by the General Synod. At present, it is open to members of Synod to elect a person who is not a Synod member as a Commissioner. However, anomalously, if a person who is a member of Synod is elected as a Commissioner and is subsequently not re-elected to the relevant House of Synod, Schedule 1 presently provides that the person also ceases to be a Commissioner. The amendment restricts this effect to the House of Bishops, which can elect Commissioners only from among its members by virtue of paragraph 1(b) of Schedule 1: a member of the House of Clergy or the House of Laity who ceases to be a member of Synod will not, in future, also automatically cease to be a Commissioner.

72. *Paragraph 3(8)* removes the requirement for newly appointed lay Commissioners to make a declaration in person of their membership of the Church of England: the new

provision enables the declaration to be signed and returned to an officer of the Commissioners at the new Commissioner's convenience.

73. *Paragraph 3(9)* provides for the Board of Governors or any Committee of the Commissioners to make standing orders enabling them to make decisions on proposals outside meetings by circulating the proposal by post or electronically, enabling a decision to be taken on an urgent matter without the need to call a meeting at short notice.

74. *Paragraph 4* amends the Clergy Pensions Measure 1961. It provides as follows:

- The Church of England Pensions Board and its committees may delegate functions to officers.
- The Chair of the Board or of any of its committees may provide for circulation of a proposal to its members for a decision to be taken outside a meeting, so enabling a decision to be taken on an urgent matter without the need to call a meeting at short notice.
- The definition of 'actuary' is amended to reflect that there is now a single professional body covering England and Scotland (the Institute and Faculty of Actuaries), rather than a separate body for each.

75. *Paragraph 5* amends the Sharing of Church Buildings Act 1969. Section 11 of the 1969 Act provides for any church "represented on the General Council of the British Council of Churches or on the governing body of the Evangelical Alliance or the British Evangelical Council" to become a church to which the Act applies (i.e. a church in respect of which a sharing agreement under the Act may be made). The General Secretary of the appropriate body then has to insert a notice in the London Gazette specifying that the Act applies to the church in question, and the appropriate authority for sharing agreements.

76. That provision has now become seriously out-of-date, as the British Council of Churches has changed its name more than once and is now Churches Together in Britain and Ireland. It has become an incorporated charity and no longer has a General Council. The Evangelical Alliance no longer has a representative governing body, and the British Evangelical Council has now changed its name to Affinity (though it does still have a representative governing body).

77. It is likely that some of the gazettings of churches in recent years have been made unlawfully, as it would have been impossible to comply with the requirements of the 1969 Act as it stands. The new section 11 therefore makes provision for future gazettings to be made in accordance with the new structures, and also makes retrospective provision (in new subsection (5)) to ensure that past gazettings are treated as always having been lawful.

78. *Paragraph 5(4)* gives effect to Schedule 3 to the Measure, which amends Schedule 2 to the 1969 Act.

79. *Paragraph 5(5)* deletes an existing entry in Schedule 2 to the 1969 Act, as the church in question has changed its name and the new name is included in the list added by Schedule 3 to the Measure.

80. *Paragraph 6* amends section 23 of the Endowments and Glebe Measure 1976.

81. *Paragraph 6(2)* substitutes a new section 23(1) of the 1976 Measure. The present text of section 23(1) provides that a Diocesan Board of Finance may exercise its powers under section 14 of the New Parishes Measure 1943 to grant certain land to the Commissioners. However, such grants are no longer to be made to the Commissioners under section 14, following amendments made to the New Parishes Measure by the Church of England (Miscellaneous Provisions) Measure 2010, and therefore section 23(1) in its present form has become meaningless. The amended text provides for a Diocesan Board of Finance to grant or appropriate diocesan glebe land held by it for a purpose specified in section 13(1) of the New Parishes Measure.

82. *Paragraph 6(3)* repeals section 23(2) and (3) of the 1976 Measure (and, consequentially, section 6(b) of the Church of England (Miscellaneous Provisions) Measure 2010), as those provisions are now redundant.

83. *Paragraph 7* makes amendments to the compensation provisions contained in Schedule 2 to the Incumbents (Vacation of Benefices) Measure 1977 so that the pensions provisions refer to the Church of England Funded Pensions Scheme.

84. *Paragraph 8* inserts some additional elements in the definition of “church” in the Ecclesiastical Fees Measure 1986.

85. *Paragraph 9* makes minor amendments to the Patronage (Benefices) Measure 1986, including amendments to take account of provision made in section 2 of the Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure 2010.

86. *Paragraph 10* amends the Church of England (Ecumenical Relations) Measure 1988.

87. The archbishops have the power, under the 1988 Measure, to designate churches to which the Measure – and as a consequence, the ecumenical canons – are to apply. Section 5 of the 1988 Measure prescribes the criteria that a Church must satisfy in order to be eligible for designation by the archbishop as follows–

“(2) No Church shall be designated under subsection (1) above unless–

(a) the Church subscribes to the doctrine of the Holy Trinity and administers the Sacraments of baptism and Holy Communion; and

(b) the Sharing of Church Buildings Act 1969 applies to the Church at the time of designation or, in the case of a Church outside the United Kingdom, it is nominated by the General Synod for the purposes of this section by resolution.”

88. The new paragraph (b) inserted by paragraph 10 replaces the requirement relating to the Sharing of Church Buildings Act 1969 (“the 1969 Act”) with a different requirement. It would leave the existing paragraph (a) in place.

89. Certain provisions in the 1969 Act had become ineffective owing to the way in which at least one of the ecumenical bodies which is responsible for ‘gazetting’ Churches under the Act (the statutory means by which the Act is applied to Churches) had reorganised itself under a new constitution. This was through inadvertence rather than design but the result was that it was not currently possible for the 1969 Act to be applied to some Churches which would formerly have qualified. A further consequence of that was that it

was not possible for some Churches with whom the Church of England might wish to enter into formal ecumenical relationships to be designated by the archbishops under the 1988 Measure.

90. The amendment uncouples the criteria for designation of Churches by the archbishops from the machinery of the 1969 Act. However, the underlying policy remains the same – namely that the Church in question should be a member of one of the ‘ecumenical instruments’, thereby demonstrating that it is committed to ecumenical goals and that it has the necessary organisational identity to enter into formal ecumenical relationships. The amended text therefore requires that the Church in question belong to one of the following ecumenical bodies (or ‘ecumenical instruments’)–

- (a) Churches Together in Britain and Ireland;
- (b) Churches Together in England;
- (c) The Evangelical Alliance; or
- (d) Affinity.

91. In order to deal with the possibility of future reorganisation of the ecumenical instruments, membership of a body which is determined by the archbishops to be the successor of any of the above bodies will satisfy the requirement.

92. *Paragraph 11* amends the Planning (Listed Buildings and Conservation Areas) Act 1990 to make it clear that chapels in episcopal houses of residence that are subject to the faculty jurisdiction receive the benefit of the ecclesiastical exemption from listed building consent.

93. *Paragraph 12* amends the Pensions Measure 1997 to confer on the Business Committee the power to decide whether rules in relation to the funded pension scheme may be considered by the General Synod under the ‘deemed procedure’ and to amend the definition of ‘actuary’ to reflect that there is now a single professional body covering England and Scotland, rather than a separate body for each.

94. *Paragraph 13* amends the National Institutions Measure 1998.

95. *Paragraph 13(2)* provides for section 2(3) of the 1998 Measure to put beyond doubt that the power of the Archbishops’ Council to apply or distribute sums made available by the Church Commissioners includes power to distribute those sums to dioceses for them to apply as they think most appropriate. The amendment also makes clear that this has always been the effect of section 2(3).

96. *Paragraph 13(3)* removes the requirement that the Standing Orders of the General Synod must always provide for at least one-third of the members of the Appointments Committee to be members of the Archbishops’ Council. Whilst there is no current proposal to amend the Standing Orders to remove the requirement to that effect contained in SO 116, the amendment will confer greater flexibility to adjust the position in future if circumstances require it and the Synod agreed the necessary change to SO 116 (e.g. in the event that the membership of the Council was reduced in size and in those circumstances it was no longer considered desirable for four of the Council’s members to have to serve on the Appointments Committee).

97. *Paragraph 13(4)* provides for the Council and its committees to delegate functions to officers and to make decisions on proposals outside meetings by circulating the proposal by post or electronically, so enabling a decision to be taken on an urgent matter without the need to call a meeting at short notice.

98. *Paragraph 14* amends the Cathedrals Measure 1999 to provide that where the guardianship of the spiritualities of a province or bishopric belonged to the Dean and Chapter of a cathedral, it is to belong to the corporate body of the cathedral (i.e. the body corporate created by the cathedral's constitution and statutes in accordance with the 1999 Measure, the members of which are the members for the time being of the Council, the Chapter and the College of Canons). It is to be exercisable by the Chapter on behalf of the corporate body.

99. *Paragraph 15* amends section 5 of the Churchwardens Measure 2001 to provide that the Church Representation Rules may make provision about the procedure for meetings of parishioners under that section, and that the meeting's power to adjourn and to determine its own rules of procedures is subject to any provision in the Church Representation Rules.

100. *Paragraph 16* amends paragraph 5 of Schedule 6 to the Dioceses, Pastoral and Mission Measure 2007 to require an instrument varying a reorganisation scheme to be sent to the Church Commissioners, the Dioceses Commission and the registry of the diocese.

101. *Paragraph 17* amends section 3 of the Ecclesiastical Offices (Terms of Service) Measure 2009.

102. *Paragraph 17(a)* corrects an omission in section 3(a) by adding to the list of events which serve to terminate an office held on Common Tenure the resignation of a bishop or archbishop under section 1 or 4 of the Bishops (Retirement) Measure 1986.

103. *Paragraph 17(c)* confers on a bishop the power to revoke the licence of a deaconess, reader or licensed lay worker who holds office on Common Tenure, by reason of that person's misconduct. Under section 1(1)(h) of the 2009 Measure any deaconess, reader or lay worker who receives a stipend or other emoluments of office now holds office on Common Tenure. Lay office holders are not subject to the Clergy Discipline Measure 2003 or the Ecclesiastical Jurisdiction Measure 1963 and section 3 currently contains no means by which the office of a lay person who is subject to common tenure may be terminated by reason of misconduct as opposed to capability. This amendment makes such provision. Corresponding amendments to the relevant Canons confer a right of appeal to the archbishop of the province on the lay office holder if his or her office is terminated in these circumstances.

104. *Paragraph 18* repeals a provision in the Church of England (Miscellaneous Provisions) Measure 2010, as a decision has now been made that the relevant provision should not be brought into force. It also makes provision putting beyond doubt the effect of a repeal that was contained in that Measure.

- *Paragraph 19* amends the Mission and Pastoral Measure 2011 for a number of purposes. It makes minor amendments conferring rights to be consulted about a scheme on clergy holding office on Common Tenure, even where those clergy do not receive emoluments or accommodation. It also removes the requirement to

delay the coming into force of a scheme if the only person whose office is abolished by the scheme is entirely self-supporting (i.e. not in receipt of a stipend or housing).

- It extends the powers under a pastoral scheme to make provision for the transfer of a parsonage house for specified purposes or for its disposal, so that in future the power will also apply to a house, or part of a house, which is held as part of the diocesan glebe land but was formerly a parsonage house.
- It makes provision enabling the Churches Conservation Trust to make gifts to another charitable foundation, with the consent of the Church Commissioners
- It extends the purposes for which the Temporary Maintenance Account (an account maintained by the Church Commissioners for the purpose of the “care, insurance, repair or maintenance” of closed church buildings) can be used. Those purposes will now include applications for planning permission or listed building consent, and funding demolition. In consequence it also changes the name of the account to reflect its expanded range of purposes.
- It enables the service of documents electronically.
- It amends the provisions contained in Schedule 4 of the 2011 Measure that are concerned with compensation of the clergy who lose office as a result of pastoral reorganisation so that the pensions provisions refer to the Church of England Funded Pensions Scheme, and to make it clear that a person whose periodical payments under that schedule are suspended is not deemed to be in pensionable service during the period of suspension.

105. *Paragraph 20* amends the definition of ‘actuary’ in regulation 2(1) of the Church of England Pensions Regulations 1988 to reflect that there is now a single professional body covering England and Scotland (the Institute and Faculty of Actuaries), rather than a separate body for each.

Schedule 3 – churches added to Schedule 2 to Sharing of Church Buildings Act 1969

106. This Schedule lists those churches which have been “gazetted” under section 11 of the Sharing of Church Buildings Act 1969, together with the “appropriate authority” which has power to give various consents under the 1969 Act.

On behalf of the Legislative Committee

P.N.E. Bruinvels

Canon Peter N. E. Bruinvels

Deputy Chairman

7 January 2014

Deliberation

WITH THE ASSISTANCE OF REPRESENTATIVES OF
THE GENERAL SYNOD

WEDNESDAY 26 FEBRUARY 2014

Present	Lord Lloyd of Berwick (Chairman)	Baroness Perry of Southwark
	Baroness Butler-Sloss	Sir Tony Baldry
	Lord Davies of Coity	Mr Ben Bradshaw
	Lord Elton	Mr Frank Field
	Lord Griffiths of Burry Port	Sir Alan Haselhurst
	Baroness Harris of Richmond	Mr Gordon Marsden
	Lord Judd	Laura Sandys
	Baroness McIntosh of Hudnall	Andrew Selous
	Lord Laming	Mrs Caroline Spelman

Examination of Witnesses: Draft Church of England Measure

Witnesses: THE REVD PAUL BENFIELD, Member of the General Synod, Chair, Steering Committee, MR WILLIAM FITTALL, Secretary General, Archbishops' Council, MR ANDREW BROWN, Secretary and CEO, Church Commissioners, MS SAIRA SALIMI, Deputy Official Solicitor, Church Commissioners, MR STEPHEN SLACK, Registrar and Chief Legal Adviser to the General Synod, Joint Registrar of the Provinces of Canterbury and York, Chief Legal Adviser to the Archbishops' Council and Official Solicitor to the Church Commissioners

Q1 The Chairman: Father Benfield, can I first of all welcome you all to this meeting of the Ecclesiastical Committee. Perhaps you could start just by introducing your colleagues. Many of them are in fact known to us, but I think you should introduce them.

Reverend Paul Benfield: Thank you, my Lord. Starting from my right: Mr Andrew Brown, Secretary of the Church Commissioners, Mr Stephen Slack, Legal Adviser to the Church of England, Mr William Fittall, Secretary General, and Ms Saira Salimi, Deputy Official Solicitor to the Church Commissioners. There is a gap at the end for the Reverend Alexander McGregor, Deputy Legal Adviser. Unfortunately, he is appearing in the Court of Arches today and the case has not finished, but he hopes to join us later. If we get to any points which he has particularly been advising on, perhaps we could delay those matters until he arrives.

Q2 The Chairman: Of course, that seems very sensible. We are, as always, very grateful to you and to your team for producing your comments and explanations, which are always of exceptional clarity. I particularly wanted to thank you for them today. I should mention that we will all have read those comments and explanations, even if we may not all have read every single word of Schedule 2 of this particular measure. I doubt whether any of us have read Schedule 2 very thoroughly. Perhaps the best thing would be for you to start by an introduction to the measure as a whole, giving in particular the history of the measure through the Synod.

Reverend Paul Benfield: Thank you, my Lord. Yes, this draft measure first came before Synod for first consideration in July 2012. It was then put into revision in the Revision Committee. The Revision Committee met four times and made considerable alterations and additions to the draft measure as things became apparent, and various people asked for other things to be added. It was then revised on the floor in full Synod. It received final approval, unanimous support with no votes against, and no abstentions in any of the three Houses. As its name implies, it is a mixed bag of very miscellaneous provisions, all designed, in a nutshell, to help and speed up the Church's mission.

Some are simply housekeeping matters, such as recognising the fact that nowadays communications can be done by electronic means, and various statutory provisions need updating to allow for that. Some are simplification provisions, such as the new shortened procedure to allow a priest in charge to be appointed incumbent of a parish without going through the full procedure normally required. That only applies when all the parties—the Patron, the Bishop, and the priest in charge—agree. If they do not, then the full provisions would apply.

Some provisions are simply to bring ecclesiastical law into line with other charity law, such as the provision to allow cathedrals to invest on a total return basis. Other charities have that provision under secular legislation, but the authorities did not wish to put ecclesiastical bodies—the Cathedral chapters—into that legislation. We are bringing it into line with the rest of the law.

Perhaps, my Lord, because it is so varied, there is not much point in me going on and on, taking

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you through the various provisions, and perhaps I should now stop and ask for questions.

Q3 The Chairman: Yes, I think that is very well. Thank you very much for that introduction. The one thing that is apparent is that this went very easily through the Synod and in the end it was unanimous after the usual process. I will ask for questions, but before doing so, perhaps anyone who has an interest to declare should do so.

In order to get the questions in some sort of order, I think we will just go section by section if it suits you, Father, and if there are any questions we will see. Unless anybody wants it, I do not think we need Father Benfield to repeat what is actually stated in the explanations. Can we start with Section 1? Are there any questions there? Are there any questions on Section 2? Our legal adviser had one point on the scheme in Section 3. What scheme is this that we are talking about?

Ms Saira Salimi: This is a scheme made under the Episcopal Endowments and Stipends Measure 1943, that is to say a scheme for the transfer of the property of the see from the bishop to the Church Commissioners. In practice, of course, all episcopal sees in England have long since transferred their assets to the Church Commissioners. This wording is merely carried over from the previous Section 5.

The Chairman: Are there any other questions on Section 3? Section 4?

Q4 Lord Elton: Having in mind the past, not always tremendously successful, investment policy of the Church, and having in mind the recent catastrophic results upon the whole of the world economic system brought about by the purchase of unsuitable derivatives, I wonder if you could say something about the feeling that it is now necessary for the Church to be able to venture into this field, not only with existing items but also with new inventions should they appear attractive?

Q5 Sir Alan Haselhurst: Is it possible just to give us a little explanation of what derivatives are?

Mr Andrew Brown: Derivatives are financial instruments. They are often used, and they will be used as far as the Commissioners are concerned, in risk management. Let me give you an example. The Commissioners invest across a wide range of assets, but also a wide range of countries and currencies. Therefore, the opportunity to “hedge”—take the risk out of currency movements by forward-selling that particular currency—does indeed take the risk out because you are actually transacting at a known rate. It is about risk management, and it is an opportunity to enable the Commissioners to reduce their risk and manage their risk.

I ought to come back to the first question because this is relevant to that. With a highly

diversified portfolio, one of the problems that the Commissioners found themselves in in the late 1980s, early 1990s, was being able to invest only for income, and an investment policy directed only towards income generation. Now they are able to invest on a total return basis, and that of course is relevant to a later provision as far as the cathedrals are concerned. Being able to distribute both income and the return that comes from the capital gain enables a much greater total return to be achieved. It also gives a facility to invest in a far broader range of assets, so to diversify the investments to assets where actually the income return may be lower than the return from the capital appreciation. One of the examples I could give you would be recent holdings we have been investing in in timber, where there is a much lower volatility of returns from the asset, but actually most of the return comes from capital return rather than income return. There will be times during the cycle of the tree where it is income return that comes through—when it is felled—but actually there is a return that comes from the asset base, or the capital base. A derivative is an opportunity to be able to take out risk in a number of different areas. They are commonly used as defensive mechanisms by virtually all investment managers and other charity investors as well.

The Charity Commission believes, as it says in the notes, that the investment powers of the Commissioners already include the power to use derivatives. The fact is that the lawyers acting for most of the banks say to us that, “Because it is not there in your founding documents, and in your main documents, unfortunately we are not prepared to accept it”. When we point out that the documents go back to 1704 and derivatives were not known at that stage, I am afraid their eyes glaze over and they say, “It does not tick the box, so therefore you need to have the specific power”, and because of our nature as a statutory corporation, it needs legislative change. I am sorry that was a long answer, but hopefully it provided some detail.

Q6 Lord Elton: Can I add to it a little? I think what we have heard is the purpose and the function of derivatives, but not actually what they are. The most recent and notorious example is the derivatives generated in the United States, which consisted of bad risk mortgages bundled up in a way in which they could not be analysed, and sold to British, American, and everybody else’s banks. The thing is that the British, American, and everybody else’s bankers fell for it hook, line and sinker. These things are exceedingly dangerous even in the hands of experts.

I do not want to belittle the expertise of the two bodies we are talking about now, but to put them on a par with the ancient and powerful financial houses of the two major financial capitals of the

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world is rather stretching it. I would be anxious, were there not power here, to also take power to use un-invented derivatives, which will be necessarily, I would have thought, more complex than the ones that already have been invented and discarded. Even without that, I would regard this with great apprehension.

Mr Andrew Brown: I can assure this Committee that there is no intention on the part of the Church Commissioners or the Pensions Board for that matter to invest in forms of investment, whether they be derivatives or others that are not understood. I think that was one of the problems with regard to the collateralised mortgage securities you refer to.

Lord Elton: Could I just also repeat something I say often in the Chamber. Intentions are present: we do not know what they will be in the future; we do not know who will be having the intentions. What we are giving is a power that will be assumed to have been given with the intention of being used. So that is why I am anxious.

The Chairman: Do you want to add anything to that?

Mr Andrew Brown: Only to reiterate what I have already said that for the Commissioners and the Pensions Board, who I am also speaking to in connection of this, this is purely a defensive opportunity or mechanism to enable the protection of return rather than the increase of return.

Reverend Paul Benfield: As far as the un-invented devices are concerned, of course, to make use of those we would have to go through the full synodical process and be subject to the negative resolution procedure of Parliament, so there is control.

Q7 Mr Field: Andrew, you spoke about the derivatives only in respect to forward changes in currency value. Is that the only area you would be using them in? What sort of activities are you having to undertake where you need to protect yourself against future value of sterling?

Mr Andrew Brown: Of the Commissioners' portfolio, something of the order of probably 50% to 60% is invested outside the sterling region. That would be equities from the US; it would be equities from Asia; it would be equities in the eurozone, for example, and property in Asia and property in the eurozone as well. Clearly, we would expect those assets to appreciate in value. There is a risk from currency that we could lose that currency appreciation because actually sterling is either strengthened or weakened, depending on the case. It is about protection of value. Let me give you another example at present. The rural property market, as members of this Committee may be aware, over the last 10 years has been extraordinarily strong. We have seen total returns on our rural assets of between 8% and 20% to 25% year on year over the last 10 years, if not longer. Quite clearly, that are not going to go on, but we do not know

when it is going to stop. There are many people that would suggest it is in a bubble, and it carries on.

It would be very difficult, because of the nature of the tenure arrangements on most of the Commissioners' farms that they hold as an investment, if they were to be sold, at a later stage in the market to buy them back in. Thus it may be possible to provide an arrangement with another party where we could create a security where they could invest now in part of the upside of that growth whilst giving us the capital—in other words taking our risk out of that particular asset. That is a sterling asset. We are not in negotiations with anyone, but it might provide the opportunity to be so. To be able to take out some of the profit without losing the underlying asset would be an attraction to us and an attraction to a counterparty who wanted to get into that part of the market.

Mr Field: So the derivatives will be used on a wider area than just worrying about currency fluctuations? If you have properties with risks in, you may try and sell part of the risks.

Mr Andrew Brown: That might be possible. It would be wrong of me to say to this Committee that that is what we will do. Equally, it would be wrong of me to say that it is what we would not do.

Q8 Lord Davies of Coity: I understand the question that you have posed regarding the issue of derivatives, but the question I want to ask is this: does this improve your income or the capital, or both?

Mr Andrew Brown: It protects both.

Q9 The Chairman: Thank you. Are there any other questions on this section? If there are not, we can then move on now to Section 5. Are there any questions on that? Section 6? Section 7? Section 8—overseas clergyman? Section 9? Section 10? Section 11? Section 12? Section 13? On Section 14—we come back to the question of investing for total return. Are there any questions on that? I think you have explained that cathedrals were kept out of the 2013 Act after a certain amount of negotiation, in the belief that they will come back in, as it were, at some convenient time, which is now. Is that how it is worked?

Ms Saira Salimi: That is not exactly the case. The issue with the 2013 Act was that the Charity Commission was very unwilling to take on the responsibility for making regulations that would cover cathedrals when they had no other role in relation to cathedrals, because cathedrals are not charities under the Charities Act 2011. Therefore, it was thought better that the Church should make its own provision for cathedrals.

The Chairman: And is that what you are now seeking to do?

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Ms Saira Salimi: Yes, this provision is parallel to that made in regulations under the 2013 Act.

The Chairman: This is one of the sections that contain a Henry VIII provision. I do not know whether any members of the Committee would like to inquire about that? It is in fact quite common for measures from the Synod to provide for Henry VIII clauses. Indeed, they are safer with the Synod than they are with Parliament, I suspect. Is there anything on Section 15 then? Section 16?

Q10 Baroness Harris of Richmond: If I may, I found this just a very timely section, as we move to the new Diocese of West Yorkshire and the Dales. I am High Steward of Ripon Cathedral, and so we have changed all the movement within the three dioceses, and I shall watch with great interest to see how this progresses, as will I am sure the Synod.

Mr William Fittall: Perhaps I could comment on that. The change, which is coming into force at Easter, will be the most significant change in diocesan arrangements in the Church of England for more than 80 years, with three dioceses being abolished and a new diocese being created. That was done under the Dioceses, Pastoral and Mission Measure, which this Committee deemed expedient back in 2007. The process of drafting that very major scheme has thrown up one or two lacunae in the drafting, which we managed to find a way around, in terms of the renaming of suffragan sees. It meant we had to go through additional processes, and this would enable us in the future, if there was such a reorganisation, to do it in a simpler way.

In addition, the provision here makes it possible for the Chair of the Dioceses Commission to be chosen from somebody who is outside the Synod, and would join the Synod. On reflection, the Synod did think that that was sensible, because one of the difficulties in choosing somebody from within the Synod is that people are elected to the Synod from particular dioceses, there is something to be said for having a Chair who comes in completely independently.

Q11 The Chairman: Is there another section in the Measure that deals with such a person being brought in?

Mr William Fittall: Yes. Section 9 deals with the amendment to the Synodical Government Measure, but it is subsection (4) here in Section 16 that removes the present stipulation that the Chair has to be chosen from members of the Synod.

Q12 The Chairman: Thank you. Do you have anything or are you happy with that answer on Section 16? Very well, next is Section 17. The question here is: have these fees been determined by the Chancellor over history without him having any power to do so at all? What is the explanation?

Reverend Paul Benfield: It has been assumed that there has been a common law power, but this is making it clear that there is a power for them to fix these fees.

The Chairman: Yes, I like the assumption of a common law power. I think that is very useful, if I may say so.

Ms Saira Salimi: My colleague Alexander McGregor is the expert in this area, but I should just add that the doubt perhaps arises from the prescription of certain fees, under legislation from 1986. Until that legislation, there would have been no doubt at all that there was a common law power.

Q13 The Chairman: Good, thank you. So that is Section 17. Section 18? Section 19? Section 20 is Schedule 2. I would be surprised if there are any questions on Schedule 2. Somebody does actually go through schedule two quite closely, do they? Perhaps you could confirm this, to make sure that they properly belong in Schedule 2 rather than in the main body.

Reverend Paul Benfield: The Steering Committee and the Revision Committee spent a lot of time on the schedules, and in fact some things in the schedule were transferred to the main Measure if they were thought to be more important, and deserved to be in the Measure itself.

The Chairman: There was some suggestion I think I remember reading about a particular amendment passed by the Steering Committee quite at the end of this long procedure.

Reverend Paul Benfield: That was a drafting amendment to clarify a mistake that was only noticed right at the end.

The Chairman: That was all it was?

Reverend Paul Benfield: Yes.

Q14 The Chairman: Yes, good. Are there any more general questions that any member of the Committee would like to ask? I never remember what your committee is called.

Mr William Fittall: We are representing the Legislative Committee.

The Chairman: Are there any more questions for the Legislative Committee?

Lord Laming: I was not going to ask a question, Chairman. I was just going to say that coming into this as a very ignorant lay person, it does seem to me that that Committee has conducted a very detailed piece of work, all of which seems to be very important. I hope that other members of this Committee would agree that they deserve some congratulations on that.

The Chairman: If I may say so, you take the words out of my mouth. We are indeed very grateful to you for coming, and if you would like to retire for a few moments, we will consider what course we should take.