

224th Report  
Ecclesiastical Committee

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**The Dioceses, Pastoral and Mission  
Measure**

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### *The Ecclesiastical Committee*

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

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

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

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

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### *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 evidence 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](http://www.parliament.uk)

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# Report by the Ecclesiastical Committee on the Dioceses, Pastoral and Mission Measure

The Ecclesiastical Committee has met and considered the

## DIOCESES, PASTORAL AND MISSION MEASURE

referred to it under the provisions of the Church of England Assembly (Powers) Act 1919 and has had the assistance of representatives of the General Synod in considering the Measure.

1. This Measure is the most substantial piece of legislation to come before the General Synod for over 20 years. It makes changes in a number of different fields of ecclesiastical law, in some cases by altering or replacing what appears in existing Measures and in others by new legislation. The main provisions of the Measure are outlined in the following paragraphs and their nature and legal effect are more fully summarised in the Comments and Explanations of the Legislative Committee of the General Synod annexed to this report.
2. Part I establishes a **general principle** that all those carrying out functions under the Measure or the Pastoral Measure 1983 (“the 1983 Measure”) must have due regard to the furtherance of the mission of the Church of England.
3. Part II makes provision about the Church’s **provincial and diocesan structure**. These provisions replace the Dioceses Measure 1978 and related legislation, and in particular:
  - establish a new Dioceses Commission and new procedures for reorganising the diocesan structure;
  - establish a new procedure for decisions on whether to fill vacant suffragan sees;
  - place diocesan bishops under a duty to keep the provision of episcopal ministry and oversight in their dioceses under review; and
  - give the diocesan bishop power to delegate his functions to suffragan and other bishops, normally subject to approval by the diocesan synod;
4. Parts III and IV make changes to the **procedures under the 1983 Measure**. The principal amendments:
  - alter some of the terminology in the 1983 Measure, for example by referring to closing a church for regular public worship rather than to making it “redundant”;
  - provide altered procedures for deciding on the future of closed churches; and
  - devolve to the dioceses some of the work at present carried out by the Church Commissioners in cases that do not involve closure of a church;

5. Part V deals with **bishops' mission orders**. These provisions set up a new legal structure for those "mission initiatives" which require it, involving recognition, accountability and oversight.
6. Part VI deals with **diocesan mission and pastoral committees**. It provides for a new committee, with a new membership and functions, to replace the diocesan pastoral committee and the diocesan redundant churches uses committee under the 1983 Measure.
7. Sections 54–57 of and Schedule 4 to the Measure deal with **the care of churches**. They establish a new Church Buildings Council, to be the single central church source of information and advice on church buildings, and to exercise the functions currently discharged by the Council for the Care of Churches and the Advisory Board for Redundant Churches. Both those bodies are to be abolished, and the present functions of the Advisory Board are to be discharged by a Statutory Advisory Committee of the Church Buildings Council on the Council's behalf.
8. The Committee is of the opinion that the Measure is expedient.

## LEGISLATIVE COMMITTEE OF THE GENERAL SYNOD

### COMMENTS AND EXPLANATIONS

#### THE DIOCESES, PASTORAL AND MISSION MEASURE

##### INTRODUCTION

1. The Legislative Committee of the General Synod, to which a Measure entitled the **Dioceses, Pastoral and Mission Measure** (“the Measure”) has been referred, has the honour to submit the Measure to the Ecclesiastical Committee with these Comments and Explanations.

##### OBJECT AND MAIN PROVISIONS OF THE MEASURE

2. The object of the Measure is to make new and more flexible provision for the Church’s structures and procedures so as to facilitate its mission for the 21st Century.
3. It seeks to achieve this by legislation which:
  - is light touch and straightforward, and avoids detailed regulation except where that is really necessary; and
  - maintains fair consultative processes and other proper safeguards, checks and balances.
4. The Measure is the most substantial piece of legislation to come before the General Synod for over 20 years. It aims to make better provision for the “cure of souls” and to assist in furthering the Church’s mission in the broadest sense. It makes changes to a number of different fields of ecclesiastical law, in some cases by altering or replacing what appears in existing Measures and in others by new legislation. The main provisions of the Measure are summarised on the first page of these Comments and Explanations.

##### BACKGROUND AND LEGISLATIVE HISTORY

5. The Measure was produced to give effect to the recommendations of a Review Group chaired by Professor Peter Toyne. The Group had been set up by the Archbishops’ Council in 2000 to review the Dioceses Measure 1978 and the Pastoral Measure 1983 and related legislation. In July 2004 the General Synod debated and welcomed its report, *A Measure for Measures: In Mission and Ministry*, and asked for a Follow-Up Group to be set up to prepare the legislation which the Review Group proposed.
6. At the same time, the General Synod also debated and welcomed another report, *Mission-Shaped Church*, which had been produced by a Working Group chaired by the Bishop of Maidstone (the Rt Revd Graham Cray). This dealt in particular with fresh expressions of church – the variety of forms of church in mission which are emerging or being put into practice in the Church of England – and has made a significant contribution to the provisions on bishops’ mission orders in the Measure.
7. The Follow-Up Group was accordingly set up and prepared the draft Measure to give effect to the Review Group’s recommendations. It was

introduced into the General Synod in 2005, and again received a very positive response. It received careful scrutiny during the synodical process, in a Revision Committee, at the Revision Stage before the full Synod and during the Final Drafting process. This resulted in a number of amendments on points of detail, while leaving the draft Measure's broad framework, principles and objectives unaltered.

8. When the draft Measure came to the General Synod for Final Approval in February 2007, the voting was as follows:

	AYES	NOES
Bishops	22	0
Clergy	104	1
Laity	123	0

9. In order to assist the Ecclesiastical Committee in its consideration of the Measure:
- Appendix 1 contains a brief overview of the existing legislation which the Measure amends or replaces; and
  - Appendix II summarises the legislative history of the Measure, beginning with the work of the Toyne Review Group and continuing with the Follow-Up Group and then the Synodical consideration of the Measure.

#### ACCOMPANYING MATERIAL AND FUTURE LEGISLATION

10. The Measure was accompanied in its passage through the General Synod by **two other pieces of legislation**, namely:
- Amending Canon No 27, which makes a number of changes to the Canons of the Church of England (see paragraph 54 below); and
  - the Vacancy in See Committees (Amendment) Regulation, which amends the Vacancy in See Committees Regulation 1993 (see paragraph 30 below).
11. It has been recognised throughout the synodical process that the Measure will need to be supplemented by a variety of different types of **guidance material**, to explain the legal effect of the new provisions, to outline the possibilities which they open up for the Church and to set out good practice in putting them into effect. In particular, the provisions on bishops' mission orders expressly require a Code of Practice to be drawn up by the House of Bishops and approved by the General Synod. (This is dealt with more fully in the explanation of Part V of the Measure – see paragraphs 54 and 56–58 below.)
12. When the legislation was introduced into the General Synod, it was made clear that if and when the Measure became law, it would be possible to produce a new **consolidation Measure**, using the fast track procedure for consolidation available under the Synod's Standing Orders. This could bring together the whole of the material in the new Measure, and those provisions of the 1983 Measure and other relevant legislation that had not been repealed, into a single coherently structured Measure. In the meantime, a copy of the text of the 1983 Measure, as amended to date and showing the

amendments contained in the Measure, was produced in order to assist Synod members. If and when the Measure becomes law, that text will be made available more widely.

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

13. The Measure is divided into the following Parts:
  - Part I – General principle (section 1)
  - Part II – Provincial and diocesan structure (sections 2–22 and Schedules 1 and 2)
  - Part III – Procedure for making pastoral schemes and orders and pastoral church buildings schemes (sections 23–39)
  - Part IV – Church buildings closed for regular public worship (sections 40–46)
  - Part V – Mission (sections 47–51)
  - Part VI – Mission and pastoral committees (sections 52–53 and Schedule 3)
  - Part VII – Other provisions (sections 54–61 and Schedule 4)
  - Part VIII – Miscellaneous (sections 62–66 and Schedules 5, 6 and 7).
14. This part of these Comments and Explanations:
  - gives an overview of the main provisions of the Measure and the main changes which it makes to the existing law. (Part II of these Comments and Explanations provides a more detailed summary of the legal effect of the Measure); and
  - summarises the main issues, and in particular those which arose during the Measure’s progress through the General Synod.
15. Those paragraphs use the following abbreviations:
  - “the 1978 Measure” – the Dioceses Measure 1978;
  - “the 1983 Measure” – the Pastoral Measure 1983;
  - “the Advisory Board” – the Advisory Board for Redundant Churches;
  - “the Appointments Committee” – the Appointments Committee of the Church of England;
  - “the CBC” – the Church Buildings Council established under the Measure;
  - “the CCC” – the Council for the Care of Churches;
  - “the Commission” – the Dioceses Commission established under the Measure;
  - “the DCMS” – the Department for Culture, Media and Sport;
  - “the Follow-Up Group” – the Group chaired by the Bishop of Exeter which was set up to prepare draft legislation to implement the recommendations of the Review Group (see below);

“the Review Group” – the Review Group chaired by Professor Peter Toyne which was set up to review the 1978 and 1983 Measures and related legislation;

“the Revision Committee” – the General Synod Committee which, under the Synod’s Standing Orders, had the task of considering the legislation in detail, together with proposals for amendments, and amending the legislation as it thought appropriate within the terms of the Standing Orders; and

“the SAC” – the Statutory Advisory Committee established by the Measure as a committee of the Church Buildings Council.

## PART 1 – GENERAL PRINCIPLE

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16. **This Part of the Measure (consisting of section 1) is of major importance in laying down a general principle which governs the Measure as whole and also the whole of the 1983 Measure – namely that any person or body carrying out functions under the Measure or the 1983 Measure must have due regard to the furtherance of the mission of the Church of England.**
17. Its origins lie in the Review Group’s recommendation that the new legislation should include a more explicit reference to mission than the 1983 Measure. The Review Group envisaged adding this to the reference to making better provision for the cure of souls which already appeared in the Long Title to the 1983 Measure. However, the Follow-Up Group decided that the best course was:
- for the opening section of the Measure to set out a general duty, binding on those carrying out the relevant functions; and
  - for that duty to be to “have due regard to” the relevant consideration – in this case, mission;
- as was done in other recent Measures, such as the Clergy Discipline Measure 2003.
18. Some of the main reasons for the use of the expression “have due regard to” are that:
- it has not only been used in comparable contexts in recent Measures but is also common in secular legislation, and there is a body of case-law on its meaning and effect; and
  - section 1 covers a very wide range of bodies and office holders and an equally wide range of functions – including, for example, matters as diverse as mission initiatives on the one hand and the future of closed churches of particular architectural merit on the other. Other factors necessarily have to be taken into account in exercising particular functions, in some cases under express provisions later in the Measure. (An example of this is the duty imposed on the diocesan mission and pastoral committee by section 53(2) to have regard to financial implications.) The “due regard” formula allows and requires a person or body exercising a particular function under the Measure or the 1983 Measure to take account of all the relevant factors, giving each of them proper weight in that particular context.
19. Section 1 has to be read together with section 62, on the interpretation of the Measure, under which “mission” in the Measure is defined as meaning:  
 “the whole mission of the Church of England, pastoral, evangelistic, social and ecumenical”.
20. This phrase was chosen because it is a broad and inclusive one, whose use in the Church’s legislation is well established and which specifically refers not only to mission in the sense of evangelism but also to other important aspects of the Church’s mission (including the ecumenical dimension). It appears, for example, in the Parochial Church Councils (Powers) Measure 1956 in relation to the functions of a parochial church council and in the Synodical Government Measure 1969 in relation to the functions of a deanery synod. Some of the main factors which make it the appropriate meaning for the term

“mission” in this Measure are the wide range of functions covered by section 1, and the fact that the weight and importance to be given to different aspects of the Church’s mission must necessarily depend on the nature of the function concerned and the context in which it is being exercised. The Measure is therefore drafted so as to allow and require the persons and bodies exercising functions within section 1 to do so on that basis.

*Matters raised before the Revision Committee and the General Synod*

*“Mission” and the priority to be given to it*

21. Because of its importance, the wording of section 1 attracted particular attention during the Measure’s progress through the General Synod. The Revision Committee therefore re-examined it and, for the reasons given above, it was satisfied that the phrase “have due regard to” was the appropriate one to use in this context.
22. A number of proposals were put to the Revision Committee for amendments to enhance the priority which the section gives to mission, by using language such as “paramount consideration”, “first consideration” or “overriding objective”. However, the Revision Committee rejected these proposals. In doing so, it bore in mind the considerations set out above; in addition:
  - the advice the Revision Committee received was that the legal effect of the various expressions which were proposed instead of “have due regard to” would, at best, be very difficult to define precisely in the abstract; and
  - the Committee also recognised that using any of those other expressions involved the risk of tension or worse between section 1 and the other factors which need to be taken into account in exercising a particular function, and which the Measure in some cases expressly requires to be taken into account.
23. For the reasons set out above, the Revision Committee was also satisfied that the meaning given to the term “mission” in section 62 is the appropriate one in this Measure, and rejected a proposal to restrict “mission” to evangelism, important though that was. The General Synod at the Revision Stage likewise rejected a proposal which would require those concerned to have due regard to the mission of the Church “and particularly to its evangelistic dimension”. However, the Synod agreed to a slight adjustment to the drafting to make clear that it is the furtherance of the Church’s mission, and not merely the Church’s mission in the abstract, to which the person or body concerned must have due regard.

## PART II – PROVINCIAL AND DIOCESAN STRUCTURE

24. Part II consists of sections 2–22 and Schedules 1 and 2, and has to be taken together with some of the transitional provisions in Schedule 6 and some of the repeals in Schedule 7. These provisions completely replace the whole of the 1978 Measure and some related legislation.

### NEW DIOCESES COMMISSION AND REORGANISATION SCHEMES

25. The first group of provisions, comprising sections 2–10, with Schedules 1 and 2:
- provides for the establishment and functions of a new Dioceses Commission to replace the existing body of that name, and gives it a proactive rather than a purely reactive role, including a general duty to keep the Church’s provincial and diocesan structure under review; and
  - lays down a new set of provisions for “reorganisation schemes”, covering both their possible subject-matter and content – for example, they can be used to alter diocesan boundaries or to create or abolish a diocese – and the procedure for making the schemes. They replace the provisions for reorganisation schemes in the 1978 Measure. (Any change in the number of provinces will require separate legislation.)
26. The present Dioceses Commission is a wholly appointed body. The Measure provides for the Chair and Vice-Chair of the new Commission to be appointed by the Archbishops from among the members of the Houses of Clergy or Laity of the General Synod, with a further four members elected by the General Synod from among its members and four appointed by the Appointments Committee. This combines a democratically elected element with an appointed element; one of the advantages of the latter is that it allows the Appointments Committee to ensure, for example, that there are members with the appropriate theological, historical and legal expertise where the elected members do not supply all these elements.
27. Some of the main features of the new reorganisation scheme provisions are that:
- they give the Dioceses Commission itself the ability to initiate and take forward schemes, as well as responding to proposals from diocesan bishops;
  - they ensure full consultation with all the interested parties, and require the consultees to be provided with information about what the Commission sees as the effect of the proposals on the mission of the Church and about their financial effects, so as to allow for a fully informed response;
  - they allow for the diocesan synod of any diocese affected to send representatives to make oral representations to the Commission in addition to or instead of making written representations. This provides a clear and straightforward procedure which takes into account that not all the dioceses affected by a scheme will necessarily take the same view of what is proposed. It ensures that the Commission has the opportunity to hear and understand the views of all the dioceses concerned, and to

engage in a constructive dialogue with the representatives of those diocesan synods which choose to send them, but then has the space to deliberate on the matter as whole and reach its conclusions; and

- as in the 1978 Measure, they require the scheme to be laid before the diocesan synod of the diocese or each of the dioceses concerned for its consent (which would be signified by a vote in accordance with its Standing Orders), then approved by the General Synod (again signified by a vote in accordance with the General Synod's Standing Orders), and finally confirmed by Order in Council.
28. Under the 1978 Measure, if a draft scheme affects two or more dioceses, and the diocesan synod of any of them does not give its consent, the Archbishops' Council may decide that the interest of that diocese in the scheme is so small that the Commission should be authorised to lay the scheme before the General Synod for approval even without that diocesan synod's consent. The new provisions amend this and create a further exception to the need for the diocesan synod's consent; the Review Group saw this as essential if the new procedure was to be effective in delivering change where it was needed. The Measure therefore includes a power for the Archbishop of the province concerned (rather than the Archbishops' Council, as in the 1978 Measure) to authorise the Commission to lay a scheme before the General Synod even in the absence of consent from the diocesan synod of one or more of the dioceses affected, if he is satisfied that:
- the diocese's interest in the scheme is so small that the fact that the diocesan synod had not consented should not prevent the scheme being brought to the General Synod; or
  - there are considerations affecting the province or the Church of England as a whole which require the scheme to be submitted to the General Synod.
29. It has been recognised throughout the process that these provisions have important ecclesiological implications, not only as regards the relationship between different dioceses which would be affected by the proposals but take different views of it, but also as regards the relationship between the diocese as a local expression of the church universal and the province or the national church of which it is part. **The principles which underlie the Measure** in this respect are as follows:
- Where issues concerning regional diocesan structures give rise to significant implications for the province or the national church, the province or the national church necessarily has a proper interest in the matter, and it is right in principle that the General Synod should reach the final decision on it. As well as representing the national and provincial church, it has representatives of each of the dioceses concerned among its members, and it can be relied upon to give very serious consideration to any objections from an individual diocese;
  - In such cases, it is essential that the diocesan synod gives full and proper consideration to the implications for the province or the Church of England as a whole when responding to the proposals. However committed the diocesan synod may be to that in principle, giving it an absolute right to veto the proposals if it thought they were not in the

diocese's own interests could well act as a disincentive to giving full weight to the wider implications;

- It is also right in principle as well as in practice that the decision on whether the provincial or national Church considerations are such as to require the matter to come to the General Synod for a decision should be taken by the Archbishop of the Province, who is in the best position to reach a judgment in the light of all the relevant factors; and
  - It would not be practicable or satisfactory in principle to try to define more precisely than the Measure does what types of schemes the Archbishop could or could not decide to refer to the General Synod in the absence of consent from a diocesan synod.
30. The Review Group had recommended including a power in the Measure to petition the Crown to postpone filling a diocesan see while reorganisation proposals were under consideration – for example, where a see fell vacant while proposals which would have a major impact on the diocese were being considered. The Review Group proposed that the Archbishop of the province should again be involved in taking a decision as to whether to exercise this power in a particular case. The Follow-Up Group accepted the intention underlying the proposal but decided, following consultation with the Prime Minister's Secretary for Appointments and the Archbishops' Secretary for Appointments, that it could best be achieved by an amendment to the Vacancy in See Committees Regulation.

*Matters raised before the Revision Committee and the General Synod*

*Membership of the Commission and rights of diocesan synods*

31. The Revision Committee examined the provisions on the membership of the new Commission, and accepted them as the most satisfactory way of ensuring a body which had both a democratically elected element and the necessary range of experience and expertise. Taking into account the potential importance of the appointed members in helping to supply the latter, the Revision Committee rejected proposals for the non-elected members to be non-voting, or for the elected element to be in the majority.
32. The Revision Committee also re-examined the provisions in the Measure for ensuring that each diocese affected has a proper voice in the process. As regards decisions by the Commission, the Revision Committee accepted that giving the diocesan synod the right to make written or oral submissions or both was an effective way of achieving this, which struck the right balance between the rights of individual dioceses and providing the Commission with the space to deliberate and decide on the matter as a whole. At the same time, it represented the right type of light touch procedure.
33. The Revision Committee was asked to look afresh at the Review Group's recommendation that where a proposed scheme affected the continued existence of a diocese or would make substantial changes to its boundaries, the Commission should include two voting members from the diocese. Like the Follow-Up Group, the Revision Committee decided that its disadvantages outweighed its potential advantages. Different dioceses affected by the proposal might take opposing views of it, or press for different and inconsistent changes to the proposal. Indeed, where the scheme adjusted the boundaries of several adjoining dioceses, the number of diocesan

members of the Commission could at least equal the number of permanent members. All this could obviously affect the Commission's dynamics and operation, and the Revision Committee was also satisfied that it would make the legislation unduly complex.

34. As regards submission of a scheme to the General Synod where the diocesan synod withheld its consent, the Revision Committee spent some time considering written and oral submissions on behalf of *Fry an Spyrys* (Free the Spirit), a group campaigning for Cornwall to become a separate province within the Anglican Communion and an autonomous Methodist district, and generally for greater control by Cornish Christians of their own affairs and destiny. The group opposed the power to override an objection from a diocesan synod on the grounds of considerations affecting the province or the national Church, and were particularly concerned at what they saw as the possibility that the power could be used at some time in the future to abolish the diocese of Truro against the will of its diocesan synod. In the light of these and other submissions, the Revision Committee considered a number of proposals for amendments to the power to override an objection from a diocesan synod, including proposals to remove it completely, to exclude cases which involved the abolition of the diocese concerned, or to create hurdles to the operation of the power. However, the Revision Committee accepted the reasoning and principles set out above in relation to the provisions in the Measure, and agreed that they should stand as drafted.
35. When the Revision Committee returned the Measure to the full Synod, this issue was referred to in debate, but no amendments were proposed, and the General Synod therefore accepted the Committee's decision. The issue was referred to yet again in the debate on Final Approval, but only by one Synod member who expressed particular concern about what he perceived as the potential risk that at some time in the future the continued existence of the Diocese of Truro might be threatened.

#### CHANGE OF NAME OF SEE

36. Section 11 brings the provisions for changing the name of a diocesan or suffragan see within this body of legislation, with some amendments to involve the new Dioceses Commission in the process.

#### EPISCOPAL MINISTRY IN THE DIOCESE

37. This is dealt with by sections 12–18. The main new features are:
- a duty imposed on the diocesan bishop to keep the provision of episcopal ministry and oversight in the diocese under review, consulting widely with such persons and bodies as he thinks fit;
  - a comprehensive set of provisions for the delegation of episcopal functions, making this in all cases a matter for the diocese rather than (as at present in the case of formal area schemes) involving the General Synod. An area scheme under the 1978 Measure, which binds the successors of both the diocesan bishop and suffragan bishops holding office when it takes effect, at present requires the approval of the General Synod, and the General Synod also has to approve any alterations, other than some minor amendments, or the revocation of the scheme. The Measure repeals the provisions for area schemes, and also the provisions in the 1978 Measure on area synods, which are not now used in practice.

The existing area schemes will continue in force under the transitional provisions in the Measure but can be revoked or amended by the diocesan bishop with the consent of the diocesan synod;

- a scrutiny process for proposals to fill most suffragan sees. This gives effect to a recommendation by the Review Group, which regarded it as essential that when a suffragan see falls vacant a case should be made to a central body for filling it before a fresh appointment is made. The Measure provides that, as the first step, the diocesan bishop must consult the diocesan synod (or, if necessary, because the matter is urgent, the bishop's council and standing committee) before deciding whether he considers a vacancy in a suffragan see should be filled. If he considers it should be filled, he must put his proposals to the Archbishop and the Commission; if both consider that the particular proposal requires further scrutiny, it must be approved by the diocesan synod and the General Synod. (The only exceptions to these provisions are the See of Dover, because of the Bishop of Dover's special role in the diocese of Canterbury, and a see where it is intended that the next bishop should be a provincial episcopal visitor under the Episcopal Ministry Act of Synod 1993); and
- a somewhat simplified process for obtaining the approval of the diocesan synod and the General Synod for a petition to Her Majesty in Council to create a new suffragan see, which no longer requires the consent of the Archbishops' Council.

*Matters raised before the Revision Committee and the General Synod*

*Filling of vacancies in suffragan sees – potential delay as a result of scrutiny*

38. Concerns were expressed to the Revision Committee about the delay which the scrutiny process for filling suffragan sees might cause in making essential appointments. The Revision Committee, like the Review Group and the Follow-Up Group before it, accepted the general principle that it was essential to require a case for filling a suffragan see to be made to a central Church body before any appointment was made. It therefore rejected proposals to create new exceptions to that provision in the Measure over and above the original very limited ones. It likewise rejected a request for the legislation to allow for a fast track approach in some cases; in the Revision Committee's view, this would have been unacceptably complex.
39. However, the Revision Committee recognised that in order to avoid undue delay, it was important for diocesan bishops to keep the case for the continuance of each suffragan see under review, and for the Commission to deal with cases promptly. It also accepted that the original provision in the Measure which required the bishop to begin the process in every case by consulting the diocesan synod would result in substantial delay and/or expense in a significant number of cases, and it therefore decided that if the bishop considered that the matter was urgent and that it was not practicable to consult the diocesan synod the legislation should permit him to consult the bishop's council and standing committee instead.

## ARRANGEMENTS FOR SHARED ADMINISTRATION BY DIOCESES

40. Sections 19–20 replace the existing provisions in the 1978 Measure for schemes for shared administration in two or more dioceses, which now apply to a wider range of bodies.
41. In addition, the Measure provides that where the scheme would affect a charitable body, it cannot proceed in the face of an objection by the Charity Commission. The process no longer contains the requirements for the consent of the Archbishops' Council and consultation with the Church Commissioners, which appear in the 1978 Measure, but it now requires the Dioceses Commission's consent. The reasons why the Follow-Up Group decided that it needed to include a provision to that effect were:
- the number of new diocesan bodies for which legislation since 1978 has laid down very carefully considered mandatory provisions, especially as regards membership. It is therefore necessary to ensure that the powers under section 19 are not applied in such a way as to undermine them, to monitor the use of the powers effectively from the centre and to save dioceses running into problems with their proposals; and
  - the need to bring a national perspective to bear on decisions by individual dioceses in this area of growing importance in practice.

### *Matters raised before the Revision Committee and the General Synod*

#### *Role of the Dioceses Commission*

42. The main issue before the Revision Committee, which was also referred to in the debate in full Synod on the Revision Committee's report, was whether it was necessary to require the Dioceses Commission's consent, and in this respect it was pointed out that the Review Group had merely envisaged giving the Dioceses Commission a monitoring and advisory role. The Revision Committee accepted that it was necessary, for the reason set out above, and the Synod accepted that decision.

### PART III – PROCEDURE FOR MAKING PASTORAL SCHEMES AND ORDERS AND PASTORAL CHURCH BUILDINGS SCHEMES

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43. Sections 23–39 amend the provisions in Part I of the 1983 Measure which deal with the procedure for making pastoral schemes and orders. Under the 1983 Measure as it stands:
- pastoral schemes are legal documents which change local church organisation, for example, in relation to the status of parishes and benefices, team and group ministries, and church buildings. The proposals originate in the diocese but they are always drafted and published by the Church Commissioners. The Church Commissioners also serve a copy on all the persons and bodies listed by the 1983 Measure as “interested parties”, who will already have been consulted at an earlier stage, and then consider any representations which are made as a result of this process. (The Church Commissioners have recently introduced a procedure which also allows for those making written representations to seek an opportunity to make oral representations.) The Church Commissioners decide whether to make the scheme; if they decide to do so, anyone who made written representations may seek leave from the Privy Council to appeal to it; and
  - pastoral orders are legal documents which deal with simpler matters, including changes to the boundaries or name of a parish or benefice or holding benefices in plurality. They involve a lighter consultation process, and there is no appeal to the Privy Council.
44. One of the main changes made by the Measure is that the closure of a church, previously known as a “declaration of redundancy”, is in future to be known as a “declaration of closure for regular public worship”, which more accurately describes the effect of the legal process. A scheme involving proposals to close a church is to be known as a “pastoral church buildings scheme”, again because it is a more accurate description. In future, the term “pastoral scheme” is thus to be reserved in practice for schemes which do not involve such proposals; the existing provisions regarding pastoral orders mean they cannot be used in a case involving a proposed closure of a church.
45. In addition, the Measure provides for two separate routes and procedures for the two types of schemes:
- **pastoral schemes and orders**, which are to be drafted and published by the dioceses, with the Church Commissioners exercising a validating role in order to check that they are in the correct form and are within the powers of the bishop and the mission and pastoral committee, and that the consultation and other procedures up to that stage have been properly carried out. Sections 24–34 contain the amendments which are to apply to pastoral schemes and orders, and produce a version of Part I of the 1983 Measure which applies where no proposal to close a church is involved; and
  - **pastoral church buildings schemes**, which are still to be drafted and published centrally by the Church Commissioners. Sections 35–39 apply to these schemes, and produce a version of Part I of the 1983 Measure which applies where the proposals involve the closure of a church.

46. In both cases, this Part of the Measure also contains a number of other detailed changes to the existing procedures.

*Matters raised before the Revision Committee and the General Synod*

*The new procedures*

47. The Revision Committee reviewed and was content with the new procedures and the part the Church Commissioners are to play in each case.
48. The Revision Committee was also asked to look again at a proposal in the Review Group's report that an objector should have a right to make (time limited) oral representations to the Church Commissioners. Following that report the Church Commissioners had introduced a procedure to allow an opportunity for oral representations. The Revision Committee agreed that, compared with the Review Group's proposal, the Church Commissioners' procedure provided a better way in practice of ensuring that the objectors' points were properly explained and explored. While that procedure did not confer a legal right, the Revision Committee accepted that to do so, particularly where there were multiple objections raising the same or related points, would be unduly inflexible and burdensome for the Commissioners and could well prove impracticable.

## PART IV – CHURCH BUILDINGS CLOSED FOR REGULAR PUBLIC WORSHIP

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49. Sections 40–46 implement the Review Group’s recommendations for changes to sections 42 and 46–51 in Part III of the 1983 Measure, relating to the future of churches closed for regular public worship. This part of the Review Group’s proposals involves a number of amendments of considerable practical importance. While the provisions in Part IV of the Measure are necessarily linked to those on mission and pastoral committees (Part VI and Schedule 3) and the care of church buildings (the opening sections of Part VII and Schedule 4), the most significant changes made by Part IV itself are that:
- what the 1983 Measure termed “redundancy schemes”, dealing with the future of a closed church, are in future to be known as pastoral (church buildings disposal) schemes, in order to reflect more accurately the nature and object of the process;
  - the new diocesan mission and pastoral committees which are to replace the present diocesan pastoral committees are also to take over the functions of the current diocesan redundant churches uses committees, with some amendments, and are to have greater flexibility in how they are carried out;
  - the provisions on cases where the future of the church can be determined at the time of closure are extended to allow for the possibility of deciding at that stage to demolish a church which is not a listed building or within a conservation area;
  - where the future of the church is determined after closure, the maximum “use seeking” period (an expression which replaces the current “waiting period”, again to reflect its purpose more accurately) is to be reduced from three to two years; and
  - the only case where there is still to be a mandatory “use seeking period”, of at least 6 months, is where there is proposal to demolish a listed building or a building within a conservation area, and even there the mandatory delay will not apply where the Church Commissioners are satisfied, after consulting the Church Buildings Council, that there is no objection to the demolition taking place.

### *Matters raised before the Revision Committee and the General Synod*

50. The Revision Committee made some detailed amendments to this Part of the Measure, but no issues of principle or general importance were put to it, nor were any issues of that kind raised by the Committee itself. There were no motions for amendments to this Part of the Measure at the Revision Stage in full Synod.

## PART V – MISSION

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51. This Part of the Measure, dealing with “mission initiatives”, contains only six sections (sections 47–51) but it presented what was probably the greatest challenge in the drafting of the Measure. This was to produce a completely new legislative means of supporting the variety of fresh expressions of church, including cross boundary and non-boundary churches, on the basis of the principles set out in the Review Group’s report.
52. **At the heart of the new provisions is the concept, in the Archbishop of Canterbury’s words, of a “mixed economy church”, under which the parochial system will and must remain an essential and central part of the national Church’s strategy for delivering mission, but which recognises that other forms of mission are also needed to supplement it, and are in fact being developed, for that purpose.** Clearly such initiatives and the parishes should ideally be mutually supportive, and in any event the initiatives, while supplementing the parochial system, must not undermine it. As the Review Group put it, “... the parish continues generally to be regarded as the cornerstone of the Church’s ministry and its primary pastoral unit.” The Review Group, the Follow-Up Group and the Synod all accepted that, if necessary, it should be possible for a mission initiative to be set up and to continue operating under the new provisions even if an incumbent or priest in charge, existing or future, of a parish concerned did not consent. However, it was essential that the views of the parochial clergy were taken into account. In any case, this aspect of the Review Group’s proposals was not aimed solely or even primarily at initiatives operating within a single parish or benefice, but was also intended to take account of network churches and other new developments which extended over a number of parishes or even more widely, or indeed were not set up by reference to particular territorial areas or boundaries.
53. Many mission activities in the life of the Church do not require any new legislation at all and are already operating successfully under the existing law. However, there are other new forms of initiative, which seek to promote or further the mission of the Church through fostering or developing different forms of Christian community, where fresh legal provision is needed. What this Part of the Measure seeks to put in place is a wholly new set of provisions which will permit legitimate new developments whilst protecting the proper rights of those affected by them, and which:
- is sufficiently flexible to cover the whole range of experiments, initiatives and fresh expressions of Church, including those as yet undreamed of which lie in the future;
  - supports, encourages and nurtures the green shoots as they grow, helps them to develop in the best direction but does not stunt or constrict their growth or stifle initiative;
  - affirms, recognises and provides legal authority and proper supervision without a legal straightjacket;
  - builds up relations with the established legal institutions and those involved with them; and
  - provides a framework of regular reviews within reasonable time-limits. One object of this is to help the successful initiatives to move on to

something more permanent as and when the time is right. However, the legislation also needs to provide for closure where experiments had been tried in good faith but not prospered.

54. The basic structure which the Measure provides for this purpose involves the following key elements:
- an order by the Bishop, accepted by those leading the initiative – thus making episcopal authority and acknowledgement of that authority the key;
  - full consultation, including consultation with those whom the bishop considers have a significant interest or are likely to be significantly affected, and also including consultation with the mission and pastoral committee, so as to ensure that the impact of the initiative on the existing work of the Church in the diocese as a whole is fully considered. The bishop must also consult such other Churches and religious organisations as he thinks fit. Depending on the terms of the proposed order, other specific consultation requirements may also apply;
  - a Visitor acting on behalf of the bishop as guide, counsellor and friend and also providing oversight and conducting periodic reviews; and
  - a carefully written House of Bishops' Code of Practice, to be approved by the Synod, to which the bishop, the leader of the initiative, the Visitor and the mission and pastoral committee must have regard.
55. The Measure recognises that even manifestly successful mission initiatives should not be left to continue indefinitely without a careful evaluation of the way in which they are operating and their impact on the life of the Church as a whole. Thus it provides for the following stages in the potential life of an initiative under the Bishop's mission orders:
- the maximum period for which the initial order can continue is five years, with a full review by the end of that period;
  - at that point, if the initiative proves successful, the best way forward may well be to put it on a more permanent footing under one of the range of possibilities provided by the 1983 Measure and other existing legislation such as the Extra Parochial Ministry Measure 1967;
  - however, if the bishop is satisfied after consultation that it is proper to do so, he has power to make a further order for the initiative, to continue for up to another five years, with another full review at the end of that period; and
  - the bishop then has power to make a further order only if he considers that the initiative should continue but there are no other suitable means for achieving the initiative or its objectives. If those conditions are satisfied and a fresh order is made, it is to continue until the bishop revokes or varies it.
56. It has been recognised throughout the legislative process that the draft legislation itself can be no more than half the story, and that the Code of Practice, to be produced by the House of Bishops and presented to General Synod for approval, also has a vital role to play in providing detailed practical guidance on how the legislation is to be implemented. The Measure places a number of those who have responsibilities regarding mission initiatives under

the legislation – the bishop, the leader of the initiative, the Visitor and the mission and pastoral committee – under a duty to have regard to the Code.

57. Because of the importance of the Code of Practice, the Synod was provided at the Revision Stage with a provisional outline of its contents, prepared by a group drawn from the Steering and Revision Committees and supported by the Bishop of Maidstone, the Revd Dr Steven Croft (Archbishops' Missioner and Team Leader for the *Fresh Expressions* project) and the Revd John Cole from the staff of the Council for Christian Unity of the Archbishops' Council. After the Revision Stage, the same group prepared a draft Code which General Synod members received for information before they came to debate the motion for Final Approval of the Measure. This draft took account of comments by the House of Bishops on an earlier version; before the General Synod met in February 2007 the House had an opportunity to consider it again in substantially the form in which it went to Synod members, and was content to receive it in that form.
58. As was made clear to the General Synod, the Code could not be formally made and approved unless and until the Measure became law and the relevant sections were brought into force, and there would be an opportunity to amend the draft if appropriate at that stage.

*Matters raised before the Revision Committee and the General Synod*

59. The Revision Committee considered a number of proposals for amendment and submissions on this Part of the Measure, although they related to the detailed provisions rather than the broad outlines of the legislation. The following paragraphs summarise the most significant issues.

*Patrons*

60. Because some of the proposals to the Revision Committee referred to concerns on the part of patrons, the Committee invited representatives of a number of patrons and patronage bodies to make oral submissions to it. Those submissions stressed the importance which the patrons concerned attached to being consulted about an initiative and the contribution they could make to it. They also made clear that the patrons did not consider this could be left wholly to a Code of Practice as opposed to legislation. In view of those submissions the Revision Committee amended the consultation provisions in the Measure so as to require the bishop to consult those who appear to him to have a significant interest in the order or to be likely to be significantly affected by it, and to make clear that those who have or share in, or have an interest in, the cure of souls in the area in question, including registered patrons and parochial church councils, are to be regarded as having an interest in the order for this purpose. (See section 46(6) and (7).)

*Ecumenical cooperation or collaboration*

61. The Revision Committee considered and added some further provisions regarding cases where the initiative is to participate in a local ecumenical partnership or is to be involved in other forms of ecumenical cooperation or collaboration.

*Priests (Ordination of Women) Measure 1993*

62. The Measure makes it clear that the section providing for bishops' mission orders does not authorise any act in contravention of a resolution under the Priests (Ordination of Women) Measure 1993. The Revision Committee was satisfied, on the basis of the advice it received, that such a provision was essential and must be retained, in order to avoid any possible ambiguity and any argument that the Measure created an exception to the 1993 Measure.

*Role of diocesan pastoral and mission committee*

63. At the Revision Stage, the General Synod decided that the diocesan mission and pastoral committee should be consulted before the bishop makes a mission order, but should not have a right to veto the making of the order. The other provisions on the Measure on the role of the mission and pastoral committee in relation to bishops' mission orders were brought into line with this at the Final Drafting Stage.

*Administration of the sacraments*

64. At the Final Drafting Stage, the Synod also agreed an amendment making it clear that a bishop's mission order is to make such provision as the bishop thinks fit for the administration of the sacraments, and that this must be in accordance with the legal rules governing the administration of the sacraments in the Church of England as a whole.

## PART VI – MISSION AND PASTORAL COMMITTEES

65. Sections 52 and 53 and Schedule 3 deal with the setting up, constitution, procedure and functions of a diocese’s mission and pastoral committee. The main objectives of these provisions are:
- to provide greater flexibility for diocesan synods in devising arrangements for the carrying out of the functions which were formerly the responsibility of the diocesan pastoral committees established under the 1983 Measure;
  - to combine those functions, in the remit of the new committee, with matters relating to church buildings (other than those which are the responsibility of the diocesan advisory committee or within the jurisdiction of the consistory court) and in particular with deciding the future of closed churches;
  - to ensure that financial considerations are expressly referred to in the committee’s remit; and
  - while leaving it to the diocesan synod to decide by what name the committee is to be called, to provide for it to be described in legislation, instruments and documents as “the mission and pastoral committee”, thus emphasising its role in mission as well as in the field of pastoral care.

### *Matters raised before the Revision Committee and the General Synod*

#### *Name of committee*

66. The formal title of the committee referred to at the end of the previous paragraph was the result of a decision by the General Synod on the sole amendment put down on this Part of the Measure at the Revision Stage. The other issues considered by the Revision Committee related to matters of detail.

## PART VII – OTHER PROVISIONS

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### CARE OF CHURCH BUILDING

67. In order to assist the Ecclesiastical Committee in understanding the issues that the General Synod had to consider in relation to these provisions in the course of the synodical process, appendix 3 to these Comments and Explanations contains a brief explanation of the background in terms of the two main existing bodies and their functions:
- the Council for the Care of Churches (“CCC”), which is a non-statutory body answerable to the General Synod through the Archbishops’ Council, and whose functions relate mainly to churches in use but which also has one set of functions under the 1983 Measure in relation to churches being considered for closure; and
  - the Advisory Board for Redundant Churches (“the Advisory Board”), which is a statutory body established by section 41 of the 1983 Measure. That section gives it advisory functions, mainly involving advice to the Church Commissioners in relation to the future of churches on or in the event of closure.
68. **Sections 54 to 57 of the Measure and Schedule 4 provide for a new statutory body, the Church Buildings Council (“CBC”), to be the single central Church source of information and advice on church buildings. Its functions are to include the existing functions of the CCC in relation to churches in use and those of both the CCC and the Advisory Board in relation to processes under the 1983 Measure regarding the closure of churches. The functions of the Advisory Board are to be discharged by a statutory committee of the CBC – the SAC – see paragraph 70 below. The Measure therefore provides for the CCC and the Advisory Board to cease to exist.**
69. The CBC’s membership is to comprise the following elements:
- a chair appointed by the Archbishops after consultation with the Appointments Committee;
  - an independent strand of membership, consisting of four members appointed by the Archbishops on the nomination of the Secretary of State, who between them are to have special knowledge of or expertise in history, architecture, archaeology and aesthetics;
  - three members elected by the General Synod from among its members and having knowledge of or expertise in matters relevant to the CBC’s work;
  - 14 members appointed by the Archbishops on the nomination of a variety of different bodies, and in some cases having specified types of knowledge or expertise, including 7 members nominated by the Appointments Committee; one of them is required to have expertise in the innovative use of churches and former churches, including their management and development; and
  - up to two co-opted members.
70. The functions at present carried out by the Advisory Board are to be carried out on behalf of the CBC by a statutory committee to be known as the

“Statutory Advisory Committee”, to which the CBC can also delegate other functions and whose advice the CBC can seek on other matters. The committee is to consist of:

- the Chair of the committee, who is to be the person holding office as Chair of the CBC, and who is not to be entitled to a vote in any of the committee’s proceedings;
- the four independent strand members of the CBC referred to above; and
- three other members chosen by the CBC from among its members;

thus enabling the four independent strand members to outvote the other members of the committee.

*Matters raised before the Revision Committee and the General Synod*

71. The Review Group recommended that there should be a single unified central Church source of information and advice on church buildings, providing advice both on extended use (i.e. for churches which were still in use for regular public worship) and on settling the future of closed churches. It recommended that this role should be carried out by the CCC, with its membership adapted to ensure an independent strand in relation to advice provided to the central body on the future of closed churches. On that basis, the Review Group recommended that there would no longer be a need for a separate Advisory Board.
72. When the General Synod debated the Review Group’s report in 2004, an amendment was moved to exclude this particular recommendation from the Synod’s general endorsement of the report. Only one member spoke for the amendment, and it was defeated.
73. The Follow-Up Group gave further consideration to the Review Group’s recommendation, and in particular to the need for an independent strand of advice in relation to the future of closed churches, to which it was aware that both the Department for Culture, Media and Sport (“DCMS”) and the Prime Minister’s Appointments Secretary attached importance. It decided that:
  - rather than transferring the Advisory Board’s functions to the CCC, the Measure should set up a new statutory body, with a statutory constitution, to take over the functions of both the CCC and the Advisory Board, with some new functions; and
  - four of the members should be appointed by the Archbishops after consultation with the Secretary of State, thus providing the independent strand recommended by the Review Group.
74. In the light of submissions from the DCMS, the Prime Minister’s Appointments Secretary, English Heritage, the Advisory Board itself and others, the Revision Committee gave further very careful consideration to the provisions for the new body, which it decided should be named the Church Buildings Council. It agreed to accept proposals from the Steering Committee:
  - for the four independent strand members to be appointed by the Archbishops on the nomination of the Secretary of State, rather than merely after consultation with the Secretary of State; and

- for the functions at present carried out by the Advisory Board to be subject to a statutory delegation to a committee – the Statutory Advisory Committee – including the four independent strand members. The proposal accepted by the Revision Committee gave these four members a built in voting majority, and also provided for the committee to give advice directly to the Church Commissioners (or the Churches Conservation Trust) in cases where the 1983 Measure as present requires those bodies to consult the Advisory Board.
75. The DCMS, the Prime Minister’s Secretary for Appointments and English Heritage were given an opportunity to consider those proposals before the Revision Committee accepted them. The DCMS welcomed the proposal for nomination of the four members and the Prime Minister’s Appointments Secretary had no further comments.
76. The member of the staff of English Heritage who attended a meeting of the Revision Committee, at its invitation, asked for clarification of some aspects of the proposals, which was provided. In particular, he asked about the impact of section 1 of the Measure and sought reassurance that the advice to the Church Commissioners would continue to be based solely on the heritage interest of the buildings concerned. A vital factor here is that section 1 deliberately does not make the mission of the Church an “overriding consideration”. It requires those carrying out functions under the Measure or the 1983 Measure (as the Advisory Board does at present) to have “due regard” to the mission of the Church, and the nature of the function is obviously relevant in deciding what is “due regard” in the particular case. The Measure makes it clear that the relevant functions of the CBC, like those of the Advisory Board at present, are to advise on purely heritage issues, namely the historic and archaeological interest and architectural quality of the church, the interest and quality of the contents, its value as part of its setting and surrounding landscape and its overall importance and, in the light of those factors, to advise on the potential impact of alterations.
77. The Revision Committee was aware that the CBC needs to be adequately staffed to fulfil its duties under the Measure, and that a transfer of the functions of the Board must inevitably involve changes in the structure and work patterns of those at present working for the CCC. It was assured that these needs were recognised and could be accommodated.
78. At the Revision Stage the General Synod had the opportunity to delete the clause which is now section 54. Only two members spoke against the clause and the Synod voted to retain it in the Measure.

#### AMENDMENTS TO THE 1983 MEASURE IN RELATION TO PASTORAL ORDERS, TEAM MINISTRIES AND TEAM COUNCILS, NEW PARISHES AND COMPENSATION OF THE CLERGY

79. Sections 58 to 60 contain a number of detailed amendments to the 1983 Measure in relation to these matters (which are explained more fully in Part II of these Comments and Explanations.)

#### *Matters raised before the Revision Committee or the General Synod*

80. The only points raised on these provisions which involve issues of substance were proposals for changes in the detail of the amendments to the 1983

Measure regarding the appointment of team vicars in a team ministry, which the Revision Committee rejected.

#### ASSISTANT CURATES

81. Section 61 contains two new provisions in relation to assistant curates. They give the bishop power:

- to direct that the holder of a particular assistant curate post is to be known by some other title, which will then be used in the formal licence; and
- to assign to an assistant curate some of the same types of special responsibility as can be assigned to a team vicar in a team ministry.

These provisions were included in the Measure in order to meet well-recognised needs in practice. In each case the section contains mandatory provisions for consultation before the power can be exercised.

#### *Matters raised before the Revision Committee or the General Synod*

82. No issues other than points of detail were raised on this section before the Revision Committee or subsequently.

## PART VIII – MISCELLANEOUS

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83. Sections 62–66 and Schedules 5–7 contain provisions on the following matters:
- the interpretation of the Measure (section 62)
  - miscellaneous amendments to the 1983 Measure (section 63(1) and Schedule 5) and a small number of detailed amendments to other legislation which are consequential on or flow from other provisions of the Measure (section 63(2)–(7));
  - transitional provisions (section 64 and Schedule 6);
  - repeals (section 65 and schedule 7); and
  - citation, commencement and extent (section 66).

### *Matters raised before the Revision Committee and the General Synod*

84. Here again, almost all the points raised before the Revision Committee and at subsequent stages were ones of detail and did not involve issues of principle. The only exceptions related to:
- the definition of “mission” in section 62 – see paragraphs 19–20 and 23 above;
  - re-suspension of presentation; and
  - the Churches Conservation Trust.

### *Re-suspension of presentation*

85. One of the submissions before the Revision Committee was a request for an amendment to section 67 of the 1983 Measure, relating to suspension of presentation. When the bishop imposes a suspension in relation to a benefice which is or is about to become vacant, following the consultation required by the section, and thus prevents the patron appointing a new incumbent, the period of the suspension is limited to five years unless it is extended before that period expires. The Revision Committee was asked to amend the 1983 Measure to clarify whether, after the suspension period has expired, a fresh suspension can then be imposed for a further period during the same vacancy in the benefice, subject to the same consultation requirements. It was put to the Revision Committee that practical difficulties were arising because there had been contradictory opinions on the legal position on this under section 67 as it stood.
86. The Revision Committee agreed to include an amendment in Schedule 5 to the Measure to permit a further suspension in those circumstances, and to provide for the bishop and the secretary to the diocesan mission and pastoral committee to be alerted to the fact that a suspension period was about to expire.
87. At the Revision Stage, the Synod accepted the argument that there were circumstances where the provision inserted by the Revision Committee was needed in practice, and retained it. On the other hand, it rejected a proposal for what was in effect an appeal to the Church Commissioners against the fresh suspension; in addition to doubts about whether the Church

Commissioners were an appropriate body to fulfil this function, it was likely to require further detailed procedural provisions, and was seen as contrary to the general intention underlying the Toyne Review, which favoured collaboration rather than confrontation and adversarial legal processes.

#### *Churches Conservation Trust*

88. As regards the Churches Conservation Trust (“the Trust”), the Review Group had proposed two amendments to its constitution, as set out in section 44 of and Schedule 5 to the 1983 Measure. These were:-
- to increase the maximum number of members in addition to the chairman, from six to nine, so that the Trust could draw on a wider range of expertise from its members. The CCT itself welcomed this; and
  - to alter the detailed provisions in relation to consultation before the appointment of the members. The change had been recommended by the Review Group, but the Trust argued against it before the Revision Committee, saying that no convincing case had been made out for it, and that if it was needed at all it was best dealt with by non-statutory procedures, so as to retain maximum flexibility. The Revision Committee accepted these arguments and agreed to delete the provision.
89. The Revision Committee also agreed, at the Trust’s request, to insert a new power, to apply in a case where a church is proposed for closure which, because of its interest or quality, is likely to merit vesting in the Trust if it is closed and no suitable use can be found for it. The new provision allows the Trust, at the request of the Church Commissioners, to give the Commissioners advice, and to give anyone else specified by the Commissioners advice and assistance, in identifying and developing proposals for a use of the church or part of it which is consistent with its primary use for worship, in order to avoid the need to close the church. An example given to the Revision Committee was that the Trust might advise on some form of community use which could be carried on while the church remained in use for regular public worship.
90. Finally, the Revision Committee agreed to amendments to sections 52 and 53 of the 1983 Measure to simplify the provisions regarding the Church Commissioners’ contribution to the funding of the Trust.

#### CONCLUSION

91. The Legislative Committee hopes that the Ecclesiastical Committee will be able to issue a favourable report on the Measure. In the event of the Ecclesiastical Committee requiring any further information or explanation, the Legislative Committee stands ready to provide this.

On behalf of the Committee

Philip Giddings

(Deputy Chair)

30th April 2007

## APPENDIX I – THE EXISTING LEGISLATION

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### DIOCESES MEASURE 1978 AND RELATED LEGISLATION

The **Dioceses Measure 1978** (“the 1978 Measure”) came into force in May 1978. Until now it has been amended only in minor respects, but it has been supplemented by other legislation (see below). Its main provisions deal with the following areas:

- the establishment and functions of the Dioceses Commission (sections 1–2);
- the procedure for making reorganisation schemes to make alterations in the diocesan structure of the Church (sections 3–9);
- the delegation of the diocesan bishop’s functions on a temporary or permanent basis and the procedures to be followed in order to make the delegation (sections 10–16);
- the consents to be obtained before a petition is submitted for the creation or revival of a suffragan bishop’s see (under the Suffragan Bishops Act 1534 and, where relevant, the Suffragans Nomination Act 1888) (section 18); and
- arrangements under which functions of diocesan bodies of two or more dioceses can be discharged by a single body, and the procedure to be followed (section 19).

In addition:

- **section 8 of the Church of England (Miscellaneous Provisions) Measure 1983** contains a further power of delegation of a diocesan bishop’s functions; and
- **section 6 of the Church of England (Miscellaneous Provisions) Measure 1988** contains a separate procedure for renaming a see.

The **Vacancy in See Committees Regulation 1993** (as amended in 2003) deals with the process for deciding on the names to be submitted by the Archbishop to the Prime Minister before the Prime Minister advises Her Majesty on the choice of a new diocesan bishop. This Regulation does not have legally binding force, but has been proclaimed an Act of Synod.

### PASTORAL MEASURE 1983 AND RELATED LEGISLATION

The **Pastoral Measure 1983** (“the 1983 Measure”) came into force in November 1983. It was the product of consolidation of the Pastoral Measure 1968 and the amendments subsequently made to it, including major amendments made by the Pastoral (Amendment) Measure 1982. It is a lengthy Measure, which has already been much amended – it now contains over 100 sections as well as 9 Schedules. Its main provisions deal with:

- the diocesan pastoral committee, with responsibility for reviewing and recommending changes to the arrangements for pastoral supervision and the cure of souls in the diocese or part of the diocese (sections 1–2);
- pastoral schemes and orders, which implement the diocesan pastoral committee’s recommendations (sections 3–40). These schemes and

orders can, among other things, set up or alter a team ministry or a group ministry, both of which are forms of collaborative ministry. The law on these forms of ministry, and in particular on team ministries, was amended by the Team and Group Ministries Measure 1995;

- declaring churches redundant (which is normally done by a pastoral scheme – see above) and making provision for the future of the buildings and land concerned (sections 41–66); and
- miscellaneous and general matters, including the adjustment of diocesan boundaries (sections 13 and 36) and provisions regarding patronage (in particular sections 67–73). (A pastoral scheme may also deal with patronage.) Substantial changes were made to the general law on patronage by the Patronage (Benefices) Measure 1986, but that Measure made only minor amendments to the 1983 Measure.

The **Church of England (Ecumenical Relations) Measure 1988** and the Canons made under it (**Canons B43 and B44**), and other provisions of the Canons, also contain provisions which are relevant to this area of ecclesiastical law.

## APPENDIX II – THE HISTORY OF THE MEASURE

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### THE TOYNE REVIEW OF THE 1978 AND 1983 MEASURES

At the end of 2000 the Archbishops' Council set up a **Review Group chaired by Professor Peter Toyne, to review the provisions and operation of the Dioceses Measure 1978 (“the 1978 Measure”) and the Pastoral Measure 1983 (“the 1983 Measure”)** and other relevant legislation, in consultation with various interested parties, “in order to ensure flexible and cost-effective procedures which fully meet changing pastoral and mission needs”, and to report with recommendations to the Archbishops' Council.

A number of strands came together to suggest that the time was ripe for such a review. In particular:

- The Dioceses Commission itself and others had repeatedly expressed frustration about the fact that the Commission had been able to achieve very little under the 1978 Measure, because of its essentially reactive nature; and
- The 1983 Measure on the other hand was very well-used, but there were calls for the streamlining of the provisions on redundant churches, and also concerns about how far the other provisions of the 1983 Measure sufficiently accommodated new arrangements for ministry and models of ministry.

The Review Group's work included two wide-ranging national consultation exercises and receiving official responses from almost every diocese, as well as written and oral evidence from a wide range of other bodies, office-holders and individuals. It took account of:

- the developing thinking of the Working Group dealing with fresh expressions of church chaired by the Bishop of Maidstone; and
- the early thinking of the review of clergy terms of service, chaired by one of the members of the Group, Professor David McClean, which was set up during the course of the Group's work.

Some of the **general principles and factors** which the Review Group took into account, and which are identified in the opening pages of the Group's report and in Professor Toyne's speech introducing the report to the General Synod in February 2004, are as follows:

- The major issue before the Group was how far the Church's current legislative machinery is well-fitted to deal with the challenges the Church faces in the rapidly changing world of the 21st Century. The Group thus had to consider how far the existing legislation facilitates change and development in order to help to sustain Christian communities, and how far it allows for the growth of new structures where they are needed to support the Church's mission and ministry to the nation;
- Mission and ministry were thus at the core of the Group's work. The Group recognised that its decisions and recommendations must be rooted in a proper theological and ecclesiological understanding of the issues involved, including the vital role of episcopal oversight and of the diocese;

- One aspect of this, made clear by evidence the Group received, was the need for a “mixed economy church” – under which the parochial system remains an essential and central part of the national Church’s strategy for delivering mission, but under which it is supplemented by other forms of mission which are developing for that purpose. Thus the Group referred to evidence it had received of the need for “pioneering” mission as well as “pastoral “mission. The Group also noted the vital importance of working ecumenically with Christians in other Churches;
- The Group recognised that the Church of England is a complex, varied and largely decentralised structure. Therefore legislation providing for structural change and for new kinds of structures must respect those features of the Church without being stifled by them. While seeking, rigorously and systematically, to facilitate decentralised decision-taking , the Group recognised the national Church’s continuing need for a coherent national framework of legislation;
- While the submissions to the Group revealed a wide range of opinion, a clear majority of those from whom the Group heard considered that significant change was required, affording greater lightness of touch and flexibility to suit differing local needs and new developments; and
- At the same time, the Group recognised that a great deal in the existing legislation is fundamentally sound and working well, and should be retained.

The Group’s report – *A Measure for Measures: In mission and ministry* – was published in January 2004. It contained over 60 detailed recommendations in the areas of dioceses, “neighbourhood and network” (much of which relates the 1983 Measure) and church buildings. The Group recommended that the legislation to give effect to these should:

- give priority to mission and ministry, with proactivity and strategic planning as other priorities;
- aim to facilitate and enable the fulfilment of the Church’s mission, and enhance the range of ways of dealing with different situations;
- maintain fair consultative processes and checks and balances; and
- give coherence to procedures which many saw as disparate and inflexible, as well as providing a framework of order.

Generally, the Group saw the need for the legislation to be flexible, enabling and light of touch, and as straightforward, comprehensible and user-friendly as possible.

The following are most significant changes proposed in *A Measure for Measures*:

#### *Dioceses*

- a new proactive Dioceses Commission, with the duty of keeping under active review the diocesan structure of the Church and the number and distribution of dioceses and episcopal posts, both in general and in particular areas;
- a new procedure for making alterations to that structure, which:

- gives the new Commission power to put forward reorganisation proposals on its own initiative and take them forward as well as responding to proposals to it ;
- encourages the fullest consultation with interested parties; and
- in certain circumstances and subject to certain safeguards, permits a reorganisation scheme to be submitted to the General Synod for approval even where the diocesan synod of a diocese which has a substantial interest in the scheme declines to approve it;
- a new procedure and criteria for deciding whether or not Her Majesty should be asked to fill a vacant suffragan see;
- devolution to the diocesan bishop, with the consent of the diocesan synod, and without central Church control, of decisions about the making, varying or rescinding of area schemes for the delegation of the diocesan bishop's functions to suffragan bishops; and
- removal of obstacles to shared administration between dioceses.

#### *“Neighbourhood and network”*

- making explicit the need to have regard to mission and financial considerations, as well as making better provision for the cure of souls;
- provision of structural support, recognition and accountability for experimental mission initiatives as well as those already in existence, in a way that responds to the needs of “networks” and other initiatives which are not based on territories or boundaries, while not neglecting those based on a geographical area. In order to achieve this, the Review Group recommended making provision for episcopally authorised mission initiatives and providing a clear procedure for their creation, renewal and termination, coupled with guidance in a Code of Practice;
- flexibility for diocesan synods to authorise committee structures that best assist dioceses in delivering their responsibilities as regards mission and ministry; and
- devolution to dioceses of the responsibility for drafting and publishing pastoral schemes.

#### *Church buildings*

- new terminology for the closure of churches to replace that based on “redundancy” (which many saw as misleading and unduly negative);
- changes to simplify and speed up the process for taking decisions on the future of churches no longer required for worship, including a reduction of the normal “use-seeking period” to 2 years and the removal of unnecessary constraints on the demolition of unlisted churches; and
- rationalisation of the central specialist advisory functions in relation to church buildings, by uniting the functions of the Advisory Board for Redundant Churches with those of the Council for the Care of Churches, thus making a separate Advisory Board unnecessary. The Review Group's report recognised that the body carrying out those functions must have an “independent strand” in its membership in relation to advice to the central Church on the future of closed churches.

## THE DEBATE IN THE GENERAL SYNOD IN FEBRUARY 2004

The Group's report was brought to the General Synod for debate in February 2004, immediately following a debate on the report *Mission-Shaped Church*. After a welcoming and positive debate, the Synod received the report, approved its recommendations and asked for a Follow-Up Group to be set up to prepare draft legislation to implement those recommendations which required it (as well as overseeing the implementation of the recommendations which did not need fresh legislation).

## THE FOLLOW-UP GROUP

A Follow-Up Group was accordingly set up, chaired by the Bishop of Exeter, the Rt Revd Michael Langrish, and with a membership that included an element of continuity with the original Review Group. Its terms of reference were based on the General Synod resolution in February 2004.

The Follow-Up Group's work involved 16 meetings over the period from July 2004. Its report, and the draft legislation for introduction into the General Synod were published in October 2005. Some of the main aspects of that report are summarised in the introductory paragraphs of these Comments and Explanations.

In carrying out its work the Group kept in touch with developments in other areas which might impact on the draft legislation, notably the work on the Review of Clergy Terms of Service, in which it was assisted by the fact that Professor David McClean, who chaired that Review, was also a member of the Follow-Up Group, and on taking forward *Mission-Shaped Church*. In the case of a few individual recommendations in the Review Group's report the Follow-Up Group came to the conclusion, with Professor McClean's support, that the subject-matter was linked to the Clergy Terms of Service process to such an extent that it would not be right for the Follow-Up Group to attempt to draft legislation on them.

In addition, there are a few other individual recommendations in the Review Group's report which are not covered by the Measure, because:

- they have already been implemented. In particular, the recommendation to facilitate extended use of church buildings by allowing a lease to be granted of part of a church, without the need to make that part redundant, was identified as an urgent matter which called for expedited treatment. It was thus embodied in a separate Measure, which has now received the Royal Assent as the Pastoral (Amendment) Measure 2006 and has been brought into force; or
- on further investigation, the Follow-Up Group concluded that the proposal concerned did not require legislation, or had unforeseen disadvantages, or could not or should not be taken forward at that stage.

## SYNODICAL CONSIDERATION OF THE LEGISLATION

The draft legislation was introduced into the General Synod at the November 2005 Group of Sessions, and was presented to the Synod by a Steering Committee chaired by the Bishop of Exeter. The Synod passed the motions giving the draft Measure and the accompanying legislation First Consideration and referring them to a Revision Committee.

The Revision Committee, chaired by Dr Edmund Marshall, held eight full day meetings and one half-day meeting between January and April 2006 to consider the proposals for amendment and submissions made to it. In addition to proposals

from the Steering Committee, the Revision Committee received proposals or submissions from over 20 members of the General Synod, and 6 of those Synod members attended one or more meetings of the Revision Committee to speak to their proposals or submissions.

In addition, the Revision Committee received written proposals or submissions from 14 other bodies, office-holders and others. At the invitation of the Committee, representatives of a number of the bodies concerned attended a meeting of the Committee in order to speak to their written material. The bodies in question included English Heritage, the Joint Committee of the National Amenity Societies, the Advisory Board for Redundant Churches, the Churches Conservation Trust in relation to heritage matters and *Fry an Spyrys* (Free the Spirit – Campaign for Self-Government for the Churches of Cornwall) in relation to reorganisation schemes. In addition, again at the Revision Committee's invitation, the Chair of the Council for the Care of Churches, the Rt Revd Graeme Knowles (the Bishop of Sodor and Man), attended the meeting which dealt with issues affecting the Council, and a number of representatives of patronage interests attended meetings of the Committee at which issues relating to patronage in the context of mission initiatives were discussed.

The Revision Committee was assisted by a number of consultants, including Mr Paul Lewis, the Pastoral and Redundant Churches Secretary of the Church Commissioners, who had also submitted proposals for amendment, and Ms Paula Griffiths, the Secretary to the Council for the Care of Churches. Mr Dudley Coates, the Methodist ecumenical representative on the General Synod, was present and spoke at meetings of the Revision Committee as an ecumenical observer; he too made written submissions to the Committee.

The Revision Committee made a substantial number of amendments to the draft legislation, but without altering its basic framework or underlying principles. The Revision Committee reported to the General Synod in July 2006.

The main issues raised at the Revision Stage in July 2006 related to:

- the general duty imposed by the opening section of the Measure on all those discharging functions under the Measure or the 1983 Measure;
- whether and subject to what conditions it should be possible to submit a “reorganisation scheme” under Part II of the Measure to the General Synod for approval even though the diocesan synod of a diocese affected declined to approve it;
- the formal title to be given in the Measure to the diocesan committees to replace the existing diocesan pastoral committees and redundant churches uses committees;
- the role of those committees in relation to bishops' mission orders;
- the transfer of the functions of the Advisory Board for Redundant Churches to the new Church Buildings Council; and
- re-suspension of presentation to a benefice after the original suspension period has expired and before the vacancy has been filled.

Following the Revision Stage, the Steering Committee considered the Final Drafting of the draft legislation. As a result, a number of drafting amendments and other changes of detail were made at the Final Drafting Stage in February 2007.

The legislation received Final Approval from the General Synod at the same Group of Sessions. There was only one speech against the motion, relating to reorganisation schemes. The voting on Final Approval was as follows:

	AYES	NOES
Bishops	22	0
Clergy	104	1
Laity	123	0

## APPENDIX III – CARE OF CHURCH BUILDINGS – EXISTING BODIES

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### THE COUNCIL FOR THE CARE OF CHURCHES

#### *Constitution and membership*

The Council for the Care of Churches (“CCC”) has existed as a formal body within the Church’s structures (first of the Church Assembly and subsequently of the General Synod and the Archbishops’ Council) since 1927 (although its name and constitution have been altered from time to time), and it is the successor to a body which first met in 1922. It is not a statutory body; it is answerable to the General Synod through the Archbishops’ Council, and has a constitution determined by the Archbishops’ Council after consultation with the General Synod and drawn up in accordance with the Synod’s Standing Orders.

That constitution provides for the CCC to consist of a Chair and up to 22 other members, of whom at least 6 must be members of the General Synod. The Chair is appointed by the Archbishops after consultation with the Appointments Committee of the Church of England (“the Appointments Committee”). The other members are:

- 3 members elected by the General Synod from among its members;
- 15 members appointed by the Appointments Committee (which must have regard to the need for the CCC’s membership to include persons with expertise in archaeology, architecture, archives, art, history and liturgy). Of these, 3 are appointed on the recommendation of the outgoing CCC (i.e. the body of members whose term of office is about to come to an end), 3 are nominated by the annual meeting of Chairmen and Secretaries of the Diocesan Advisory Committees for the care of churches (“DACs”) and 1 is nominated by the Cathedrals Fabric Commission for England; and
- Up to 4 co-opted by the CCC to reflect special interests not otherwise covered.

#### *Finance and reporting*

The CCC is staffed from the Cathedral and Church Buildings Division of the Archbishops’ Council and funded by the Archbishops’ Council as part of that Division. The annual report which the Archbishops’ Council makes to the General Synod under section 4 of the National Institutions Measure 1998 refers to key aspects of the Division’s work, and under the Synod’s Standing Orders the CCC is among the bodies to whose Chairs Synod members may address formal Synod Questions regarding the body’s business.

#### *Functions*

The Council’s main functions relate to the care, conservation, use and development of places of worship in use. They include:

- giving advice and assistance on matters relating to the use, care, planning or design of places of worship, their curtilages and contents to:
  - the Archbishops’ Council and the General Synod;

- the ecclesiastical courts in relation to the faculty jurisdiction. (This function is recognised in the Rules governing the exercise of that jurisdiction);
- DACs (which also have statutory functions in relation to the faculty jurisdiction). The CCC's functions also include co-ordinating the DACs' work;
- diocesan pastoral committees and other diocesan bodies, archdeacons and other diocesan officers; and
- others within the Church;
- maintaining contact with other official church bodies, government departments and other recognised bodies concerned with aspects of the CCC's work. Under this heading the CCC liaises closely with the Department for Culture, Media and Sport and English Heritage on the operation of the "ecclesiastical exemption" from listed building control;
- educational work and promotion of research and artistic creativity; and
- maintenance of a library.

In addition to those functions, section 3 of the 1983 Measure provides that, before a decision is taken at diocesan level to recommend that a church should be declared redundant, the CCC must prepare a report for the relevant diocesan bodies and the Church Commissioners on:

- the historic interest and architectural quality of the church concerned and other churches in the area;
- the historic interest and aesthetic quality of the contents of those churches; and
- any special features of their churchyards or burial grounds.

## THE ADVISORY BOARD FOR REDUNDANT CHURCHES

### *Constitution and membership*

The Advisory Board for Redundant Churches ("the Advisory Board") is a statutory body, established under section 41 of the 1983 Measure (replacing section 42 of the Pastoral Measure 1968). It consists of a chairman and not more than 6 nor more than 10 other members appointed by the Archbishops jointly after consultation with the Prime Minister. At present it has the maximum complement of 10 members in addition to the chairman. Members of certain other bodies, including the Board of Governors of the Church Commissioners and Church Commissioners' committees, are excluded from membership.

### *Finance and reporting*

The Advisory Board is required by section 41(8) of the 1983 Measure to make an annual report to the Archbishops of its proceedings during the year; copies of the report must also be sent to the Church Commissioners and laid before the General Synod.

Section 41(5) gives the Church Commissioners power to make grants out of their general fund in respects of the Advisory Board's expenses. In practice the

Commissioners at present use that power to meet the whole of the Advisory Board's expenses.

### *Functions*

The Advisory Board's functions under section 41 are set out in section 41(3) and relate to churches which are being considered for redundancy, or whose future on or in the event of redundancy is under consideration, or which are being considered for possible acquisition by the Churches Conservation Trust after redundancy under section 44(5A) of the 1983 Measure. ("Church" for this purpose includes part of a church, and also includes the church's curtilage and any churchyard or burial ground annexed to the church.) Those functions consist of giving information and advice to the Church Commissioners about:

- the historic and archaeological interest and architectural quality of the church concerned;
- the historic and archaeological interest and aesthetic qualities of its contents;
- its value as part of the landscape; and
- its overall importance.

The 1983 Measure makes no provision for the Church Commissioners to consult the Advisory Board unless and until a draft scheme has been drawn up providing for the redundancy of the church or the future of the church building following redundancy is under consideration. When that point is reached, the 1983 Measure contains a number of specific provisions requiring the Church Commissioners to consult the Advisory Board, or to serve copies of draft schemes on it.

There are also a very few provisions in section 44 of the 1983 Measure under which the Churches Conservation Trust is required to consult the Advisory Board in relation to properties vested in the Churches Conservation Trust which it has let or is proposing to let.