GENERAL SYNOD

LEGISLATIVE COMMITTEE

DIOCESAN STIPENDS FUNDS (AMENDMENT) MEASURE

COMMENTS AND EXPLANATIONS

The Diocesan Stipends Funds (Amendment) Measure amends the Diocesan Stipends Funds Measure 1953 to give the trustees of a diocesan stipends fund, like the trustees of other charities, a permissive power to invest the capital account of the fund on a total return basis. It enables trustees who adopt this approach to determine what proportion of the total return (i.e. the sum of the capital gains and income) should be expended for the purposes of the fund and what proportion should be reinvested in the capital account.

INTRODUCTION

1. The Legislative Committee of the General Synod, to which a Measure entitled the Diocesan Stipends Funds (Amendment) Measure ('the Measure') has been referred, has the honour to submit the Measure to the Ecclesiastical Committee with these Comments and Explanations.

2. The Measure is a very short, single-topic Measure which removes the statutory constraints preventing diocesan boards of finance ('DBFs') from deciding how to allocate investment returns between the income and capital accounts of their diocesan stipends fund, by enabling them to pass a resolution under section 104A of the Charities Act 2011, in exactly the same way as other charities with permanent endowment funds, so as to allow them to adopt a 'total return' approach to the investment of the fund. The effect of such a resolution is that the trustees of the charity are able to determine the balance between sums to be spent and the sums to be retained for further investment by looking across the whole investment return rather than at the technical classification of receipts as capital or income.

3. The new power is a permissive one, and DBFs will be under no obligation to follow a total return approach should they not wish to do so.

4. The Legislative Committee invites the Ecclesiastical Committee, having considered the material presented here, to issue a favourable report on the Measure. If the Ecclesiastical Committee requires any further explanation, the Legislative Committee stands ready to provide it.

BACKGROUND

5. By virtue of the Diocesan Stipends Funds Measure 1953 ('the 1953 Measure'), the DBF of every diocese is required to keep two accounts for its diocesan stipends fund, namely a capital account and an income account. Money or assets held for the purposes of the diocesan stipends fund must be allocated either to the income account or to the capital account. Only the income account can be expended for the purposes of the fund (chiefly the provision of clergy stipends).

6. The 1953 Measure sets out clear restrictions on the purposes for which the capital account can be used (in section 4): essentially it must be held for investment purposes, or used to acquire land to be held as diocesan glebe land or for the provision or improvement of parsonages. Capital gains – whether realised or unrealised - must be reinvested in the capital account, and the capital account may not be used for payment of stipends.

7. In an environment where income returns are low, this may have the unintended consequence that the value of the capital account increases while the annual sum from the income account which is available for payment of stipends is decreasing. Alternatively, it could encourage trustees to adopt an investment policy which would increase income in the short term, but at the expense of eroding the capital and reducing income over the longer term.

8. Some dioceses hold substantial capital sums in their diocesan stipends funds, and wished to explore the possibility of investing (and allocating returns) on a total return basis.

9. Funds held in a capital account by DBFs as part of a diocesan stipends fund are held for charitable purposes. Under the Charities Act 2011 (as amended by the Trusts (Capital and Income) Act 2013), a charity with a permanent endowment fund may invest the fund on a total return basis, provided that the charity trustees, having satisfied themselves that it is in the best interests of the charity to do so, pass a resolution to that effect.

10. If they follow this approach, trustees need to determine a 'base level' for the endowment, which cannot be applied and which will therefore be preserved, and to decide whether this base level will be fixed or varied over time in line with a predetermined policy. The initial base level is usually defined as the original value of the endowment adjusted by an inflationary factor. If the original value of the endowment is unknown, the Charity Commission's guidance makes clear it is permissible to make a reasonable estimate[*]. How far back in time it is reasonable to go in making this estimate will depend on factors such as the amounts involved and the state of the records.

11. The difference between the initial base level, calculated as described in paragraph 10, and the actual value of the fund as at the date of the resolution is known as the 'unapplied total return' and can be allocated either to investment or for application for charitable purposes. If the fund has made significant capital gains in the past, the new flexibility in relation to the unapplied total return may provide a charity with a source of extra funds to distribute.

12. However, the power to pass a total return resolution is not available where (as in the case of the capital accounts of diocesan stipends funds) there is a statutory restriction preventing the trustees from doing so. A number of diocesan boards of finance indicated that this was an unhelpful constraint, and the Archbishops' Council was therefore asked to consider bringing forward legislation to remove the effect of the restriction. The Council agreed to do so, introducing the Measure into the Synod to that end.

THE PROVISIONS OF THE MEASURE

11. Clause 1 inserts new section 5A into the 1953 Measure.

12. Subsection (1) of the new section enables a DBF to make a total return resolution under section 104A of the Charities Act 2011 in relation to the capital account of its diocesan stipends fund - that fund being the equivalent of the 'permanent endowment' referred to in section 104A since it is not available for expenditure on stipends but must be invested in accordance with section 4 of the Measure.

[*] Charity Commission, *Total Return Investment for Permanently Endowed Charities*, November 2013

13. Subsection (2) provides that where a DBF has passed a total return resolution, decisions relating to the ‘unapplied total return’ are decisions about whether funds should be allocated to the capital account or the income account. This clarifies how the regulations made by the Charity Commission under section 104B of the Charities Act 2011, which refer to allocation of unapplied total return to the ‘trust for investment’ and the ‘trust for application’, should apply to a diocesan stipends fund.

14. Subsection (3) provides that the Charity Commission regulations have effect with such modifications as may be necessary. The principal modifications are that, as noted above, references to the ‘trust for investment’ and the ‘trust for application’ should be read as references to the capital account and the income account of the diocesan stipends fund.

15. Clause 2 deals with the short title, commencement and extent of the Measure.

PROCEEDINGS IN THE GENERAL SYNOD

16. In November 2014, the Synod gave First Consideration to the Measure. No proposals for amendment were received in the course of the Revision Committee Stage, and therefore the Revision Committee did not meet and informed the Synod that a report was not necessary. Following the Revision Stage in July 2015, when again no proposals for amendment were received, the Steering Committee informed the Synod that a Final Drafting stage was not required. The Measure therefore proceeded to Final Approval unamended. The Measure was given Final Approval in July 2015 on a division by Houses. The voting figures were as follows:

	In favour	*Against*
Bishops	18	0
Clergy	88	0
Laity	90	1

There were no recorded abstentions.

On behalf of the Legislative Committee

P.N.E. Bruinvels
Canon Peter N. E. Bruinvels
Deputy Chairman

[ ] 2015