



House of Lords
House of Commons
Ecclesiastical Committee

**Care of Churches and Ecclesiastical
Jurisdiction (Amendment) Measure**

Ecclesiastical Property Measure

**Draft Church of England (Pensions)
(Amendment) Measure**

234th 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

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Lord Elton
Lord Glenarthur
Lord Griffiths of Burry Port
Baroness Harris of Richmond
Lord Judd
Lord Laming
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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

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234th Report of the Ecclesiastical Committee

1. The Ecclesiastical Committee has met and considered the Care of Churches and Ecclesiastical Jurisdiction (Amendment) Measure, the Ecclesiastical Property Measure and the Church of England (Pensions) (Amendment) Measure.

Care of Churches and Ecclesiastical Jurisdiction (Amendment) Measure

2. The Care of Churches and Ecclesiastical Jurisdiction (Amendment) Measure amends existing legislation concerned with the exercise of the faculty jurisdiction and the ecclesiastical courts. (The faculty jurisdiction is the Church's system for regulating works and other proposals relating to church buildings and churchyards.)

3. Amongst other matters, the Measure empowers the consistory court for each diocese to grant faculties permitting the erection of free-standing buildings on disused burial grounds, subject to certain conditions (section 4); provides for nationally applicable lists of minor and routine works that can, subject to certain conditions, be undertaken without a faculty (section 5); and makes provision about appeals from the decisions of the consistory courts (section 7).

4. The Comments and Explanations printed with this report give further details about these and the other provisions in the Measure, and explain that the Measure implements certain recommendations made by a Faculty Simplification Group in July 2013. A transcript of the Committee's proceedings with representatives of the Church of England about this Measure is printed with this report.

5. The Committee is of the opinion that the Care of Churches and Ecclesiastical Jurisdiction (Amendment) Measure is expedient.

Ecclesiastical Property Measure

6. The Ecclesiastical Property Measure removes the requirement for the consent of the "diocesan authority" for certain transactions by parochial church councils and the trustees of certain trusts, and introduces a financial threshold for other transactions below which the consent of the authority will not be required. This new threshold will be set by order made by the Archbishops' Council made by statutory instrument, subject to annulment by either House of Parliament.

7. The Comments and Explanations printed with this report give further details about the provisions of the Measure, and set out the background to the Measure. A transcript of the Committee's proceedings with representatives of the Church of England about this Measure is printed with this report.

8. The Committee is of the opinion that the Ecclesiastical Property Measure is expedient.

Church of England (Pensions) (Amendment) Measure

9. Existing Church of England pensions legislation permits the Church Commissioners to spend capital to meet their historic pensions obligations, until the end of 2018. This short Measure extends the period from the end of 2018 to the end of 2025.

10. The Comments and Explanations printed with this report give further details about the provisions of the Measure, and set out the background to the Measure.

11. The Committee is of the opinion that the Church of England (Pensions) (Amendment) Measure is expedient.

Minutes of Proceedings

Thursday 11 December 2014

Minutes of the meeting of the Ecclesiastical Committee held on Thursday 11 December 2014 at 1.30pm in Committee Room 4A, House of Lords.

Present:

Baroness Butler-Sloss	Sir Tony Baldry MP
Lord Elton	Sir Peter Bottomley MP
Lord Glenarthur	Alistair Burt MP
Lord Judd	Mr Ben Bradshaw MP
Lord Laming	Mr Frank Field MP
Lord Lloyd of Berwick	Helen Goodman MP
Lord Luke	Sarah Newton MP
Baroness McIntosh of Hudnall	Caroline Spelman MP
Baroness Perry of Southwark	
Lord Walpole	

Lord Lloyd of Berwick in the Chair.

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

Care of Churches and Ecclesiastical Jurisdiction (Amendment) Measure

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

The Lord Bishop of Worcester
The Right Worshipful Timothy Briden, Vicar General, Province of Canterbury
The Venerable Christine Hardman, Prolocutor of the Convocation of Canterbury
William Fittall, Secretary General
Alexander McGregor, Deputy Legal Adviser

Ecclesiastical Property Measure

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

The Venerable Clive Mansell (Archdeacon of Tonbridge and Chair of the Steering Committee for the Measure)
Robert Key (Chair of the Revision Committee)
William Fittall (Secretary General)
Saira Salimi (Deputy Official Solicitor)

Church of England (Pensions) (Amendment) Measure

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

William Fittall (Secretary General)

The Committee deliberated.

Sir Tony Baldry declared as an interest that he expected to take up the post of Chair of the Church Buildings Council after the 2015 general election.”

It was moved that the Care of Churches and Ecclesiastical Jurisdiction (Amendment) Measure be deemed expedient.

The motion was agreed to.

It was moved that the Ecclesiastical Property Measure be deemed expedient.

The motion was agreed to.

It was moved that the Church of England (Pensions) (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 Churches and Ecclesiastical Jurisdiction (Amendment) Measure

INTRODUCTION

1. The Legislative Committee of the General Synod, to which the Measure entitled the Care of Churches and Ecclesiastical Jurisdiction (Amendment) Measure ('the Measure') has been referred, has the honour to submit the Measure to the Ecclesiastical Committee with these Comments and Explanations.
2. The Care of Churches and Ecclesiastical Jurisdiction (Amendment) Measure amends the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 ('the 1991 Measure') and the Ecclesiastical Jurisdiction Measure 1963 ('the 1963 Measure').
3. The amendments are intended to simplify and increase the efficiency of the existing legal framework for the care of churches. The most significant change is a new provision which enables subordinate legislation (in the form of rules) to prescribe matters which may be undertaken without a faculty (see section 5).
4. The remainder of this paper is in three parts. First, in **paragraphs 6 to 13** it summarises the background to the draft Measure. Secondly, in **paragraphs 14 to 71** it sets out what the Measure as presented to Parliament provides. Thirdly, in **paragraphs 72 to 97** it summarises the proceedings in the General Synod and the consideration of the draft Measure during the Revision Committee Stage and the subsequent Revision Stage in full Synod. There is also an **appendix** containing illustrative drafts of rules to be made under section 5.
5. The Legislative Committee invites the Ecclesiastical Committee, 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 it.

BACKGROUND TO THE MEASURE

6. The Measure implements a number of recommendations made by a Faculty Simplification Group which were reported to the General Synod by the Archbishops' Council in July 2013.¹
7. A faculty issued by the consistory court of the diocese is generally required before any alterations, additions, removals or repairs to the fabric, ornaments or furniture of a church, or any works in the churchyard, may be undertaken. The court's jurisdiction extends to all consecrated buildings and land, including all parish churches (whether or not listed) and churchyards and some licensed chapels, as well as to the ornaments and furnishings of those buildings and to any objects in or on that land.

1 GS Misc 1048.

8. The faculty jurisdiction is a reflection of the Church of England's understanding that decisions about what happens in and to church buildings and churchyards is not simply a matter for local, congregational decision. It is important both for safeguarding the Church's historic buildings and for maintaining the confidence that the Government places in the Church of England in allowing it to operate its own internal procedures rather than being subject to the secular consent procedure for listed buildings. It also has a role in ensuring that any proposals concerning a church or churchyard are consistent with the Church's doctrine and takes proper account of the interests of all those whom parish churches exist to serve.
9. The last major overhaul of the faculty jurisdiction was carried out in the 1980s and resulted in the Care of Churches Measure 1991.
10. The Faculty Simplification Group (established as part of a wider exercise that was being undertaken by the Archbishops' Council) carried out an extensive consultation with parishes and a wide range of other interested parties. While respondents overwhelmingly supported the existence of the faculty jurisdiction, it was considered to be unduly bureaucratic, resource intensive and often unfathomable to those who had to apply for a faculty. The key need was to make it more user friendly by modernising and streamlining the system to make the process easier for those in parishes who had to engage with it.
11. The package of reforms recommended by the Simplification Group included:
 - i. the establishment of an agreed national list of minor works not requiring a faculty;
 - ii. the establishment of an agreed national list of routine works which would require advice from the diocesan advisory committee and the approval of the archdeacon, but which would not need to go through the full faculty procedure;
 - iii. a more streamlined application process from early advice stage through to the formal faculty petition (i.e. the application to the consistory court) with a more disciplined time frame for routine cases;
 - iv. the creation of an online system for applying for faculties;
 - v. the creation of a standard information form for each church which would be stored electronically, thus eliminating the need for repetition in future applications; and
 - vi. a much shorter and more streamlined form of petition (i.e. the application to the court for a faculty).
12. Items iii to vi have already been largely implemented by the Faculty Jurisdiction Rules 2013.²
13. Items i and ii require primary legislation and are given effect by the most significant provisions contained in the current Measure. Other provisions in the Measure give further effect to the policy of modernising and streamlining the operation of the faculty jurisdiction.

THE PROVISIONS OF THE MEASURE

Section 1 – Guidance as to the planting etc. of trees in churchyards

² S.I. 2013/1916.

14. Section 1 amends section 6(3) of the 1991 Measure. Section 6(3) currently requires the chancellor of each diocese to give written guidance to all parochial church councils in the diocese on the planting, felling, lopping and topping of trees in churchyards. The amendment will transfer the responsibility for giving guidance on trees from chancellors to the Church Buildings Council.
15. The Church Buildings Council is a statutory body whose functions include promoting, by means of guidance or otherwise, standards of good practice in relation to the care, conservation and development of churches and churchyards.³ It makes more sense for guidance on trees to be given on a national basis and, in the light of its statutory functions, the Church Buildings Council is the most suitable body to give it.

Section 2 – Powers of archdeacons

16. Section 2 amends section 14 of the 1991 Measure (Delegation to archdeacons of power to grant faculties).
17. Section 14(1) currently requires the chancellor of each diocese to delegate some of the jurisdiction of the consistory court in faculty matters to each of the archdeacons of the diocese. The extent of the archdeacons' delegated jurisdiction to grant faculties is prescribed by rules made under section 26 of the 1991 Measure. The amendment made by section 2(1) removes the requirement for the chancellor to take any steps to confer jurisdiction on the archdeacon: instead the new section 14(1) will confer jurisdiction directly on the archdeacon. But, as is currently the case under section 14, the extent of the archdeacon's jurisdiction in faculty matters remains limited to such matters as are prescribed in rules.
18. In the light of other provisions of the Measure (see the notes on section 5 below), it is not currently proposed to prescribe any matters as being within the archdeacons' jurisdiction under the new section 14(1). But the amendment keeps the possibility open for the future.
19. Section 2(2) is a consequential amendment.
20. Section 2(3) makes express statutory provision for archdeacons to grant licences for the temporary minor re-ordering of churches. The extent of archdeacons' powers to grant such licences is to be prescribed in rules. The Faculty Jurisdiction Rules 2013 already make provision for archdeacons to grant licences for temporary minor re-ordering but the legal basis for their doing so is not as clear as it might be. The amendments made by section 2(3) therefore clarify the position in that regard.
21. It is expected that the extent of the archdeacon's power to grant a licence for temporary minor reordering will continue on the same basis as under the current Rules. The application for a licence will require the support of the minister and a majority of the parochial church council and, if granted, the licence will be for a specified period of not more than 15 months (a faculty still being required to make the reordering permanent).

Section 3 – Consultation with advisory committee

22. Section 3 amends section 15 of the 1991 Measure (Consultation with diocesan advisory committee).

³ Section 55(1)(d), Dioceses, Pastoral and Mission Measure 2007.

23. Section 15(1) requires the chancellor to seek the advice of the diocesan advisory committee ('DAC') before making a final determination in faculty proceedings or issuing an injunction or making a restoration order. However, that requirement does not apply if –
- i. the proposed action relates exclusively to exhumation or the reservation of a grave space; or
 - ii. the chancellor is satisfied that the matter is sufficiently urgent to justify dealing with the matter without obtaining the DAC's advice.
24. The exception in section 15(1) for urgent cases is currently drafted in such a way that it is not entirely clear whether it applies to the making of restoration orders (as well as to the grant of faculties and the issue of injunctions). The amendment made by section 3(1) ensures that restoration orders are covered by the exception for urgent cases.
25. Section 3(2) adds a new subsection at the end of section 15 which will enable the Rule Committee to make rules specifying further exceptions from the general requirement for the chancellor to seek the DAC's advice before making a final determination. The power might be used to provide an exception so that where the parochial church council had already obtained the advice of the DAC and that advice was before the consistory court, the chancellor need not seek advice from the DAC him- or herself, thereby removing an unnecessary delay from the process.

Section 4 – Disused burial grounds

26. The Disused Burial Grounds Act 1884 makes it unlawful to erect any building (whether permanent or temporary) on a burial ground which is no longer used for interments except for the purpose of enlarging a church, chapel, meeting house, or other place of worship. It is therefore unlawful for a free-standing church hall (for example) to be built on a closed churchyard and a faculty cannot be granted to authorise it.
27. This has resulted in some church halls being built unnecessarily close to churches, connected to the church by a covered walkway of some description, so that these buildings qualify as an enlargement of the church. In some cases, the 1884 Act has resulted in faculty petitions having to be refused for proposals that would, but for the prohibition contained in the Act, have been authorised without any difficulty by the consistory court.
28. The effect of the 1884 Act has been modified in relation to non-conformist burial grounds by the Disused Burial Grounds (Amendment) Act 1981 but that Act does not apply to any consecrated ground and is not therefore of assistance in relation to parochial churchyards.
29. The prohibition contained in the 1884 Act can be overcome by certain types of pastoral scheme (by virtue of section 44(4) of the Mission and Pastoral Measure 2011). But a pastoral scheme is not normally a convenient mechanism for facilitating most building proposals in churchyards, not least because the statutory provisions governing such schemes normally require the exhumation and re-interment elsewhere of all human remains in the land concerned. The faculty jurisdiction, by contrast, would be capable of providing a much more flexible means of authorising such proposals.
30. Section 4 of the Measure accordingly inserts a new section 18A into the 1991 Measure which empowers consistory courts to grant faculties permitting the erection of free-standing

buildings on disused burial grounds. If such a faculty is granted the prohibition on building in the 1884 Act will not apply to the works authorised by the faculty.

31. The exercise of the power to grant such a faculty is subject to one of two alternative conditions being met. The conditions – which are essentially the same as those which apply under the Disused Burial Grounds (Amendment) Act 1981 and under the Mission and Pastoral Measure 2011 – are either:
 - i. that no interments have taken place in the land on which the building is to stand within the past 50 years, or
 - ii. if there have been any interments within the past 50 years, the executor or relatives of any person who has been buried in the land during that period does not object to the grant of the faculty.
32. The consistory courts can be expected to safeguard any human remains in accordance with their normal approach to such matters. Planning permission will continue to be required for the new building.

Section 5 – Powers to prescribe matters not requiring a faculty

33. Section 5 implements the proposal from the Faculty Simplification Group that there should be nationally applicable lists of minor and routine works that can, subject to certain conditions, be undertaken without a faculty.
34. The new section 18B(1) empowers the Rule Committee (which is established under section 25 of the 1991 Measure) to make rules prescribing matters within the jurisdiction of a consistory court that may be undertaken without a faculty.
35. Subsection (2) of the new section 18B enables the rules to impose conditions on the undertaking of any of those matters. Subsection (3) provides that the power to specify conditions includes –
 - i. making it a condition that the archdeacon is consulted on the proposal, and that it may be undertaken without a faculty only if the archdeacon gives written notice to that effect, and
 - ii. a power for the archdeacon to impose conditions on the undertaking of a particular proposal, over and above any standard conditions that are contained in the rules.
36. Subsection (4) enables the rules to impose a requirement that the archdeacon obtain the advice of the DAC or of its members or officers before giving notice that a proposal may be undertaken.
37. Subsection (5) makes provision for the situation where the archdeacon decides not to give notice that the matter may be undertaken without a faculty (which could be because the archdeacon considers that the proposal does not meet the requirements prescribed in the rules; or alternatively because the archdeacon, as a matter of discretion, considers that the proposal needs the more detailed consideration, including public consultation, that a faculty petition would provide for).

38. Subsection (6) deals with the position where the archdeacon is the incumbent or priest in charge of the benefice concerned. In such a case, the chancellor is to exercise the role that would otherwise be exercised by the archdeacon under the rules.
39. Subsection (7) excludes the matters listed there from the scope of the power to prescribe matters that may be undertaken without a faculty. The matters listed in subsection (7) are matters that must always be the subject of a faculty petition. Notably, no works which involve the alteration or extension of a listed building such as to affect its character can be carried out without going through the full faculty process.
40. Subsection (8) makes provision for the court to determine any question as to whether a particular proposal is a prescribed matter and therefore whether it can, in principle, be undertaken without a faculty.
41. Subsection (9) applies the existing definition of 'partial demolition' contained in the 1991 Measure for the purposes of the new section 18B.
42. The new section 18C(1) empowers the chancellor to add to the list of matters that may be undertaken without a faculty and to make undertaking them subject to any conditions imposed by the chancellor under subsection (2).
43. Subsection (3) of the new section 18C empowers the chancellor to make an order in relation to a particular parish so that certain matters may not be implemented there without a faculty despite the fact that they are prescribed by the rules as matters that may generally be undertaken without a faculty. This power will enable the chancellor to ensure that the ability to undertake prescribed matters without a faculty does not result in harm to particular buildings which require special treatment because, for example, the whole building and all its fittings are of special artistic importance. It will also enable the chancellor to take action where there is evidence of the system having been abused.
44. Subsections (4) to (8) of the new section 18C make supplementary provision.
45. Section 5(2) of the Measure repeals section 11(8) of the 1991 Measure. Section 11(8) currently requires the chancellor of each diocese to give written guidance to all parochial church councils, ministers and churchwardens as to those matters within the jurisdiction of the consistory court which are of such a minor nature that they may be undertaken without a faculty. That requirement will become redundant once the new section 18B has been implemented.
46. The Rule Committee has carried out some preliminary work on the way in which the new section 18B might be implemented. It provisionally proposes that the power to prescribe matters that may be undertaken without a faculty should be exercised by creating two lists. Matters in List A could simply be carried out by a parish, subject to any conditions imposed in respect of any particular item in the list. Undertaking matters in List B would be subject to consultation with the archdeacon, who would be required to consult the DAC (or its members or officers), and could proceed only if the parish received written notification from the archdeacon that the proposal may be undertaken without a faculty.
47. Illustrative drafts of List A and List B are reproduced in the Appendix. These will be subject to further consideration by the Rule Committee before Rules are made and laid before the General Synod and both Houses of Parliament.

Section 6 – Membership of Rule Committee for matters relating to faculty jurisdiction etc.

48. Section 6 amends section 25 of the 1991 Measure which constitutes the Rule Committee.
49. The effect of the amendments will be that when the Rule Committee is convened to make rules relating to the faculty jurisdiction and related matters (such as rules prescribing matters that may be undertaken without a faculty, or rules of court concerned with injunctions and restoration orders) its membership will additionally include a chairman and a secretary of a diocesan advisory committee.
50. The amendments also have the effect that the person nominated by the Church Buildings Council to the Rule Committee will only sit as a member when the Committee is convened to make rules relating the faculty jurisdiction and related matters. That represents a change from the current position where that person sits as a member for all Rule Committee business (including, for example, when the Committee is making rules under the Clergy Discipline Measure 2003).

Section 7 – Allocation of appeals

51. Section 7 (which was inserted by the General Synod at the Final Drafting Stage) amends various provisions of the Ecclesiastical Jurisdiction Measure 1963 that are concerned with appeals from the decisions of consistory courts.
52. The amendments continue the distinction which was created by the 1963 Measure between appeals in ordinary faculty cases and faculty cases that involve matter of doctrine, ritual or ceremonial ('doctrine cases'). Appeals in ordinary cases continue to go to the Court of Arches or the Chancery Court of York (consisting of the Dean of the Arches and two chancellors) and appeals in doctrine cases to the Court of Ecclesiastical Causes Reserved (consisting of three bishops and two senior judges). But the amendments provide greater clarity in terms of determining the court to which an appeal lies in a particular case.
53. There are various problems with the existing provisions of the 1963 Measure that deal with appeals from consistory courts. Section 7, on the face of it, requires an appeal in a faculty case to go to the Court of Ecclesiastical Causes Reserved if the proceedings in the consistory court involved matter of doctrine, ritual or ceremonial even if the appeal itself does not involve any such matter.
54. However, amendments were made to the appeals provisions in the 1963 Measure in the Care of Churches and Ecclesiastical Jurisdiction Measure 1991. Those amendments provided for the Court of Ecclesiastical Causes Reserved to refer an appeal that had been brought in that court to the Court of Arches or the Chancery Court of York if the appeal did not involve matter of doctrine, ritual or ceremonial. They also provided for the Court of Ecclesiastical Causes Reserved to refer an appeal if it had disposed of any matters of doctrine, ritual or ceremonial involved in the appeal and considered it expedient that the remaining issues should be dealt with by the Court of Arches or the Chancery Court. And it provided for an equivalent power for the Court of Arches and the Chancery Court to refer appeals to the Court of Ecclesiastical Causes Reserved if either of those courts considered that an appeal brought in those courts related to matter involving doctrine, ritual or ceremonial.
55. The policy established by the amendments made by the 1991 Measure was that it was the subject matter of the appeal, rather than of the original proceedings in the consistory court, which should determine which court should decide the issues raised in the appeal.

56. However, not all of the relevant provisions of the 1963 Measure were amended to reflect that policy. As a result, the provisions relating to appeals continue to give rise to problems in practice. A particular problem arises when a chancellor is asked to give a certificate stating whether a question of doctrine, ritual or ceremonial is involved for the purpose of determining the court to which an appeal lies from the chancellor's decision. It is not clear whether the subject of the chancellor's certificate is meant to be the matters that were involved in the case before the consistory court at first instance or only the matters that a party proposes to take to appeal.
57. The amendments made by section 7 give further effect to the policy adopted in 1991. In doing so they put the position beyond doubt so that in the case of appeals from consistory courts:
- it is the subject matter of the appeal (rather than the entire subject matter of the consistory court proceedings) that is to be considered in determining whether the appeal is an ordinary appeal or a doctrine appeal;
 - accordingly, where an appeal is to be brought, the chancellor will certify (on the basis of the grounds of appeal submitted by the appellant) whether the proposed appeal relates to any extent to matter involving doctrine, ritual or ceremonial;
 - unless the appeal relates to any extent to matter involving doctrine, ritual or ceremonial, it will go to the Court of Arches or the Chancery Court;
 - if the appeal does relate to any extent to matter involving doctrine, ritual or ceremonial, it will go to the Court of Ecclesiastical Causes reserved.
58. The existing provisions which enable appeals to be referred between the appellate courts are retained. Cases concerning injunctions and restoration orders are now treated in the same way as other faculty cases. So are any other cases that fall within the consistory courts' residual jurisdiction under section 6(1)(e) of the 1963 Measure.
59. The opportunity has also been taken to make other, minor improvements to the provisions concerned with appeals.
60. In particular the jurisdiction of the Dean of the Arches and Auditor to give leave to appeal will cease to be conditional on the chancellor having previously refused leave. The procedure for seeking leave to appeal is left to be dealt with in the procedure rules which can then provide for the necessary degree of flexibility to meet the situations that arise in practice.

Section 8 – Power for appellate court to intervene in proceedings in cases of delay

61. Section 8 arises from a proposal that originated from the Faculty Simplification Group and is concerned with addressing cases where there is undue delay in proceedings in a consistory court.
62. Section 8 inserts new subsections in section 7 of the 1963 Measure that empower the Court of Arches and the Chancery Court of York to give directions as to the further conduct of proceedings that are pending in a consistory court if the appeal court considers that there has been inordinate delay in the conduct of the proceedings or if it is otherwise in the interests of

justice for the appeal court to intervene in that manner. The appeal court can give such directions either of its own initiative or on the application of a party to the proceedings.

Section 9 – Duration of office of chancellor

63. Section 9 of the Measure amends section 2 of the 1963 Measure (Judge of consistory court). Section 2(4) of the 1963 Measure provides for a chancellor to hold office until he or she reaches the age of 70. Subsection (4A) currently empowers the bishop to continue the chancellor in office for a further period (or periods) not exceeding one year in total if he considers it desirable in the interests of the diocese to do so.
64. Clause 7 replaces subsection (4A) with a new provision that empowers the bishop to continue the chancellor in office for up to two years. Subsection (4B) empowers the bishop to continue the chancellor in office thereafter for periods of one year at a time. But, by virtue of new subsection (4C) the chancellor cannot be continued in office beyond the date at which he or she reaches the age of 75.
65. New subsection (4D) requires the bishop to consult the Dean of the Arches and Auditor before continuing the chancellor in office under subsections (4A) or (4B).

Section 10 – Interlocutory orders in the appellate courts

66. Section 10 amends section 47 of the 1963 Measure. That section provides that proceedings in the Court of Arches and the Chancery Court of York are to be heard and disposed of by the Dean of the Arches and Auditor sitting with two diocesan chancellors. That provision is entirely apt to deal with appeal hearings themselves. But it is disproportionate when it comes to the making of interlocutory orders relating to appeals (e.g. orders as to timetables, the service of documents, permission to call witnesses at a hearing etc.) which are capable of being dealt with – and can be dealt with more expeditiously – by a single judge.
67. Section 10 accordingly inserts a new subsection (1A) in section 47 of the 1963 Measure which provides that the Dean of the Arches and Auditor sitting alone has jurisdiction to make interlocutory orders in the Court of Arches or the Chancery Court of York. (That would include any orders made under the new section 7(4) of the 1963 Measure inserted by section 8 of the Measure.)

Section 11 – Citation, commencement and interpretation

68. Section 11(1) makes provision for the short title of the Measure.
69. Section 11(2) provides for the Measure to come into force on such day as the Archbishops may appoint. Different days may be appointed for different provisions or for different purposes. Section 11(3) allows transitional and saving provisions to be made to facilitate the implementation of the provisions of the Measure. The power to make an order commencing the provisions of the Measure or making transitional or saving provisions is exercisable by statutory instrument.
70. Some of the Measure’s provisions can be extended to the Isle of Man and the Channel Islands if legislative instruments are made to that effect by their respective legislatures.
71. The expressions “the 1963 Measure” and “the 1991 Measure” are defined in section 11(8).

PROCEEDINGS IN THE GENERAL SYNOD

72. The Measure was introduced into the Synod for First Consideration in November 2013. It was received positively by the Synod and committed to a Revision Committee. It received detailed scrutiny from the Revision Committee and was then considered by the Synod at the Revision Stage in July 2014. The process of revision resulted in a number of amendments being made.
73. A number of further, technical, amendments were made to the Measure at the Final Drafting stage which was taken at the November 2014 group of sessions of the Synod. The Final Approval stage immediately followed when the Measure received the approval of all three Houses.
74. The voting on the Measure at the end of the Final Approval stage was as follows—

	Ayes	Noes
Bishops	17	0
Clergy	102	0
Laity	101	0

One abstention was recorded in the House of Clergy.

MATTERS RAISED BEFORE THE REVISION COMMITTEE AND THE GENERAL SYNOD

Proposals relating to section 5 (powers to prescribe matters not requiring a faculty)

75. The Reverend Simon Cawdell made a proposal to the Revision Committee in relation to the new section 18C(3). This provision empowers the chancellor to make an order in relation to a particular parish so that certain matters may not be undertaken there without a faculty despite the fact that they have been prescribed by the rules as matters that can generally be undertaken without a faculty. Mr Cawdell was concerned that this power was “unfettered”, and he suggested that it should be exercisable only after consultation with English Heritage or the Diocesan Advisory Committee.
76. The Committee did not agree that the power was “unfettered”: it was only exercisable in special circumstances. The Committee agreed, however, that the chancellor should be required to seek the advice of the DAC before exercising the power. It also considered that such a requirement should apply to the power conferred on the chancellor by the new section 18C(1) to make an order adding to the matters that could be undertaken without a faculty.
77. The Revision Committee made amendments accordingly.
78. Mr Cawdell also proposed to the Revision Committee that the Measure should be amended so as to establish a general principle under which any rules made under the new section 18B should provide for any alterations to a building to be undertaken without a faculty provided that they were approved by the archdeacon and the DAC had certified that “the proposed alteration neither affects the structural integrity of the building, or its outward appearance”. Only works that were of a description expressly excluded by the rules would not be subject to this general principle.

79. The Revision Committee considered that Mr Cawdell's proposal would cause significant problems, resulting in a very wide range of works – unless expressly excluded by the Rules – being allowed without a faculty and without the giving of notice to the public or anyone else concerned. Establishing such a principle would result in the Church of England's arrangements no longer meeting the requirements set out in the Government's Code of Practice relating to the ecclesiastical exemption from listed building control.
80. The Committee also considered that such a principle would place a significant and undesirable constraint upon the Rule Committee in the exercise of its power under section 18B, requiring it to deal with works of a particular description in the same way, so that all alterations to a building, however significant or however minor, would be subject to the same level of control, namely consultation with, and approval by, the archdeacon, unless expressly excluded. The imposition of such a constraint would be inconsistent with the objective that the clause sought to achieve which was that the level of control should be proportionate to the particular nature of what was proposed.
81. The Committee therefore rejected the proposal.
82. The Dean of the Arches informed the Revision Committee that the new section 18B(3) might not make it sufficiently clear that the archdeacon had a discretion to decline to give notice that a matter could be undertaken without a faculty even though the matter in question was included in the list of prescribed matters. It had been the intention of the original framers of the Measure that the archdeacon should have such a discretion, enabling the archdeacon to require that a faculty petition be submitted in respect of proposals where he or she was aware that they were contentious or where other relevant considerations meant that it would not be right for them to be undertaken without going through the faculty process.
83. The Revision Committee accepted that the matter ought to be clarified and agreed an amendment to make it clear that the archdeacon had a discretion as to whether to give notice under section 18B(3)(a) allowing a matter to be undertaken without a faculty. The Committee accordingly inserted what is now subsection (5) of the new section 18B.
84. The Revision Committee also considered that questions might arise as to whether particular proposals fell within the list of matters that could be undertaken without a faculty. The Committee agreed to amend the Measure to make provision for any such question to be determined by the court: see subsection (8) of the new section 18B.

Proposals for the insertion of new clauses to provide for annual review of the work of the chancellor and for the bishop to terminate the chancellor's tenure of office

85. The Revision Committee received two proposals from the Reverend Tony Redman for the insertion of new provisions in the Measure. The first proposal was that the Measure should make provision for the work of the chancellor to be subject to annual review by the bishop. The second proposal was that the Measure should make provision for the bishop to have power to shorten the chancellor's period of office if the bishop considered it in the interests of the diocese to do so.
86. Mr Redman explained the rationale for his proposals on the basis that there was "no legal requirement for the chancellor to explain his work to the diocesan bishop, or for the diocesan bishop to reflect with the chancellor of the diocese on his work." It was his view that annual review for chancellors ought to be a legal requirement and that it would "provide

a review process for chancellors similar to that recently introduced for diocesan registrars, and in line with the normal practice for all others with a responsibility held under episcopal authority". The basis for the proposal relating to chancellor's term of office was that it would enable the Bishop to remove the chancellor from office in circumstances where that was not currently possible. This would "bring chancellors into the same structural relationship to the Diocesan Bishop as the Diocesan Registrar and those who hold office under the Bishop in other areas of diocesan life".

87. The Committee noted that the office of chancellor was summarised as follows in volume 34 of Halsbury's Laws of England, at paragraph 1036 –

As judge of the consistory court the chancellor acts in the capacity of official principal of the bishop, who appoints him to the office by letters patent. Although the power of nomination and appointment resides in the bishop, the chancellor's authority is derived from the law. He is a Queen's judge, in one of the Queen's courts. He acts in the court as an ordinary, that is to say, as an independent judge, uncontrolled by the bishop, and with no special instructions from him. There is no appeal from the chancellor to the bishop. The chancellor, being a judge independent of the bishop, may hear and determine in the consistory court a cause in which the bishop is himself interested.

88. The Committee noted that the independence of the judiciary was a fundamental principle of the constitution. The judges in the temporal courts were not accountable to the Government or to Parliament for the exercise of their office. Any training and mentoring was provided by the Judicial College, an independent judicial body. Similar arrangements were made in the case of ecclesiastical judges by the Ecclesiastical Judges Association.
89. The Committee further noted that the only circumstances in which a chancellor could be removed from office were if the Upper House of the Convocation of the relevant province resolved that he was incapable of acting or unfit to act: section 2(4)(b), Ecclesiastical Jurisdiction Measure 1963. The very limited scope of the bishop's power of removal was necessary in order to preserve the independence of the judiciary and reflected the position in respect of judges of the High Court and the other Senior Courts. Subject to a statutory retirement age, their tenure of office was subject only to a power of removal by Her Majesty on an address presented to Her by both Houses of Parliament.
90. To impose a requirement on the chancellor to account to the bishop for the exercise of the functions of his office, or to make provision which enabled the bishop to remove the chancellor, would amount to an interference with the independence of the chancellor as an independent judge and would, as such, be unconstitutional.
91. The Dean of the Arches, in opposing Mr Redman's proposal on behalf of the Steering Committee, explained that chancellors were not members of the bishop's staff, but were special appointments made by letters patent. As such, they were not subject to supervision by the bishop and could only be dismissed in special circumstances. Mr Redman's proposal would represent a major change in this understanding. It appeared, moreover, to be premised on the basis that chancellors never met with their diocesan bishops, which was not in fact the case. Many chancellors held informal meetings with their bishop at least once a year to discuss matters.

92. The Committee decided that while it was important to encourage best practice (which was something that the Ecclesiastical Judges Association was already doing), it was necessary to reject Mr Redman's proposals on the basis of their unconstitutionality.

Proposal for changes to membership of Rule Committee for matters relating to the faculty jurisdiction

93. Canon Timothy Allen proposed to the Revision Committee that a new clause should be inserted in the Measure to amend section 25 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (which provides for the membership of the Rule Committee).

94. His proposal was for a DAC secretary and a DAC chairman, both nominated by the Church Buildings Council, to be included among the membership of the Rule Committee when it was convened for the purpose of making rules concerned with the operation of the faculty system.

95. He also proposed that the person appointed by the Church Buildings Council who was currently a member of the Rule Committee for all purposes (including making rules relating to proceedings under the Clergy Discipline Measure 2003) should only function as a member when the Rule Committee was dealing with business concerned with the faculty jurisdiction.

96. The Committee accepted Canon Allen's proposals and amended the Measure accordingly, inserting what is now section 6.

Revision Stage

97. No further proposals for amendment were made when the Measure was considered in full Synod on the Revision Stage.

On behalf of the Legislative Committee

P. N. E. Bruinvels

Canon Peter Bruinvels

(Deputy Chairman)

18th November 2014

Appendix – Illustrative drafts of rules to be made under section 5

Matters which may be implemented without a faculty

Table 1

List A – Matters which may be implemented without the need for consultation

This table prescribes matters which may be implemented without a faculty subject to any specified conditions. The matters prescribed in the table are subject to general exclusions set out in rule 2A.4 which, among other things, excludes certain categories of works to listed buildings.

<i>Matter</i>	<i>Specified conditions</i>
Church building etc.	
Works of routine maintenance to the church building (other than works affecting the fabric or any historic material)	
Routine repairs and replacement of fittings to kitchens, lavatories, boiler rooms and office accommodation	
Like for like repairs to window glass	The works do not include repairs to broken or cracked quarries in stained glass or historic clear glazed windows
The repair or like for like replacement of wire mesh window guards	Only non-corroding fixings are used and, where practicable, are fixed in mortar joints
Works of routine maintenance to existing—	The works do not involve making additions to an electrical installation
<ul style="list-style-type: none"> • heating systems • gas, water or other services • electrical installations and other electrical equipment 	<p>Any work to a gas fitting is carried out by a person who is registered on the Gas Safe Register (or is a member of another class of persons approved by the Health and Safety Executive for the purposes of Regulation 3(3) of the Gas Safety (Installation and Use) Regulations 1998)</p> <p>Any work to an electrical installation or electrical equipment is carried out by a</p>

person whose name appears on the Electrical Safety Register or any similar register established by the Electrical Safety Council (alone or jointly with any other body)

The installation of a roof alarm

The amount of associated cabling is kept to the minimum that is reasonably practicable

Work to an existing lightning conductor

The work is carried out by a specialist contractor whose name appears on the Electrical Safety Register or any similar register established by the Electrical Safety Council (alone or jointly with any other body)

The parochial church council's insurers are notified of the proposed work

The removal, disposal, repair or replacement of a flagpole

Only non-corroding fixings are used where a flagpole is repaired or replaced

The introduction, removal or disposal of furniture, furnishings, office equipment and minor fixtures in vestries (other than safes)

The existing use of the vestry is not changed

No item of historic or artistic interest is removed or disposed of

The replacement of fittings in existing kitchens and lavatories

The introduction, removal or disposal of fire extinguishers

Any instructions from the supplier or the parochial church council's insurer in relation to their type or location is complied with

The making of additions to an existing name board

The board is not a war memorial or roll of honour

The addition is in the same style (including colour and materials) as existing names on

the board

The installation of bat boxes as part of a bat management programme

The introduction of anti-roosting spikes Only non-corroding fixings are used and, where practicable, are fixed in mortar joints

Musical instruments

The introduction or disposal of musical instruments (other than organs and grand pianos) and associated equipment

The routine tuning and maintenance of organs and pianos In the case of organs, any works do not involve tonal alterations, changes to the action or major dismantling of the instrument

Bells

The inspection and routine maintenance of bells and bell frames No tonal alterations are made to any bell

The repair and routine maintenance of bell wheels Works do not include the re-soling or re-rimming of a bell wheel

The replacement of bell stays, pulleys, bell ropes, sliders or ball bearings

Clocks

The inspection and routine maintenance of clocks and clock faces Works of maintenance do not include re-painting or re-gilding of clock faces

Church contents

The repair of woodwork, metalwork and movables

Matching materials are used

The repair does not involve any works to—

- woodwork or metalwork of historic or artistic interest
- Royal coats of arms
- hatchments or other heraldic achievements
- paintings
- textiles of historic or artistic interest
- church plate (including candlesticks and crosses)

The invisible marking of items for security purposes

The introduction of kneelers, hassocks, pew runners and cushions

The introduction of such items does not result in a change to the overall appearance of the church

The introduction, removal or disposal of—

No item of historic or artistic interest is removed or disposed of

- movable bookcases
- books (other than hand bound books or other books of historic interest)
- free-standing noticeboards
- movable display stands
- cruets
- vases and flower stands
- hymn boards
- altar linen (but not altar frontals or falls)
- flags and banners used for

temporary displays (but not the laying up, removal or disposal of flags or banners)

- the Union flag or St George's flag (with or without the diocesan arms in the first quarter) for flying from the church

Church halls

Routine repairs to the building and the replacement of fittings in the building

The introduction, removal or disposal of furniture

No item of historic or artistic interest is removed or disposed of

Churchyard

The purchase and maintenance of equipment for maintenance of the church and churchyard

The routine repair of paths and other hard-surfaced areas, including resurfacing in the same materials and colour

The routine maintenance of, repairs to, and replacement of fences and gates (but not to lychgates, walls or historic railings)

The carrying out of repairs to a notice board and the repainting of a notice board

The grant by the incumbent of a licence for grazing in the churchyard

The licence is in a form approved by the chancellor

Trees

Works to trees (other than felling)	<p>The works do not relate to any tree in respect of which a tree preservation order is in force or which is in a conservation area</p> <p>The works are carried out by a professional arboriculturist and regard is had to guidance issued by the Church Buildings Council as to the planting, felling, lopping and topping of trees in churchyards</p>
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The removal of self-sown saplings

Table 2

List B – Matters which may be implemented without a faculty subject to consultation etc.

This table prescribes matters which may, subject to any specified conditions, be implemented without a faculty if the archdeacon has been consulted and has given notice in writing that the matter may be implemented without a faculty. The archdeacon may impose additional conditions in the written notice. The matters prescribed in the table are subject to general exclusions set out in rule 2A.3 which, among other things, excludes certain categories of works to listed buildings.

<i>Matter</i>	<i>Specified conditions</i>
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Church building etc.

Works of routine maintenance and repair affecting the fabric of a church or historic material	<p>The works are identified as routine items of maintenance in the most recent report prepared in respect of the church pursuant to section 1(2) of the Inspection of Churches Measure 1955 (the “quinquennial inspection report”) or in subsequent written advice from a qualified person</p> <p>The mix of any mortar to be used on a listed building or on any stone forming part of an unlisted building has been specified by the qualified person who produced the quinquennial inspection report or by another qualified person</p>
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The installation of a wall offertory box	The installation does not affect historic
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fabric

The introduction of a safe in a vestry

Works of external or internal redecoration Details of materials and colours are submitted to the archdeacon when he or she is consulted on the proposal

The parochial church council's insurers are notified of any proposal to erect scaffolding

The overall appearance of the building is not changed

The treatment of timber against beetle or fungal activity The works do not involve the replacement of timber

Works of adaptation (not amounting to substantial addition or replacement) to— The works do not involve making additions to an electrical installation

- heating systems
- gas, water and other services
- electrical installations and other electrical equipment

Any work to a gas fitting is carried out by a person who is registered on the Gas Safe Register (or is a member of another class of persons approved by the Health and Safety Executive for the purposes of Regulation 3(3) of the Gas Safety (Installation and Use) Regulations 1998)

Any work to an electrical installation or electrical equipment is carried out by a person whose name appears on the Electrical Safety Register or any similar register established by the Electrical Safety Council (alone or jointly with any other body)

The parochial church council's insurers are notified of the proposed works

The replacement of a boiler in the same location and utilising an existing fuel supply and existing pipe-runs Any work to a gas fitting is carried out by a person who is registered on the Gas Safe Register (or is a member of another class of persons approved by the Health and Safety Executive for the purposes of Regulation

3(3) of the Gas Safety (Installation and Use) Regulations 1998

The parochial church council's insurers are notified of the proposals

The introduction or replacement of control equipment that is ancillary to a boiler or existing heating system

Any work to a gas fitting is carried out by a person who is registered on the Gas Safe Register (or is a member of another class of persons approved by the Health and Safety Executive for the purposes of Regulation 3(3) of the Gas Safety (Installation and Use) Regulations 1998

Any work to an electrical installation or electrical equipment is carried out by a person whose name appears on the Electrical Safety Register or any similar register established by the Electrical Safety Council (alone or jointly with any other body)

The parochial church council's insurers are notified of the proposals

The like for like replacement of roofing material

The material being replaced was not introduced unlawfully

The parochial church council's insurers are notified of the proposals

The application of forensic marking on roof lead or other material covering a roof or to rain water goods or flashings

The installation of lighting and safety equipment

The lighting or other equipment—

- is installed only in a part of the church (such as a tower or crypt) that is not normally visible to the public, or
- when installed will not be visible from ground level

The work is carried out by a person whose

name appears on the Electrical Safety Register or any similar register established by the Electrical Safety Council (alone or jointly with any other body)

The installation will not affect any graves or vaults

The parochial church council's insurers are notified of the proposals

The installation of a lightning conductor

The work is carried out by a person whose name appears on the Electrical Safety Register or any similar register established by the Electrical Safety Council (alone or jointly with any other body)

The parochial church council's insurers are notified of the proposals

The installation of a sound reinforcement system or loop system or the alteration of an existing system

Bells etc.

The lifting of a bell to allow the cleaning of bearings and housings

The like for like replacement of roller bearings and their housings

The like for like replacement of steel or cast iron headstocks

The introduction of peal boards in a location not normally visible to the public

Clocks

Alterations to striking trains to prevent No part of the clock mechanism is affected

striking at night

Church contents

The repair of—

- Royal coats of arms
- hatchments and other heraldic achievements
- paintings
- historic textiles

The work is undertaken by a specialist conservator

The repair and maintenance of church plate (including candlesticks and crosses) that is not of special historic or artistic interest

The introduction of portable audio-visual equipment used in connection with church services

No equipment is fixed to the fabric of the church

The replacement of portable audio visual equipment

No equipment is fixed to the fabric of the church

The maintenance of audio visual equipment

The replacement of carpets or other floor covering and underlay

Only breathable underlay is used when underlay is replaced

The replacement of curtains (other than curtains and other hangings associated with an altar)

Treatment of fixtures and furniture against beetle or fungal activity

The introduction of a book of remembrance and stand

The introduction of a fixed internal noticeboard

Churchyard

The introduction of benches in a churchyard

No bench has an inscription on it which would not be permitted on a memorial in the churchyard under the applicable churchyard regulations made or approved by the chancellor

The replacement of gas or oil tanks

The replacement tank is of similar dimensions and in substantially the same location

No works of excavation are involved

The routine maintenance, repair or rebuilding of walls

The works do not relate to any wall which is a scheduled ancient monument or a listed building

No works of excavation are involved

Trees

The planting of trees

Regard is had to the guidance issued by the Church Buildings Council as to the planting, felling, lopping and topping of trees in churchyards

The felling of dead or diseased trees

The law relating to the preservation of trees in respect of which a tree preservation order is in force or which are in a conservation area is complied with (if applicable)

The works are carried out by a professional arboriculturist and regard is had to the

guidance issued by the Church Buildings Council as to the planting, felling, lopping and topping of trees in churchyards

Works (other than felling) to trees in respect of which a tree preservation order is in force or which are in a conservation area

The law relating to the preservation of trees in respect of which a tree preservation order is in force or which are in a conservation area is complied with

The works are carried out by a professional arboriculturist and regard is had to the guidance issued by the Church Buildings Council as to the planting, felling, lopping and topping of trees in churchyards ”

Legislative Committee of the General Synod: Comments and Explanations on the Ecclesiastical Property Measure

INTRODUCTION

1. The Legislative Committee of the General Synod, to which the Measure entitled the Ecclesiastical Property Measure has been referred, has the honour to submit the Measure to the Ecclesiastical Committee with these Comments and Explanations.
2. The Ecclesiastical Property Measure makes some modest changes to the Parochial Church Councils (Powers) Measure 1956 (“the 1956 Measure”) and the Incumbents and Churchwardens (Trusts) Measure 1964 (“the 1964 Measure”), reducing the number of transactions for which the consent of the “diocesan authority” (usually the diocesan board of finance) is required. Some types of transaction (such as commencement of legal proceedings) are removed from the scope of the requirement for consent altogether, while for others consent will in future be required only if the value of the transaction exceeds a threshold to be set by order made by the Archbishops’ Council.

BACKGROUND TO THE MEASURE

3. Section 6 of the 1956 Measure provides that where a parochial church council (a “PCC”) holds or acquires an interest in land, other than a short lease (defined as a lease lasting for no more than one year), or any interest in personal property held on permanent trusts, the interest must be vested in the diocesan authority, usually the diocesan board of finance.
4. Where property is vested in the diocesan authority, the PCC may not “*sell, lease, let, exchange, charge or take any legal proceedings with respect to the property without the consent of the authority*”.
5. At the July 2012 group of sessions the General Synod passed the following resolution, on a Private Member’s Motion moved by the Revd Christopher Hobbs:

“That this Synod call on the Archbishops’ Council to bring forward legislation to amend the Parochial Church Councils (Powers) Measure 1956 so as to permit a PCC which is a registered charity to acquire and hold any interest in land and any interest in personal property to be held on permanent trusts, without any requirement for the interest to be vested in the diocesan authority.”

6. The Archbishops’ Council subsequently considered how to give effect to the Synod’s resolution. Its conclusions were reported to the Synod in July 2013 in GS Misc 1060, a copy of which is annexed to this paper.
7. In summary, the Council accepted that Mr Hobbs had drawn attention to some relevant issues.

8. First, PCCs disposing of land are in effect now subject to double regulation, because they are also subject to the requirements of the Charities Act 2011 governing disposals of land. It is a relatively recent development that PCCs are regulated by the Charity Commission, and therefore the question of double regulation could not have occurred to the framers of the 1956 Measure.
9. The Council also noted that the controls under the 1956 Measure are unusually restrictive: they affect not only acquisitions and disposals of land, but also legal proceedings in relation to land (so that a PCC needs the consent of the diocese, for example, to evict squatters from a property that they own).
10. However, the Council did not support the proposed method or degree of deregulation. The suggested distinction between registered and unregistered charities was a distinction without a difference, given that all PCCs are regulated by the Charity Commission and subject to the same governance requirements. Additionally, it is open to a PCC with income below the registration threshold to register voluntarily with the Commission.
11. The Council also noted that some smaller PCCs might struggle to comply with all the legal requirements for the sale of land and that the diocesan authority could provide valuable support in these cases.
12. The Council therefore agreed to bring forward legislation which would provide for a degree of deregulation, but would not remove the diocesan authority's role altogether. The draft Measure was introduced to give effect to that commitment.
13. It was noted in GS Misc 1060 that the 1964 Measure contains very similar provisions about property held on charitable trusts, the trustees of which are the incumbent and / or churchwardens of a parish, and therefore that, for the sake of consistency, that Measure should be amended in a corresponding way.
14. The Council received no comments from members of Synod on GS Misc 1060.

THE PROVISIONS OF THE MEASURE

Section 1 – Amendment of Parochial Church Councils (Powers) Measure 1956

Section 1(1) and (2)

15. Subsection (1) introduces the provisions of section 1. Subsection (2) deletes the reference to bringing legal proceedings from the list of matters for which the consent of the diocesan authority is required, enabling PCCs to bring legal proceedings relating to land, if they think it appropriate, without first referring the matter to the diocese.

Section 1(3)

16. Subsection (3) inserts a new subsection (4A), which provides that the requirement for the consent of the diocesan authority does not apply in a case where the consideration on the transaction is less than the amount specified in, or determined in accordance with, an order made by the Archbishops' Council. This provision is designed to be flexible, enabling the Council either to specify a monetary value below which the consent of the diocesan authority is not required, or to set out a calculation for the purposes of determining whether

such consent is required (e.g. by specifying a value by reference to a proportion of the value of the PCC's corporate property).

Section 1(4)

17. Subsection (4) amends section 6(5), which provides that the consents required by section 6 are additional to any other consents required by law, to remove specific references to the Minister for Education and the Charity Commission. The reference to the Minister for Education is outdated, and the reference to the Charity Commission is adequately covered by the reference to “any other consents required by law”.

Section 1(5)

18. Subsection (5) amends the definition of a “short lease” (in respect of which the consent of the diocesan authority is not required regardless of the value of the short lease) to extend it from one year to seven years. This brings the provision into line with the controls on disposals of land by charities under the Charities Act 2011, which also do not apply in relation to a lease for seven years or less.

Section 1(6)

19. Subsection (6) makes a minor amendment to ensure that it is clear, if there is no diocesan bishop in office, who has the responsibility for appointing a person to determine whether personal property is held on permanent trusts or not.

Section 1(7)

20. Subsection (7) inserts a new section 6A into the 1956 Measure, setting out the procedure for orders made by the Archbishops' Council under section 6(4A). The provision gives the Council a significant degree of flexibility, enabling them, for example, to make different provision for different purposes or different areas (so they could, for example, set different limits for land and for personal property held on permanent trusts).
21. Orders made under the new section 6A will be made by statutory instrument, laid before General Synod and subject to the negative resolution procedure in Parliament.

Section 2 – Amendment of Incumbents and Churchwardens (Trusts) Measure 1964

22. Subsection (1) introduces the amendments to the 1964 Measure.

Section 2(2)

23. Subsection (2) removes the definition of “custodian trustee” from the 1964 Measure, to reflect the deletion of this term from the rest of the 1964 Measure by subsequent amendments. This is because the term is defined in the Public Trustee Act 1906, and the role of a “custodian trustee” as defined in that Act is incompatible with the role played by the diocesan authority under the 1964 Measure. A custodian trustee may not interfere in the management of property except to prevent a breach of trust, while the role of the diocesan authority under the Measure is more pro-active and the authority's consent is required for certain transactions.

Section 2(3)

24. Subsection (3) amends the definition of a “short lease” in the same way that it will be amended in the case of the 1956 Measure, so that instead of a lease for a year or less it is defined as a lease for seven years or less.

Section 2(4)

25. Subsection (4) omits a further reference to the diocesan authority acting as “custodian trustee”.

Section 2(5)

26. Subsection (5) inserts a new subsection (5A) into section 3 of the 1964 Measure, providing for the “managing trustees” (i.e. the incumbent and / or churchwardens as trustees of the relevant trust) to indemnify the diocesan authority. This has the effect that the managing trustees of the trust will continue to be responsible for any liabilities in relation to the property (e.g. a mortgage), insurance, taxes and so on, as well as for the diocesan authority’s costs of taking on the legal title to the interest and the costs of any legal proceedings.

Section 2(6)

27. Subsection (6) amends section 5 to omit a further reference to the diocesan authority acting as custodian trustee, and to remove the requirement for the consent of the diocesan authority to the taking of legal proceedings. For consistency with the amendment made to the 1956 Measure, it also omits the specific reference to the Charity Commission, which is covered by the reference to “any other consents or orders required by law”.

Section 2(7)

28. Subsection (7) inserts a new section 5A, which has the effect of excluding any transaction under a value to be specified in an order made by the Archbishops’ Council. The procedure for these orders is the same as for orders under the 1956 Measure.

Section 3 – Short title, commencement and extent

29. Section 3 makes provision for the short title of the draft Measure and makes provision for commencement by order of the Archbishops of Canterbury and York acting jointly, and for extension to the Isle of Man by Act of Tynwald if desired.

MATTERS RAISED BEFORE THE REVISION COMMITTEE AND THE GENERAL SYNOD

Revision Committee

30. Two members of Synod made proposals for amendment for consideration by the Revision Committee from, and the Steering Committee also proposed a number of amendments.
31. The first proposal was for an amendment to clause 1, providing that the requirement for vesting in the diocesan authority should be abolished, and that in its place a new requirement for the consent of the diocesan authority should be imposed on a disposal by a PCC of land or of property held on permanent trusts. The diocesan authority would be required to give its consent in any case where the archdeacon had been consulted by the PCC and certified that he or she did not object to the disposal.

32. The Committee had a number of concerns in relation to the proposal. They considered that it placed excessive burdens on archdeacons, who may not necessarily have expertise in relation to the disposal of property. They also considered that it removed an important safeguard: if property is vested in the diocesan authority, someone checks the relevant documents before the disposal. Not all PCCs have the necessary expertise, or instruct solicitors with the necessary expertise, to produce documents relating to sale of church property.
33. Some members of the Committee, however, supported the proposal to abolish vesting in the diocesan authority, on the basis that it better reflected the spirit of Mr Hobbs' original Private Member's Motion.
34. The Committee voted against the proposal by 7 votes to 3.
35. The second proposal was that there should be an additional amendment to the 1956 Measure, unrelated to the subject matter of this Measure, to correct the reference to the "Rules for the Representation of the Laity" so that they refer to the Church Representation Rules set out in Schedule 3 to the Synodical Government Measure 1969. The Committee accepted that the amendment was obviously correct, but were advised that it was outside the scope of this Measure and should be made when an appropriate vehicle (possibly the next Miscellaneous Provisions Measure) became available. Until that time, the operation of the Interpretation Act 1978 on the reference to the "Rules for the Representation of the Laity" would produce the correct result. The Committee therefore did not accept the amendment.
36. The Steering Committee also made proposals for amendment to Clause 1, to improve the drafting and reduce the number of changes to the Parochial Church Councils (Powers) Measure 1956. The substantive changes made by the amendments were relatively small: they included a slight amendment of the order-making power to remove the reference to the consideration "paid" (to cover, for example, the case of a lease at a market rent, where not all the consideration will be paid at the time of the transaction). The provision setting out the detail and procedure for the Archbishops' Council's order-making power was also to be moved into the 1956 Measure rather than remaining as a free-standing provision, and the range of the Council's powers was extended to include power to make provision for different purposes, different cases or different areas. The Revision Committee agreed unanimously to accept the Steering Committee's amendments.
37. The third proposal for amendment related to clause 2 of the draft Measure and identified a potential difficulty with the wording of clause 2(4) of the Measure, namely that it would not cover the case where the consideration paid at the time of the transaction does not reflect the true value of the land, or where not all the consideration is by way of premium at the beginning of the process. It was suggested that a surveyor's report should be obtained and lodged with the DBF in every case of a disposal of an interest in land.
38. The Committee rejected this proposal, noting that the concern raised was very substantially dealt with by the provisions of the Charities Act 2011 (which applies to all but the very smallest charities, whether registered or not). Section 119 of the Charities Act 2011 requires a charity disposing of land to obtain a surveyor's report and to decide that they are satisfied that the terms on which the disposition of the land is made are the best that can reasonably be obtained for the charity.

39. Section 119 of the Charities Act would not apply to the transfer of personal property held on permanent trusts, but the concerns specified – such as wayleaves, rent reviews and easements – would have no parallels in relation to property other than land. The chief risk, in relation to property other than land, is a sale at an undervalue, and the trustees of a trust to which the Incumbents and Churchwardens (Trusts) Measure 1964 applies would be subject to the general fiduciary duty of charity trustees to act in the best interests of the charity.
40. The Steering Committee also made proposals for amendment of Clause 2, for purposes of improving the drafting and bringing the order-making procedure into the principal Measure. The Committee agreed to those amendments.

Revision Stage

41. Further amendments were tabled at Revision Stage.
42. An amendment was tabled and debated which would have amended the Measure so that, for any property acquired after the coming into force of the Measure, there would be no requirement for it to be vested in the diocesan authority. A number of Synod members spoke in favour of the amendment on the grounds that it better reflected the intention of the original private member's motion from July 2012. Other members argued that, now that PCCs are regulated as charities (which was not the case in 1956), there is no need for the additional level of protection and regulation provided by the 1956 Measure, which is an unnecessary additional burden on PCCs. However, a number of members expressed disquiet at the proposed amendment, because of concerns about lack of capacity in some PCCs adequately to manage property transactions, especially if there are complexities of ecclesiastical or charity law which may be outside the experience of a high street solicitor. The amendment was lost in all three houses.
43. A further amendment (providing for deemed consent in specified circumstances, where a parish has consulted the archdeacon about a transaction and no response had been received within a specified time period) was moved, but did not receive the support of 40 members of Synod and therefore lapsed without debate.
44. A third amendment, removing an out-of-date reference, was accepted by the Steering Committee and was carried on a show of hands.

PROCEEDINGS IN THE GENERAL SYNOD

45. The Measure was introduced into the Synod for First Consideration in November 2013. It was received positively by the Synod and committed to a Revision Committee. The Revision Committee met twice and made amendments to the Measure.
46. The Measure was returned to the Synod for Revision in July 2014. One amendment was made. Further amendments were moved but were not carried.
47. At Final Drafting, in November 2014, the Synod took note of the Steering Committee's report, which noted that a number of minor drafting amendments had been made to the Measure. No special amendments were made. Final Approval stage was also taken at the November 2014 group of sessions of the Synod, when the Measure received the approval of all three Houses.
48. The voting on the Measure at the end of the Final Approval stage was as follows—

	Ayes	Noes
Bishops	20	0
Clergy	75	0
Laity	90	0

No abstentions were recorded in the House of Bishops, none in the House of Clergy and one in the House of Laity.

On behalf of the Legislative Committee

P. N. E. Bruinvels

Canon Peter Bruinvels

(Deputy Chairman)

November 2014

ANNEX

GS Misc 1060

GENERAL SYNOD

Parochial Church Councils (Powers) Measure 1956: a response to the Private Member's Motion agreed by General Synod in July 2012

Background

1. The Parochial Church Councils (Powers) Measure 1956 ('the 1956 Measure') at present provides that:

- a PCC may not acquire an interest in land other than a short lease, or other property to be held on permanent trusts, without the consent of the diocesan authority and that, if a PCC does acquire such an interest, it must be vested in the diocesan authority; and
- where property is vested in the diocesan authority in this way the PCC may not sell, lease, exchange, charge or take any legal proceedings in relation to it without the diocesan authority's consent.

2. At the July 2012 group of sessions, the General Synod passed the Private Member's Motion laid by the Revd. Christopher Hobbs, which read as follows:

"That this Synod call on the Archbishops' Council to bring forward legislation to amend the Parochial Church Councils (Powers) Measure 1956 so as to permit a PCC which is a registered charity to acquire and hold any interest in land and any interest in personal property to be held on permanent trusts, without any requirement for the interest to be vested in the diocesan authority."

3. The Archbishops' Council has now considered how to respond to that motion, and is proposing to bring forward legislation to make some changes to the 1956 Measure.

Issues underlying the Synod's resolution

4. It is not uncommon for charity property to be vested in the name of a body other than the trustees. For example, the Official Custodian for Charities is a statutory corporation which exists for the purpose of holding legal title on behalf of charities, and many small charities use the service to hold the legal title to their land.

5. However, it is unusual to find such an arrangement in a case where the charity which owns the land is itself a body corporate, as PCCs are. Usually the reason for vesting land in the Official Custodian or some other body corporate is that the trustees are a changing body of individuals and it is administratively simpler to have the title to the land vested in a corporate body, rather than making an application to the Land Registry to change the title every time a trustee is appointed or retires. This is obviously not a relevant consideration in the case of a PCC.

6. It is not entirely clear why the requirements set out in paragraph 1 above were included in the 1956 Measure. They date from the original Parochial Church Councils (Powers) Measure 1921,

and may have reflected uncertainty at the time about the capacity of what were then newly established bodies to manage property transactions adequately (particularly in small rural parishes).

7. The régime under the 1956 Measure now creates an element of double regulation, since nothing in the Measure disapplies the normal consent regime under the Charities Act 2011 for disposals of land by a charity (which now, of course, applies to PCCs).

8. The controls under the 1956 Measure are also unusually restrictive. They affect not only sales and purchases of property vested in the diocesan authority, but also the bringing of legal proceedings in relation to it: a PCC cannot, for example, take steps to evict squatters from property they own and manage without the consent of the diocese. This is arguably an excessive degree of control over PCCs' powers to manage their own property.

The Council's response to the Synod's resolution

9. The resolution passed last July proposed a distinction between PCCs which are registered charities and other PCCs. This is a distinction without a real difference behind it: **all** PCCs, whether or not registered, are regulated by the Charity Commission and subject to the same governance requirements. Only those with an annual income of over £100,000 are required to be registered, but voluntary registration is possible for those with smaller incomes.

10. It would be very odd to make registration the relevant threshold for this purpose when PCCs may move either way across the compulsory registration bracket as their income varies from year to year (and, as noted above, some PCCs which are not in that bracket may choose to register voluntarily).

11. That said, it is right to say that PCCs have widely differing capacity to deal with legal and financial matters: particularly in very small parishes, there may not be the capacity to be able to handle property transactions without diocesan support. In general larger parishes would be better placed to manage these matters competently.

12. The Council therefore proposes to amend the legislation to reduce the number of transactions for which diocesan consent is required, so that PCCs have flexibility in smaller matters but diocesan consent continues to be required for significant transactions.

13. In contrast, the Council proposes that the requirement for consent to legal proceedings should simply be repealed: it seems reasonable and proportionate to allow PCCs to make their own judgment about whether legal proceedings should be taken in relation to their property.

14. The definition of a "short lease" would also be amended to enable PCCs to grant longer-term tenancies without reference to the diocese. The 1956 Measure presently provides that a lease for a year or less is a "short lease" and not required to be vested in the diocesan authority. This could be extended to seven years, to align with the Charity Commission controls on disposals of land (which do not apply to leases for less than seven years).

15. The remaining provisions would be subject to a *de minimis* limit (which would be prescribed in regulations under the 1956 Measure as amended, to enable updating for inflation) providing that the diocesan authority's consent was required for a transaction in excess of the limit but not for a transaction below it. The precise limit remains to be decided.

16. There is a precedent for this type of approach in the Cathedrals Measure 1999, which provides that the Church Commissioners' consent is required for a disposal or acquisition of land by a cathedral unless the Commissioners have excepted the transaction by order. The present excepting order provides that no consent is necessary for any transaction under a specified value.

17. The overall effect of the Council's proposals is that all land owned by PCCs, and personal property held on permanent trusts, would continue to be vested in the diocesan authority but its consent would not be required for transactions below the limit. The consequence would be that, in the absence of a need for consent, PCCs would be free to deal with their property as they thought fit - consistently with their fiduciary duties - and diocesan authorities would only be able to decline to give effect to a disposal if they had reason to suspect a breach of trust.

18. These changes will require a new measure. The Council hopes to be able to introduce the necessary amending legislation in November 2013. For consistency, it is likely that the legislation will also amend the Incumbents and Churchwardens (Trusts) Measure 1964, which makes provision similar to that in the 1956 Measure for land, and property held on permanent trusts, owned by the incumbent or churchwardens of a parish.

19. The Council has accepted that if PCCs are to be given more flexibility in this way, additional guidance will need to be issued by dioceses and / or the national institutions about dealing in property by fiduciaries, to ensure that PCCs with no members with suitable training or experience have at least basic information available to them about matters to be taken into account.

William Fittall

Secretary General

June 2013

Legislative Committee of the General Synod: Comments and Explanations on the Draft Church of England (Pensions) (Amendment) Measure

Background: the Measure and its origins

1. The Legislative Committee of the General Synod, to which a Measure entitled the Church of England Pensions (Amendment) Measure ("the Measure") has been referred, has the honour to submit the Measure to the Ecclesiastical Committee with these Comments and Explanations.
2. The Pensions Measure 1997:
 - (a) limited the Church Commissioners' clergy pensions liabilities to those arising from service before the end of 1997;
 - (b) created a funded scheme into which dioceses (through funds raised from parishes) pay clergy pension contributions in respect of service from and after 1 January 1998; and
 - (c) gave the Commissioners power (until 2004) to spend their capital in meeting their pensions liabilities.
3. It is the last of these provisions with which the new Measure is concerned.
4. The Commissioners' power to spend capital in meeting their pensions liabilities allows them to maintain a significant amount of other support for the Church's ministry, including that in the neediest parishes. Their initial power under the 1997 Measure expired at the end of 2004 and was renewed for a further seven years by the Church of England (Pensions) Measure 2003, and again for a further seven years by the Church of England (Pensions)(Amendment) Measure 2009, so that the current power expires at the end of 2018.
5. The original version of the 2003 Measure submitted to the Ecclesiastical Committee in January 2002 provided, in addition to the renewal of the power, for the possibility of an unlimited number of further extensions of the power for successive periods of seven years, to be achieved by Orders made by the Commissioners. Any such Order would have been laid before the General Synod for approval and then laid before Parliament as a statutory instrument under the negative resolution procedure. Whereas the Ecclesiastical Committee was willing to find the extension of the power expedient, it was opposed to any future extensions of the period otherwise than by further Measure because of Parliament's wish to retain control over the application of the Commissioners' capital funds due to the origin of some of those funds. The Measure was therefore withdrawn in the light of the Ecclesiastical Committee's expressed concern and taken back to the General Synod with the relevant provisions removed. The revised Measure was then brought back to the Ecclesiastical Committee in July 2002, on which occasion it found the Measure to be expedient.
6. The 1997 Measure stemmed from the realisation in the mid-1990s that the Commissioners' asset base could not sustain both their pensions liabilities and their other support for the

Church (support for the ministry of bishops and cathedrals and for parish mission and ministry). Without the power to spend capital, the Commissioners would have had to bridge the gap between income and expenditure either by cutting their distributions, or by investing in high yielding assets which would reduce growth and distributions over the long term. The power to spend capital granted in 1997 has enabled the Commissioners to follow an investment policy that focuses on long-term total returns, which means investing in real assets with the opportunity for capital growth. The power has therefore been a crucial contributor to the significant success of their fund over the last decade. The Commissioners have consistently achieved or exceeded their target of total returns of RPI plus 5%, and in 2013 the total return on the Commissioners' fund was 15.9%. The value of the Commissioners' fund at the end of 2013 was £6.1 billion, up from £5.5 billion at the end of 2012.

7. Since the last extension of the power to spend capital, in 2009, the legal position has materially altered, in that the Commissioners have obtained an order from the Charity Commission under section 105 of the Charities Act 2011 enabling them to invest and spend their general fund on a "total return" basis. The Charity Commission's order, made on 28 September 2012, brought the Commissioners' accounting practice in line with their investment strategy and actuarial methodology. It was granted on the basis that the power to spend capital would still be available, and therefore the "base capital" of the Commissioners' fund would be recalculated each year to reflect their pensions spending. However, if the power to spend capital is not renewed and payments would have to be made out of the unapplied total return rather than the "base capital", the funds available each year for spending on the Commissioners' other beneficiaries would have to be significantly reduced, with the result that a greater and greater proportion of the Commissioners' fund would be locked away, contrary to the intention of the Charity Commission order.

The Church of England (Pensions) (Amendment) Measure

8. Clause 1 of the new Measure substitutes the year "2025" for the year "2018" in section 7(2) of the Pensions Measure 1997 (as amended), thus extending the period in which the Commissioners have the power to spend capital until 31 December 2025. The purposes for which the Commissioners will have the power to spend capital remain the same, namely the payment of clergy and staff pensions in respect of service before 1998.
9. Clause 2 deals with the short title, commencement and extent of the Measure, and makes consequential amendments to other legislation.
10. In February 2014, the Synod gave First Consideration to the draft Measure and referred it for Revision in Full Synod. No proposals for amendment were received, and therefore the Steering Committee informed the Synod that a Final Drafting stage was not required. The Measure proceeded to Final Approval unamended. The Measure was given Final Approval in July 2014 on a division by Houses. The voting figures were as follows:

	In favour	Against	Abstentions
Bishops	22	0	0
Clergy	136	0	1
Laity	157	0	1

On behalf of the Legislative Committee

P.N.E. Bruinvels

Canon Peter N. E. Bruinvels

Deputy Chairman

29 September 2014

Deliberation

WITH THE ASSISTANCE OF REPRESENTATIVES OF
THE GENERAL SYNOD

THURSDAY 11 DECEMBER 2014

Present	Lord Lloyd of Berwick (Chairman) Sir Tony Baldry Sir Peter Bottomley Mr Ben Bradshaw Alastair Burt Baroness Butler-Sloss Lord Elton Mr Frank Field	Lord Glenarthur Lord Judd Lord Laming Lord Luke Baroness McIntosh of Hudnall Sarah Newton Baroness Perry of Southwark Mrs Caroline Spelman Lord Walpole
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Examination of Witnesses: Deliberation of the Care of Churches and Ecclesiastical Jurisdiction (Amendment) Measure

Witnesses: THE LORD BISHOP OF WORCESTER, THE RIGHT WORSHIPFUL TIMOTHY BRIDEN, Vicar General, Province of Canterbury, THE VENERABLE CHRISTINE HARDMAN, Prolocutor of the Convocation of Canterbury, WILLIAM FITTALL, Secretary General, Archbishops' Council, and ALEXANDER MCGREGOR, Deputy Legal Adviser to the General Synod

Q1 *The Chairman:* Bishop, welcome to you and your team to the last meeting of the Ecclesiastical Committee of this Parliament. Perhaps we could start with you introducing, for our benefit, the members of your team.

The Lord Bishop of Worcester: Indeed. On my far right is Alex McGregor, who is deputy legal adviser for the Church of England. On my right is Timothy Briden, who is Vicar General of the Province of Canterbury. On my left is Christine Hardman, who is Prolocutor of the Convocation of Canterbury. On my far left is William Fittall, who is Secretary General.

Q2 *The Chairman:* Thank you. Clearly we are going to take these three Measures in order. The first of them is the bulkiest. Could you start by telling us something about the background to that Measure? I think you deal with it to some extent in your comments and explanations. Could you give us just the background that led up to this simplification process?

The Lord Bishop of Worcester: I shall be pleased to do so.

Members of the Committee will be aware that the Church of England has responsibility for 16,000 church buildings, 45% of them grade I. It is a responsibility that we take very seriously. I might add that I am here because I have just taken over from the Bishop of London as lead bishop on cathedrals and church buildings.

To start, I want to say that the entire Measure is intended to simplify the faculty system, which is something that we take very seriously. The

faculty system enables proper care of churches for the benefit of both the Church and the nation. The reforms we are considering are based on an expressed desire by clergy and laity in parishes to simplify and speed up the faculty system, and to allow proportionate deregulation, which will help to increase compliance and benefit everyone involved.

A faculty simplification group was set up, comprising a chancellor of a diocese, a registrar, a diocesan advisory committee chair and secretary, and an archdeacon. It was chaired by Anne Sloman, who until recently chaired the Church Buildings Council. All stages of the procedure were brought to the table and there was a wealth of practical knowledge about the system. Rather than taking their own views as a starting point, they embarked on a very extensive round of consultation, surveying people in the parishes: clergy and laity, and diocesan advisory committees—all those whose responsibility it is to implement the system and who have to work with it.

A remarkable consensus emerged from that consultation. It transpired that the faculty system was highly valued. Only one respondent among many hundreds wanted to abolish it. The consensus was that it could be considerably simplified to make life easier for all concerned without losing the important safeguards to the significant heritage held in our 12,500 listed parish churches throughout the land.

That is the background to the Measure you have before you. It might be worth noting, though this is not contained within the Measure, that an

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interesting adjunct to this is the proposal that the faculty system goes online, which will make life a lot easier for everyone involved.

Q3 The Chairman: Thank you very much for that.

Members of the Committee might like to have page 3 of the comments and explanations open while we go through the clauses one by one. There are clearly some on which we are likely to spend a little more time than others, especially clauses 4 and 5, but can we just go through them? Does anyone have any questions about clause 1 of the Measure, dealing with trees in churchyards? If not, clause 2 deals with the powers of archdeacons. Are there any questions about that? It is all very clearly set out, if I may say so, in the comments and explanations. Clause 3? No.

We may perhaps spend a little more time on clause 4, which is on disused burial grounds. I know that Lord Elton has given notice of some questions that he would like to ask about that.

Q4 Lord Elton: My general concern is about someone whose father died 70 years ago, but is still hale and hearty himself and has moved out of the parish, perhaps to another province. What arrangements are there to make sure that he knows he has an opportunity to object? Is he likely to come back and find a village hall or whatever standing on the spot that he had come to visit?

The Lord Bishop of Worcester: I will look to my right for a response to that, if I may.

The Rt Worshipful Timothy Briden: My Lord, perhaps I can give some assistance on that. The proposed arrangements for building on disused burial grounds involve a faculty being obtained from the consistory court. It flows from that, that appropriate notice has to be given to interested parties. Although proposed new subsection (2) refers to the 50-year period as being a trigger for the exercise of the power, the fact remains that that does not override the rights of an interested party—someone whose relative has been lying in the ground for more than 50 years would still be an interested party—to become a party to the faculty proceedings and to object.

The question then is: what steps are taken to give notice? That matter is at the discretion of the chancellor, who has the power to give special directions in relation to the publicity of petitions for faculties. I envisage, as a chancellor myself, that if this type of case came before me, I would be concerned to protect the rights of those families who had perhaps moved away from the parish—the mobility of the population is, of course, much greater now than it used to be—and who might have an interest in making representations to the court. There are various ways of doing that. One is by way of newspaper advertisement. Unfortunately,

that is not as successful as one might think. There are processes in the secular system under which mandatory newspaper advertisements are required, and they do not produce very much information or response.

The other way to do it is to require the petitioners to give special notice, which would involve them sending out to the last known address of a potentially interested party the details of the proposals and an opportunity to object. In the last resort, if a family has disappeared from a locality, gone elsewhere and left no trace of its whereabouts, there is a limit to what the parish or the chancellor can do to give notice, but I would emphasise to the Committee that church authorities would have no desire to ride roughshod over the rights of people whose relatives were buried in the potential footprint of a property. Indeed, there have been occasions over the years when a petition to build an extension to a church, for example, has been refused because of the level of opposition to the proposal from people in that class.

Lord Elton: In the case that you have illustrated, at the point that it reaches you, it becomes not an obligation but something that it is assumed you will wish to do. Is there nothing on the face of it that says the degree of effort that must be made to trace people?

The Rt Worshipful Timothy Briden: That is a matter in part for the rules of the consistory court, which are laid down by way of statutory instrument, and in part it is a matter for the practice of the chancellors. I have indicated what my practice is, and I envisage that as the practice of the generality of chancellors.

Q5 Lord Elton: On page 5 of the notes, at paragraph 32, there is a reference to the consistory court adopting its “normal approach” for the protection of human remains. What is that approach?

The Rt Worshipful Timothy Briden: The approach, which is laid down in decisions of the court, is that human remains are to be treated in a decent and respectful manner. That is the basic principle. The practice of dealing with human remains potentially affected by building works in a churchyard is varied and depends on the particular circumstances. One process that finds favour among church architects and the consistory court is the building of structures on piles that are driven between grave sites so that there is no actual interference with the remains interred. I think it right to say that that is the preferred solution when there is a risk of disturbance.

It is possible by law to exhume human remains from one site in a churchyard and rebury them elsewhere. Again, that is an exercise carried out in a decent and respectful manner, and there are all sorts of public health and other controls that

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regulate that. Those two strategies, as well as the building of very shallow foundations that do not impact on graves at all, are those that are generally favoured. I think it right to say that parishes and the consistory court would regard with disapproval and distaste the idea that a churchyard containing human remains is simply dug up and the earth is moved around willy-nilly to facilitate a building scheme.

Lord Elton: But the parish is not entitled to object, is it?

The Rt Worshipful Timothy Briden: Normally the parish, in the sense of the members of the parochial church council, would be petitioners in support—

Lord Elton: Thank you very much; I do not think you need to say more.

The Rt Worshipful Timothy Briden: The individual parishioners have the right to make an objection. They have a sufficient interest in the case to object if they wish to do so.

The Chairman: Mrs Spelman, does your question arise from the same matter?

Q6 Mrs Spelman: It is on the same subject.

I have been listening intently, so can you give some comfort in this case? The Ministry of Defence wishes to sell off Biggin Hill chapel and its burial ground as part of a commercial development. The Bishop of Rochester consecrated Biggin Hill chapel after the second world war and many veterans are buried there, including—I must declare an interest—my father-in-law, who was a glider pilot. Will this Measure make it any less or more difficult for the remaining members of the deceased's family to object to the commercial development of that site? Does it weaken or strengthen the process, and does it offer any comfort to families who want to protect their loved ones' remains?

The Rt Worshipful Timothy Briden: This operates on two levels. One is, of course, that in the context of the general development of the site, of which this is a consecrated part, there is the means to make objection under planning law. Also under planning law there is a statutory power to remove the legal effects of consecration from consecrated land. If that happens, the matter falls to be dealt with exclusively under planning law and the ecclesiastical courts no longer have jurisdiction. If, however—and so long as—ecclesiastical law continues to apply, it would be necessary for a faculty to be obtained for the reuse of the land.

Obviously, I cannot speak for the Bishop or the Chancellor of Rochester but, that being said, the position of the war dead is one, we know, of particular sensitivity, and it is just the sort of case where a 50-year rule would not be particularly compelling so far as the ecclesiastical courts were concerned. In principle, there is no reason why a veterans' association would not have a legitimate interest in an application of this sort, and it would

be entitled to make its own representations to the consistory court if so desired.

The Chairman: If there is nothing else on clause 4, we will move on to clause 5, which is another important clause dealing with matters that can now be done without a faculty. Are there any questions about that clause?

Q7 Lord Glenarthur: I have one, if I may. It comes down to the illustrative drafts of rules to be made under section 5 on pages 14, 15 and subsequently. First, how illustrative are they, and how can they be amended to include things that may not yet be included in them? Particularly when it comes to the removal of furniture and the fitting of other things, I notice that no tonal alterations can be made to any bell. Organs can be maintained, but tonal alterations, major dismantling and so on cannot be undertaken.

One of the effects of introducing carpets into churches, which I have come across more than once, has been a massive change to the acoustics of the church when it comes to sacred music. Has that been considered, or can the illustrative drafts be readily amended to encompass things that are not generally thought of as being a problem?

The Rt Worshipful Timothy Briden: My Lord, if I may assist on this clause. The purpose of clause 5 is to enable the Rule Committee to provide rules, of which the drafts are illustrations. They are a work in progress and will not be finalised until after the Measure has received parliamentary sanction. The short answer is: yes, there will be the opportunity to look at this again. However, that is not the end of the matter because it is envisaged that when the Rule Committee has completed making these rules, it will not simply cease to function. It will reassemble periodically for the purpose of making alterations to the lists and to keep pace with the changes in society generally, which have an impact on what works are to be done in a church.

As a further safeguard, there is the provision that, over and above these minimum items specified in the draft rules, individual chancellors will have the power to expand that which may be done without a faculty. The chancellors will not normally be able to remove items from the list, except in specific circumstances, but it will be possible for chancellors to expand matters. If, for example, something needs to be done on a somewhat urgent basis before the Rule Committee can meet, the chancellors will be able to address that. That is the generality of the situation.

I turn specifically to the question of carpets. My Lord, as you have indicated, carpets are a sensitive matter. They can affect acoustics, and the fabric of the church by trapping moisture where it ought not to be trapped. For many years, it has been recognised that that is a potentially difficult matter. Therefore, when the Rule Committee came to do some work on list B, towards the bottom of page

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20—the part of the list over which the archdeacon has control—there is an item, “The replacement of carpets or other floor covering and underlay”. A parish would be entitled, subject to the archdeacon’s permission, to replace that which has already been there. If, for example, the chancel was carpeted and the carpet wore out, the parish would be able to seek permission for a replacement. What is not possible under the provision is an extended or a fresh carpeting scheme. That will require a faculty because of the very implications to which you have drawn attention.

Q8 Lord Glenarthur: That is very helpful; thank you very much indeed. May I add one more question? Just above the replacement of carpets in list B, there is information about the “introduction of portable audio-visual equipment”. One thing that I am aware of—I declare an interest, because I play the organ in church—is the introduction of small cameras which can be used to see the conductor, with a little screen which appears on the music desk or somewhere adjacent to it. Does that require special permission? Is it encompassed within “audio-visual equipment”? Can it be done? It says here: “No equipment is fixed to the fabric of the church”. You probably have to fix on a small camera, which is very tiny. Can that be done without a faculty?

The Rt Worshipful Timothy Briden: That depends on whether any alteration is required to the mains supply. If it is simply a matter of plugging an additional item of equipment into an existing mains supply, that does not present a problem. But we are very strict in not allowing parishes to make alterations to the installed circuitry of the church without a faculty, because of the risk that people who are not proper electricians may do potentially dangerous things.

Q9 The Chairman: I have a general question on clause 5. Are there any other questions on clause 5? The only question I wanted to ask was about the distinction drawn between what are called routine matters and what are called minor matters. As I understand it, those are two of the same things. No distinction is meant to be drawn. The distinction is between those things covered by list A, which can be done without a faculty at all, and those things which can only be done with the consent of the DAC or the archdeacon. Is that the basic distinction?

The Rt Worshipful Timothy Briden: That is the basic distinction, and the point of the distinction is that list A is ultimately derived from existing chancellors’ minor works lists.

The Chairman: I see.

The Rt Worshipful Timothy Briden: List B contains matters which potentially could not be simply described as “minor” but, on the other hand, are

routine in the sense that they do not involve an intervention into the fabric of the church.

Q10 The Chairman: Thank you very much. Unless there is anything else on clause 5, clause 6 deals again with the membership of the Rule Committee. Are there any questions on that? It is fairly straightforward. Clause 7 is a matter which I know will create interest for Lady Butler-Sloss and myself—a rather subtle point. Are there any questions other than the ones that she and I would like to ask? No questions. It deals, as I understand it, with a very technical point. If a question has been raised relating to “doctrine, ritual or ceremonial” in the court below, it does not have to go to the Court of Ecclesiastical Causes Reserved, unless that very same point is being raised again. Is that the point?

The Rt Worshipful Timothy Briden: That is exactly the point, my Lord. The difficulty has arisen because parishes often put in composite petitions which contain, say, half a dozen matters. One of them involves doctrine, ritual or ceremonial. The chancellor gives his authority to that, but he refuses some other item which is not in the reserved category. Under the law as it was, the chancellor had to certify that it involved a reserved matter because the language of the Measure and the decided authorities indicated that that was what he had to do. The alteration enables him to certify that it is a reserved matter only if it is the subject matter of the appeal itself.

The Chairman: I follow. I think that Lady Butler-Sloss and I will be very happy, although we will be losing some of our jurisdiction.

Baroness Butler-Sloss: Since we haven’t sat for the last 20 years, I do not think that it is going to matter.

The Chairman: It might happen; you never know. Is there anything on clause 8? Again, that is fairly straightforward. Clause 9 is straightforward. Any questions? Clause 10. Anything else generally on that Measure? Is there anything that anybody wishes to add before we go on to the Ecclesiastical Property Measure? Again, it is pretty technical—actually, not technical, but quite important. Would you like to say anything in general?

Q11 Lord Laming: May I say that the voting in the Synod on this last Measure represents a considerable achievement and it ought to be acknowledged by the earlier team?

William Fittall: Just for the sake of the record, could I correct a figure that was given in the introduction? We have 16,000 buildings and they constitute 45% of the grade I listed buildings of England. I do not have to hand what proportion of that 16,000 are grade I, but more than three quarters are listed, whether as grade I, grade II or grade II*. The 45% relates to all the listed buildings in England.

The Chairman: Thank you. That is very helpful.

11 December 2014

Ven Clive Mansell, Robert Key,
William Fittall and Saira Salimi

Examination of Witnesses: Ecclesiastical Property Measure

THE VENERABLE CLIVE MANSELL, Archdeacon of Tonbridge and Chair of the Steering Committee for the Measure, ROBERT KEY, Chair of the Revision Committee, WILLIAM FITTALL, Secretary General, Archbishops' Council, and SAIRA SALIMI, Deputy Official Solicitor, Church Commissioners.

Q12 The Chairman: This Measure is to relax the requirement in relation to short leases. Would you like to give any further explanation?

The Venerable Clive Mansell: Lord Chairman, shall I introduce my team alongside me here? I am Clive Mansell, I am the Archdeacon of Tonbridge and I chaired the Steering Committee on this draft Measure. On my left is Robert Key, a former Member of Parliament; he chaired the Revision Committee. On my right is, Saira Salimi, who is our legal advisor and William Fittall, the Secretary General, who you have heard from already.

The Measure makes some modest changes to update the regime for real property and for property held on permanent trust belonging to parochial church councils and held for charitable purposes. It also makes some parallel changes to the regime for certain trusts where the incumbents and churchwardens are the trustees. At present, the legal title to all PCC—parochial church council—land is vested in the diocese, which holds it as trustee for the PCC. The dioceses' consent is required for all kinds of transactions, with the exception of leases of one year or less. The trigger for the Measure was a private member's motion at the July 2012 group of sessions of the General Synod, which called for PCCs that are registered with the Charity Commission to be able to hold their own property legally and beneficially.

The Archbishops' Council did not support that change as it thought that the proposed distinction between registered and unregistered charities would not be workable. It also had concerns about the ability of some PCCs to manage legal issues. While some PCCs are very well resourced and have a number of members with legal and property experience, others are much less well equipped to deal with transactions, and that can be especially so if there are dimensions not just of charity law but of unfamiliar ecclesiastical law to the proposed property transaction. PCCs change over time, and a PCC that had a number of very able members five years ago will not necessarily continue to have people of equivalent competence in legal matters now.

However, members of the Archbishops' Council acknowledged that the Parochial Church Councils (Powers) Measure 1956 was passed some time ago. The legal and regulatory environment has changed considerably since then. It has therefore agreed that a modest degree of deregulation would be very desirable. That is the point at which you began to ask me questions a few moments ago.

The draft Measure makes three substantive changes to the Parochial Church Councils (Powers) Measure 1956. First, it removes the requirement for a PCC to obtain the consent of the diocesan authority before bringing legal proceedings—for example to evict squatters or non-paying tenants from parish property. If this Measure is passed, it will be for a PCC to decide in every case whether it is in its interests to bring court proceedings.

Secondly, it extends the length of lease that can be granted without reference to the diocesan authority. Under section 6, as it stands, a short lease is defined as a lease for a year or less. The new draft Measure provides that a short lease is a lease for seven years or less, aligning this requirement with the controls on dispositions of land under the Charities Act 2011, which apply only to leases of more than seven years.

Thirdly, it provides that the consent of the diocesan authority is required only for transactions with a value in excess of a figure to be specified in an order made by the Archbishops' Council that will be laid before the General Synod and Parliament. The Measure goes on to make equivalent provisions for ecclesiastical trusts governed by the Incumbents and Churchwardens (Trust) Measure 1964.

You will see from the briefing paper that the Measure had the overwhelming support of the General Synod at final approval—indeed, it was *nem con*. We commend the Measure to the Committee.

The Chairman: I am sorry not to have given you the chance to introduce the other members of your team, but I am very grateful for what you have just said. It is now simply a question of whether any Committee members have questions on those three matters that I think were covered very clearly by the Archdeacon. If not, then thank you very much.

11 December 2014

William Fittall

Examination of Witnesses: Church of England (Pensions) (Amendment) Measure

Witness: WILLIAM FITTALL, Secretary General, Archbishops' Council

The Chairman: Is it right that it is the same team for the next Measure? Or is there a different team?

William Fittall: I think we had had an indication that you were unlikely to ask questions on the Pensions Measure, but the legal adviser and I are very happy to answer any questions that you may have about it. As you know, it is simply a renewal, for a further period of time, of a power that you have already approved in legislation on a number of occasions.

The Chairman: Are there any questions on the pensions Measure?

Q13 Baroness McIntosh of Hudnall: May I ask a question that is not about the pensions themselves? Out of interest, how many pensioners does the Church of England currently support and how many is it likely to support in future? Is that trend up or down?

William Fittall: I do not have in my head the precise number, but the Church of England Pensions Board runs a number of schemes for both the clergy and people who have served the Church in other capacities—for example, Church Army evangelists and lay workers. I think that the number is upwards of 20,000, but I would need to write if you want the precise figure. As we know, clergy are very long lived, on average, so every time that we have an actuarial valuation, longevity calculations have to be refreshed. Over the next decade, we face a very considerable retirement bulge as the baby boom generation starts to draw pensions.

The position is that the Church Commissioners meet the pension liability for pension service earned up to the end of 1997, which is what the Measure is about. Since the beginning of 1998 although the benefits remained the same, there has been a funded scheme, so the dioceses and other bodies contribute a proportion of the stipend to build up that pension fund, which is a regulated pension fund in the usual way. The assets of that fund are now worth in excess of £1 billion. As with most other pension schemes, it was in deficit at the last valuation, but there is a deficit recovery plan, of which we are currently a little ahead.

It is undoubtedly a very significant financial contribution. Dioceses are paying about £70 million a year into the new funded pension scheme, and the Church Commissioners are currently paying out somewhere over £100 million a year in relation to service earned up to the end of 1997, so these are

quite big sums of money. It is very important for the overall management of the Church's finances that the Commissioners can continue to be able to draw on capital in that way.

The Chairman: Any other questions? No.

We shall, in the usual way, consider whether we regard the three Measures as expedient and let you know in due course. As this is the last meeting of the Ecclesiastical Committee in this Parliament, I would like to express, on behalf of all Committee members, our thanks for the unfailing help that we have had from all the members of the Legislative Committee over the past five years. Your notes and explanations are always so clear and so good. Without them, we would be lost, but with your help, we have got through all right, so thank you very much.

I also thank all members of the Ecclesiastical Committee for turning up faithfully to our meetings. On this occasion, however, I thank above all Sir Tony Baldry, because this is his last meeting—he will no longer be with the Committee after this Parliament. His service has been truly remarkable over many years and we are very grateful indeed. *[Applause.]*

Sir Tony Baldry: My Lord Chairman, thank you for those kind comments. On behalf of the whole Committee, I thank you for the exemplary way in which you have chaired the Ecclesiastical Committee over the course of this Parliament. We have had some interesting Measures before us, not least the women bishops Measure. We have all been extremely grateful for how you have led, steered and guided the Committee, so thank you.

William Fittall: As I act as the point of continuity in these sessions—for which bishops, archbishops and other members of the Synod rotate, depending on the subject matter—perhaps I might be allowed on behalf of the General Synod, to thank the Committee members. This is indeed the last legislation we have to bring before you in the lifetime of this Parliament. But I can assure you that the wheels are turning. We have some very important legislation going to its revision stage at the General Synod in February on safeguarding and clergy discipline. It is likely to be coming forward early in the lifetime of the new Parliament. Hopefully, quite a number of Committee members will still be here when next we meet.

The Chairman: Thank you. Until that meeting, perhaps we should all just say goodbye.
