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Factsheet L10 Legislation Series

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House of Commons Information Office

Church of England Measures

The Church of England Measures is a type of instrument that enables legislative changes to be made to the organisation and administration of the Church of England.

This Factsheet looks at how these measures are made and the background to the procedure.

The Factsheet is available on the internet at:
<http://www.parliament.uk/factsheets>

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Introduction

Church of England Measures are the instrument by which changes are made to legislation relating to the administration and organisation of the Church. The General Synod of the Church of England has the power to propose legislation to Parliament's Ecclesiastical Committee. This committee is made up of Members of both Houses. The committee examines the Measure and then makes a report as to whether it thinks the Measure should be made. A draft of the report is sent to the legislative committee of the Synod. If Synod agrees, the report and the Measure can then be laid before Parliament. Motions need to be passed by both Houses before the Measure can be presented for Royal Assent.

This Factsheet will look at this procedure in more detail but first will look at the background to these measures.

Background

Convocations of York and Canterbury

In 1852, the Convocations of Canterbury and York were re-established as representative bodies of the clergy alone. These bodies could, among other duties, enact Canons or make the Canon Laws of the Church, which were submitted to the Crown for Assent. A Royal Licence was issued to announce and exercise them. The dissolution of Parliament at the time also caused the dissolution of these Convocations.

In 1919, the Convocations of Canterbury and York agreed Addresses to the King which sought, amongst other things, greater opportunity for the Church to discuss its own affairs and to revise the legislative role of Parliament. It was proposed that Measures agreed by a representative Church Assembly might be submitted for a modified form of scrutiny rather than proceeding by Bill from the outset. However, the Addresses did not specify what exact form of Parliamentary scrutiny was to be substituted. These Addresses were formulated in the light of the recommendations of a Representative Committee that had sat from 1913 to 1916.

Lack of Parliamentary Time

The main reasons for the introduction of the 1919 proposals had been the difficulty in getting Church legislation through Parliament. This was a result of the House of Commons' time having been more and more appropriated to the use of government. Church legislation was often held up through lack of parliamentary time and often had to take its chance in Private Members' time. The Archbishop of Canterbury, introducing the *National Assembly Bill* in the House of Lords on 3 June 1919, cited an example of a bill, on patronage and tenure of benefices that took 12 years to get through. His summary of the intent of the *National Assembly Bill* was "to enable the Church of England to do its work properly ... [by] ... removing ... hindrances which by a kind of accident ... have been at present constantly across our way" . Sir Edward Beauchamp, who introduced the Bill into the House of Commons, said that only 33 out of 217 Church bills introduced in the period 1880-1913 had been successful.

Church of England Assembly (Powers) Bill

This Bill became the *Church of England Assembly (Powers) Act 1919*, also known as the "Enabling Act" . It set up what is in effect the present system and the legislative

effect of which it is the purpose of this **Factsheet** to describe.

The National Assembly of the Church of England was empowered to discuss any proposal concerning the Church, excluding definitions of doctrine, theology, etc and in the case of proposals which had legislative effect, to agree Measures, which would be presented to Parliament for approval before being submitted for the Royal Assent. The Convocations continued to exist after 1919 and doctrinal matters were reserved to them.

For the first time, the laity were represented in the government of the Church through their membership of the National Assembly. Latterly, it consisted of 734 members: 387 from the bishops and clergy, 342 lay members, elected every five years, plus five co-opted lay members. It met for three sessions each of four days in most years.

When the Church Assembly had approved a Measure, it would be referred to their Legislative Committee, who presented it, with any comment or explanation deemed necessary, to the Ecclesiastical Committee (composed of Peers and Members of Parliament) which was also established by the 1919 Act.

The General Synod

In November 1963, the Assembly approved resolutions generally endorsing a report that suggested the setting up of a General Synod, in which would vest the legislative and other functions (with certain exceptions) of the Assembly and Convocation. This General Synod was set up by the *Synodical Government Measure* (CAM. No. 2 1969) which received Royal Assent on 25 July 1969.

The functions of the General Synod, amongst other things, are to make legislative provisions by Measure in the same way as the Church Assembly did before it. The Synod consists of the three Houses; Bishops, Clergy and Laity. The Legislative Committee, similar to that appointed by the old Assembly, is drawn from all three Houses. It may also make Canons which are mainly to do with the work of the clergy, and which are not subject to parliamentary procedure; they are submitted to the Queen via the Home Secretary.

Parliamentary Scrutiny

The Ecclesiastical Committee, established by the Act of 1919, is composed of fifteen Members of the House of Lords, nominated by the Lord Chancellor, and fifteen Members of the House of Commons, nominated by the Speaker. The Committee appoints its own chairman, who has always been a Peer. Members are appointed shortly after the beginning of each Parliament and serve for the whole Parliament. The nomination of Commons Members are recorded in the *Votes and Proceedings*, and details of membership and changes made to it, are given in the House of Commons Weekly Information Bulletin. The names of Lords members are similarly recorded in the *Lords Minute*.

Ecclesiastical Committee Reports

Parliamentary consideration of a Church of England measure begins when the Legislative Committee of the General Synod submits a draft Measure to the Ecclesiastical Committee for consideration and approval. The Ecclesiastical

Committee generally invite General Synod representatives to discuss the proposals with the Committee, and then make a Report back to the General Synod. The 1919 Act also provides that a conference may be arranged between the Legislative Committee and Ecclesiastical Committee at the request of either; such conferences are held in public, and transcripts of the proceedings are published with the Committee's report. However, the Committee does not have the power to take oral evidence in public from other individuals or bodies.

The 1919 Act requires the Committee to report on "the nature and legal effect of the measure and its views as to the expediency thereof, especially with relation to the constitutional rights of all His Majesty's subjects." Committee reports are first communicated in draft to the Legislative Committee of the General Synod. While the Committee's draft report may recommend the amendment of a draft Measure, the Committee itself has no power to amend Measures. A Report is not laid before the two Houses until the Legislative Committee has signified its wish that it should be.

A Measure is presented for the approval of both Houses at the same time as the Committee lays its Report thereon. Both Houses consider a Measure on motions that it should be presented for Royal Assent in the form in which it was laid before Parliament.

While there is nothing in law to prevent a Measure being considered by the two Houses even after an adverse report, in practice this does not happen, as the Legislative Committee will invariably decide not to proceed with a draft Measure in its present form if it receives an unfavourable draft report from the Ecclesiastical Committee. For instance, the Legislative Committee twice withdrew drafts of the *Churchwardens Measure* from consideration before the Measure was approved by the Ecclesiastical Committee and the House in April 2001.

Printing and Numbering of Reports

Each report of the Ecclesiastical Committee is numbered in a series which began with No 1 in 1920. Reports are printed in both the House of Lords and House of Commons Papers series, as are the Measures on which they report. The two papers are commonly given consecutive numbers in both series. The Papers are laid before the House and are recorded in the Appendix to the daily Votes and Proceedings of the Commons and Minutes of the House of Lords, and their presentation and dates of debate in both Houses are given in the House of Commons Weekly Information Bulletin, and for the session, in the Sessional Information Digest.

The existence of the machinery under the 1919 Act does not preclude Church legislation from proceeding by Bill if such a course seems appropriate. Backbenchers wishing to legislate on Church matters may use this method; recent examples are the various *Prayer Book Protection Bills* (none of which has passed into law).

Debates

Generally, motions to present the Measure for Royal Assent are debated in each House soon after the Ecclesiastical Committee's report is laid. Neither the motion itself nor the Measure can be amended. In the Lords, they are generally moved by a Bishop or Archbishop, and in the Commons by the Second Church Estates Commissioner, who also answers parliamentary questions on certain Church matters.

In the Commons, less important Measures have occasionally been referred to the delegated legislative committee (see **Factsheet L6**). This is permissible under SO No 118, although this practice is rare. For the purposes of timing of debates, Church Measures are exempted business under SO No 17 in the same way as statutory instruments. The Measures themselves have to be agreed in full: unlike Bills, they cannot be amended.

Controversial Measures

In general, Measures are the target of little opposition, and Parliament exercises its ultimate control with due restraint. However, certain measures have been controversial, and have been the subject of Divisions, for instance, the *Prayer Book Measure* of 1927. The motion to recommend this Measure for the Royal Assent was negated by 247 votes to 205 on 15 December 1927. Similarly, the *Incumbents (Vacation of Benefices) Measure 1975*, was rejected by 33 votes to 19 on 15 October 1975, and the *Appointment of Bishops Measure* by 32 votes to 17 on 16 July 1984. The *Clergy (Ordination) Measure* was rejected by the Commons by 51 votes to 45 on 17 July 1989, but subsequently agreed to by 228 votes to 106 on 20 February 1990.

Royal Assent

Church Measures receive the Royal Assent in the same way as Bills, and notification of the Royal Assent is given to both Houses similarly and recorded in the Weekly Information Bulletin. Copies of the Measures, which are cited in a form such as "CAM No 1, 1938" (for Measures up to 1970) and "GSM No 1, 1978" (thereafter), are printed and sold by the Stationery Office, and also appear at the end of the Acts in the Public and General Acts and Measures annual volumes.

Measures from 1988 can be downloaded from the OPSI website¹. A list of measures is also available on the Church of England website². It is worth mentioning that Measures, like Acts of Parliament, may amend or repeal previous Acts or Measures and statutory instruments. They have the full force of statute law and apply generally throughout England.

The House rarely invokes its right to reject them, though if a number of Members feel strongly about their substance, the Measure will have no automatic right to proceed unhindered. Members occasionally make the point in debates on Measures that, although the House naturally does not wish unduly to interfere in the Church's self-government, its agreement cannot be taken for granted. "The House", as one Member suggested during the debate on the *Vacation of Benefices Measure*, "is not here simply to rubber-stamp anything the General Synod may lay before it ...".

¹ <http://www.opsi.gov.uk/uk-church-measures/index>

² <http://www.cofe.anglican.org/about/churchlawlegis/legislation/measures/>

Glossary

Convocations	A large formal assembly.
Canon	A law of the Church.
Ecclesiastical Committee	The Ecclesiastical Committee is a statutory Committee appointed under the Church of England Assembly (Powers) Act 1919.
General Synod	National Assembly of the Church of England.
Royal Assent	Royal Assent is the Monarch's agreement to make a Bill into an Act of Parliament. The Monarch actually has the right to refuse Royal Assent but nowadays this does not happen and the Royal Assent is a formality.
Dissolution	Dissolution is the official term for the end of a Parliament. A Parliament can last for up to five years and is dissolved by Royal Proclamation followed by a general election. The Prime Minister may call a general election before the end of the five year term and he or she asks the Monarch to grant a dissolution.

Appendix A

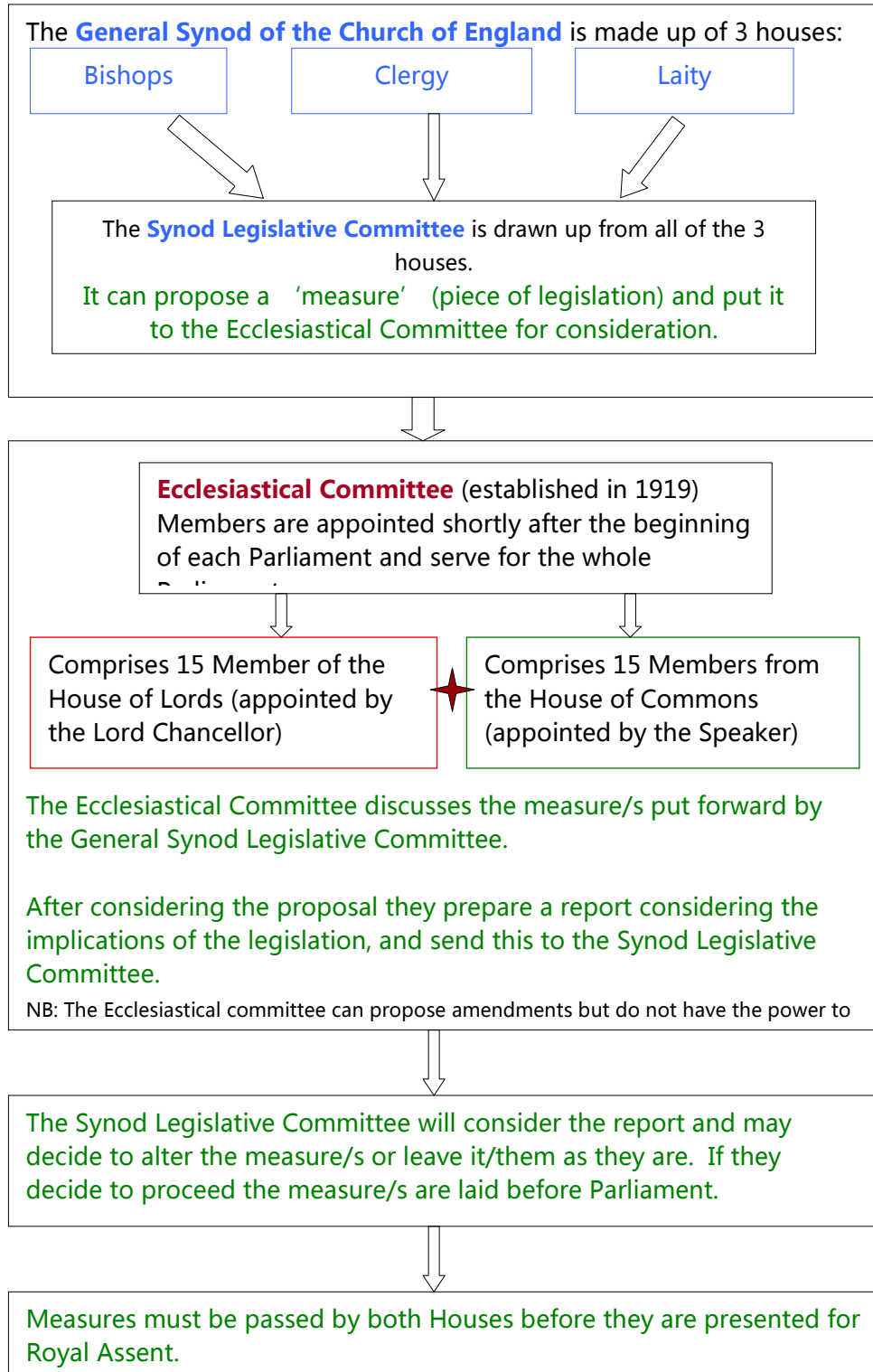
Reports of the Ecclesiastical Committee since March 1992

Session	Report	HC	HL	Measure	
1992-93	Incumbents (Vacation of Benefices) (Amendment) Measure	202	515	64-II	1993 No.1
1992-93	Priests (Ordination of Women) Measure;	203	895	116	1993 No 2
	Ordination of Women (Financial Provisions) Measure	204			1993 No.3
1993-94	Pastoral (Amendment) Measure	205	18	3-II	1994 No.1
1993-94	Care of Cathedrals (Supplementary Provisions) Measure	206	250	27-II	1994 No.2
1993-94	Church of England (Legal Aid) Measure	207	457	64-II	1994 No.3
1994-95	Team and Group Ministries Measure	208	149	21-II	1995 No.1
1994-95	Church of England (Miscellaneous Provisions) Measure	209	645	79-II	1995 No.2
1996-97	Pensions	210	383	65-II	1997 No.1
1997-98	National Institutions Measure & Church of England (General Synod) Measure	211	772	111-II	1998 No.1
1997-98	Cathedrals Measure	212	1026	147-II	1999 No.1
1998-99	Care of Places of Worship Measure	213	488	68-II	1999 No.2
1999-00	Church of England (Miscellaneous Provisions) Measure	214	500	64-II	2000 No.1
2000-01	Churchwardens Measure	215	306	41	2001 No.1
2001-02	Synodical Government (Amendment) Measure	216	1136	157-II	2003 No.1
2002-03	Church of England (Pensions) Measure	217	74	4-II	2003 No.2
2002-03	Clergy Discipline Measure	218	613	87-II	2003 No.3
2004-05	Stipends (Cessation of Special Payments) Measure	219	396	55-I	2005 No.1
2004-05	Care of Cathedrals (Amendment) Measure	220	392	56-I	2005 No.2
2004-05	Church of England (Miscellaneous Provisions) Measure	221	394	57-I	2005 No.3
2005-06	Church of England (Miscellaneous Provisions) Measure	222	932	131-I	2006 No.1
2005-06	Pastoral (Amendment) Measure	223	930	132-I	2006 No. 2
2006-07	Dioceses, Pastoral and Mission Measure	224	951	175-II	2007 No. 1
2007-08	Church of England Marriage Measure	225	510	96-II	2008 No. 1
2008-09	Church of England Pensions (Amendment) Measure	226	269	36-II	2009 No. 1
2008-09	Ecclesiastical Offices (Terms of Service) Measure	227	271	35-II	2009 No .2
2009-10	Church of England (Miscellaneous Provisions) Measure, Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure, Crown Benefices (Parish Representatives) Measure	228	206	25	2010 No. 1
2009-10	Church of England (Miscellaneous Provisions) Measure	229	207	26	2010 No. 2
2009-10	Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure	230	208	27	2010 No. 3

2009-10	Crown Benefices (Parish Representatives) Measure	231	209	28	2010 No. 4
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Appendix B

Brief Summary of Church of England Measures Process



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