

**GENERAL SYNOD  
LEGISLATIVE COMMITTEE**

**Church of England (Miscellaneous Provisions) Measure**

**Comments and explanations**

The Church of England (Miscellaneous Provisions) Measure makes provision for a range of matters concerning the Church of England that do not merit freestanding legislation. The Measure includes a power for the Church Commissioners to make grants to the Archbishops' Council and provisions relating to the conduct of funerals, clergy terms of service, decisions of appeal courts, and other miscellaneous matters.

**Introduction**

1. The Legislative Committee of the General Synod, to which the Measure entitled Church of England (Miscellaneous Provisions) Measure ('the Measure') has been referred, has the honour to submit the Measure to the Ecclesiastical Committee with these Comments and Explanations.

*Summary of the Measure*

2. The Measure makes provision in respect of a range of matters concerning the Church of England that do not merit freestanding legislation.
3. The Measure includes a power for the Church Commissioners to make grants to the Archbishops' Council.
4. It also makes provision relating to the conduct of funerals, clergy terms of service, decisions of appeal courts, and other miscellaneous matters.

**The provisions of the Measure**

*Section 1 Power to make grants to the Archbishops' Council*

5. Section 1 provides the Church Commissioners with a new power to make grants out of their general fund to the Archbishops' Council for the purposes of the Council's functions.
6. The purposes for which the Church Commissioners' funds can be applied are provided for in a number of statutory provisions. Examples of those purposes include the payment of bishops' stipends and their costs of office, the payment of certain costs associated with cathedrals, the payment of costs associated with certain pensions, and the making of additional provision for the cure of souls in parishes where such assistance is most required.
7. The Church Commissioners currently have no power that would enable them to apply their funds towards furthering the mission and work of the Church of England more generally.
8. The new power would enable the Church Commissioners to support the work and mission of the Church of England more generally by making grants to the Archbishops' Council whose

objects are wider than those of the Church Commissioners. A grant could be made by the Church Commissioners under the new power for any purpose that came within the Archbishops' Council's objects which are "to co-ordinate, promote, aid and further the work and mission of the Church of England" (section 1, National Institutions Measure 1998).

### *Section 2 Land registration: disposals of church land*

9. Section 2 is a technical amendment to remove the anomalous continuing requirement by the Land Registry for a certificate from the Church Commissioners in respect of any disposal of benefice property registered in the name of an incumbent.

### *Section 3 Marriage: licensing chapel during suspension period in benefice*

10. Section 3 amends section 20 of the Marriage Act 1949.
11. Section 20 of the Marriage Act empowers the bishop to license a public chapel for the publication of banns and the solemnization of marriages. Before doing so, the bishop is required to obtain the consent of the incumbent of the benefice in which the chapel is situated; alternatively, the bishop can licence a chapel without the consent of the incumbent if the bishop has served formal notice of intention to do so on the incumbent and has inquired into any reasons given by an incumbent who refuses consent.
12. Section 85 of the Mission and Pastoral Measure 2011 empowers the bishop to suspend the right of presentation to a parochial benefice for a renewable period of up to 5 years. Where a suspension is in force in respect of a benefice, the patron cannot exercise the right of presentation to the benefice without the consent of the diocesan mission and pastoral committee and (if the bishop is not the patron) the bishop. A suspension is normally imposed where pastoral reorganisation is being considered or a parsonage is proposed to be disposed of. The result of imposing a suspension is normally that the benefice is not filled and that it therefore does not have an incumbent. Instead, a temporary priest in charge is usually appointed.
13. The requirement in section 20 of the Marriage Act to seek consent from the incumbent means that where a suspension period is in force in respect of a benefice and a priest in charge has been appointed it is not possible for the bishop to licence a chapel within that benefice (as a priest in charge is not an incumbent). The amendment made by section 3 of the Measure provides for section 20 of the Marriage Act to have effect as if references to the incumbent were references to the priest in charge in those circumstances.

### *Section 4 Funerals: conduct*

14. Section 4 widens the scope for the provision of funeral ministry by clergy who are beneficed, licensed or have permission to officiate. It also amends the Order for the Burial of the Dead in the Book of Common Prayer.
15. As the law currently stands a funeral service at a cemetery or crematorium may be performed by the minister of the parish where the deceased died, resided or was on the church electoral roll. There is currently no provision which enables other clergy, including assistant or retired clergy, or authorised lay persons, to officiate at a funeral at a cemetery or crematorium even if they are asked to do so by the deceased's minister or by the family or friends of the deceased.

16. Subsections (1) to (4) of section 4 provide authority for any member of the clergy who has a current authority to minister in the Church of England to perform a funeral service at a cemetery, crematorium or other non-parochial setting provided he or she is asked to do so by the persons concerned (usually the family or friends of the deceased), and provided that he or she has, so far as practicable, informed the deceased's own parish priest and sought his or her goodwill.
17. Subsections (5) to (7) amend section 2 of the Church of England (Miscellaneous Provisions) Measure 1992. That section currently enables – and in certain circumstances requires – the minister of a parish to perform a funeral service in a cemetery or crematorium if the deceased died or was resident in the minister's parish or was on the church electoral roll. It does not provide for the minister to delegate the performance of the funeral service to, for example, an assistant curate or a reader. The amendments made by subsections (5) to (7) will enable the minister of the parish to arrange for another member of the clergy or a suitably authorised lay person to perform the funeral in his or her place.
18. Subsection (8) removes the first rubric at the beginning of the Order for the Burial of the Dead in the Book of Common Prayer. That rubric provides that the burial service may not be used “for any that die unbaptized, or excommunicate, or have laid violent hands upon themselves”. Amending Canon No. 37, which was enacted at the February 2018 group of sessions of the General Synod, abolished the rule of canon law that the burial service could not be used in the cases mentioned in the rubric. The rubric has therefore ceased to reflect the canonical position and needs to be removed.

### *Section 5 Bishops: delegation of functions to other bishops*

19. Section 5 puts it beyond doubt that the bishop of a diocese, as Ordinary, may commit non-statutory episcopal functions to another bishop of the Church of England.
20. Section 15(1) of the Dioceses Measure 1978 (now repealed) abolished the power of a diocesan bishop to give a commission to a suffragan bishop. The view of the Legal Advisory Commission is that the abolition was concerned only with the statutory commissioning of a suffragan under the Suffragan Bishops Act 1534 and was not intended to prevent a diocesan committing the exercise of non-statutory episcopal functions such as carrying out confirmations or ordinations to another bishop. (If that were not the position, it would now be necessary for the performance of those rites by, for example, a retired assistant bishop in the diocese to be authorised by way of a formal instrument of delegation under section 13 of the Dioceses, Pastoral and Mission Measure 2007.)
21. Section 5 removes any remaining doubt as to the position.

### *Section 6 Terms of service*

22. Clause 6 makes various amendments to legislation relating to the terms of service of the holders of ecclesiastical offices.
23. Subsection (1) amends the Ecclesiastical Offices (Age Limit) Measure 1975. That Measure provides that the term of certain offices – including all offices held under common tenure – automatically ceases when the holder of the office reaches the age of 70. However, a minority of those who hold office under common tenure hold office under a contract of employment; in particular, hospital and other sector chaplains. Any provision as to

retirement for these office holders should be contained in their contract of employment. It is inconsistent with that for legislation to provide for the automatic termination of their office on reaching a particular age. Subsection (1) therefore removes those who hold office under a contract of employment from the scope of the 1975 Measure.

24. Subsections (2), (3) and (8) make amendments that are consequential on the Ecclesiastical Offices (Terms of Service) (Amendment) Regulations 2017 (SI 2017/316). Those Regulations allow office holders under common tenure to be continued in office after they reach the age of 70, and accordingly restrict section 3 of the Ecclesiastical Offices (Age Limit) Measure 1975 to offices not held under common tenure. Consequential amendments are required to sections 1 and 2 of the Bishops (Retirement) Measure 1986 and section 3 of the Ecclesiastical Offices (Terms of Service) Measure 2009 so that they provide for the case of offices held under common tenure.
25. Subsection (4) amends section 11 of the Church of England (Miscellaneous Provisions) Measure 1992 to bring the method of resignation by freehold incumbents into line with that for incumbents on common tenure.
26. As the law currently stands, an office holder on common tenure may resign by giving three months' notice in writing to the bishop (subject to the possibility of both parties agreeing to waive the notice period). But a freehold incumbent who wishes to resign must either execute a deed or tender resignation in the statutory form provided in Schedule 2 to the Church of England (Miscellaneous Provisions) Measure 1992.
27. Subsection (4) allows a freehold incumbent to resign simply by giving three months' written notice to the bishop. The notice period can be waived if both the incumbent and the bishop agree.
28. Subsection (5) is a consequential amendment and repeals Schedule 2 to the 1992 Measure.
29. Subsection (6) amends section 1 of the Ecclesiastical Offices (Terms of Service) Measure 2009 to address an anomaly relating to deaconesses, readers and lay workers. These office holders are able, in certain circumstances, to conduct funeral services. Where they do so, the diocesan board of finance may have agreed that they may receive the parochial fee payable to the board (or part of it). If so, that could amount to an emolument of office such as to bring the deaconess, reader or lay worker within common tenure and all that entails.
30. The intention of section 1 of the 2009 Measure, so far as deaconesses, readers and lay workers are concerned, was that they should be subject to common tenure only if they were stipendiary or held office on a house for duty basis. It was not intended to make those who carry out occasional funeral duty subject to common tenure. Subsection (4) gives effect to that intention by providing that the receipt by a deaconess, reader or lay worker of parochial fees pursuant to a decision of a diocesan board of finance does not amount to that person receiving 'emoluments of office' – and therefore ensures that they do not become subject to common tenure.
31. Subsection (7) inserts a new subsection into section 2 of the Ecclesiastical Offices (Terms of Service) Measure 2009 to make it clear that regulations made under that section may include provision enabling a person to exercise a discretion. Because regulations previously made under that section assumed that such provision could be made by regulations, subsection (6) provides for the new subsection to have retrospective effect.

32. Subsection (9) removes regulation 5(3) from the Ecclesiastical Offices (Terms of Service) Regulations 2009 on the basis that the provision it makes in relation to pensions and contracted-out employment is no longer applicable.
33. Subsection (10) substitutes a new regulation 23 in the Ecclesiastical Offices (Terms of Service) Regulations 2009 so that the provision in respect of maternity, parental, adoption etc. leave and time off for carers is all dealt with in the Regulations themselves rather than partly in the Regulations and partly in directions. The substance of the provision is unchanged.
34. Subsection (11) revokes the directions which are replaced by the provision contained in the new regulation 23.
35. Subsection (12) provides for the amendments made by subsections (2), (3), (7) and (8) to have retrospective effect in order to avoid any question arising about the operation of relevant provisions prior to the commencement of the amendments.
36. Subsection (13) validates the previous operation of the directions which are to be revoked by subsection (11).
37. Subsection (14) makes it clear that the new regulation 23 substituted by subsection (10) can be subject to further amendment by future regulations in spite of its having been inserted by primary legislation (and so avoid any doubt there might otherwise be as to the power to make such amendments).
38. Subsection (15) repeals section 13 of the Mission and Pastoral etc. (Amendment) Measure 2018 because that section has been superseded by the Ecclesiastical Offices (Terms of Service) (Amendment) Regulations 2017 which now make comprehensive provision for the holding of office beyond the age of 70.

### *Section 7 Provincial courts: decisions to be treated as taken by each Court*

39. Subsection (1) of clause 7 amends the Ecclesiastical Jurisdiction and Care of Churches Measure 2017 by inserting a new section 14A that is concerned with the status of decisions of the ecclesiastical appeal courts. Currently, a decision of the Court of Arches is binding on consistory courts only in the province of Canterbury and a decision of the Chancery Court of York is binding on consistory courts only in the province of York. That has resulted on occasion in cases being decided differently, by consistory courts at first instance and by the appeal courts, according to the province in which those courts are situated.
40. The new section 14A provides that a decision of the Court of Arches or the Chancery Court of York is to be treated by the other appeal court, and by the lower ecclesiastical courts, as if it were a decision which the other appeal court had itself taken. That will mean, for example, that a consistory court in the province of Canterbury will treat a decision taken on an appeal by the Chancery Court of York as if it were a decision that had been taken by the Court of Arches and will apply the decision accordingly in cases before that consistory court.
41. Subsection (2) makes a consequential amendment to the Ecclesiastical Jurisdiction Measure 1963.
42. Subsection (3) applies the new section 14A to decisions of the appeal courts that were made before that section comes into force (as well as to those which are made after that).

## *Section 8 Fees*

43. Section 8 makes miscellaneous amendments to provisions concerned with ecclesiastical fees.
44. Subsection (1) amends section 1 of the Ecclesiastical Fees Measure 1986 by substituting a reference to a duly “authorised” deaconess, reader or lay worker for the existing reference to a duly “licensed” deaconess, reader or lay worker. The new wording will cover any deaconess, reader or lay worker who is authorised under the relevant Canon to conduct funerals irrespective of whether that person is licensed by the bishop or has written permission from the bishop to officiate in the diocese on a temporary basis.
45. Subsection (2) of clause 8 amends section 1 of the Ecclesiastical Fees Measure 1986 so that parochial fees are not payable to a parochial church council or diocesan board of finance where the relevant duty is carried out in the course of a person’s employment by a university, college, school or public or charitable institution.
46. Subsection (3) amends section 84 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 to alter the composition of the Fees Advisory Commission. Instead of one of the members of the Commission having to be a member of the House of Bishops, one member will be a diocesan or suffragan bishop nominated by the House of Bishops regardless of whether he or she is a member of the House.
47. Subsection (4) inserts new subsections (5A) to (5D) in section 85 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 to enable the Fees Advisory Commission to conduct its business by correspondence where appropriate and to delegate the approval of urgent matters to its Chair.
48. Subsection (5) inserts a new subsection (4A) in section 86 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 so that a fees order may provide for the amount of a court fee to be determined by a court, ecclesiastical judge or other official, or by reference to other statutory provision, instead of the amount of the fee being stated in the fees order itself. Subsection (6) gives retrospective effect to the new subsection (4A) on the basis that fees orders have previously been made on the assumption that such provision could be made in a fees order.

## *Section 9 Timing of sessions and membership of House committees*

49. Section 9 amends the Constitution of the General Synod, which is set out in Schedule 2 to the Synodical Government Measure 1969.
50. Subsection (2) amends article 3 of the Constitution which is concerned with meetings of the Synod. Article 3(1) requires the Synod to meet in session at least twice a year. The Synod is to meet at such times and places as it provides or, if it does not make provision, as the Joint Presidents of the Synod (i.e. the Archbishops) direct. The amendments are concerned with the power to vary provision which has been made for a meeting of the Synod. If provision for the time or place of a meeting has been made by the Synod, the Synod may vary that provision; and the Presidents, the Prolocutors of the Convocations and the Chair and Vice-chair of the House of Laity may jointly exercise that power on its behalf. If provision has been made by the Presidents, they may vary that provision. The power to vary includes a power to cancel a meeting of the Synod. The requirement that the Synod must meet at least twice a year does not apply if it does not meet as a result of a cancellation.

51. Subsection (3) amends Article 10(3) of the Constitution, so that the Standing Orders of the three Houses of the Synod can provide for committees of the House concerned to include persons who are not members of that House.
52. Subsection (4) makes retrospective provision so that the powers of the Synod and of the Presidents under article 3(1) of the Constitution are to be regarded as having always included a power of cancellation.

### *Section 10 and the Schedule Legal Aid Commission: rules*

53. Section 10 and the Schedule make a number of changes to the framework for the administration of ecclesiastical legal aid, which is contained in the Church of England (Legal Aid) Measure 1994 and the Church of England (Legal Aid) Rules 1995.
54. Section 10 amends section 4 of the 1994 Measure, with retrospective effect, so that rules made under it may allow the delegation of a discretion so that rules under that section can allow a body or individual (for example, the Legal Aid Commission or the Chair or Secretary) to exercise a discretion when dealing with a matter.
55. The Schedule amends the 1995 Rules in various respects in order to facilitate the administration of ecclesiastical legal aid by the Legal Aid Commission.
56. Paragraph 2(1) adds a new paragraph (1A) to rule 5, making provision for the election by the Commission of one of its members to undertake certain specified functions when the Chair of the Commission is unable to undertake them.
57. Paragraph 2(2) amends rule 5(2) so as to enable the Commission to conduct its business by correspondence where appropriate and to delegate urgent decisions to its Chair.
58. Paragraph 2(3) and (4) amend rules 5 and 10 so as to allow the Commission's deputy secretary to act in the place of its secretary generally, when required, rather than only for the purpose of issuing interim legal aid certificates.
59. Paragraph 3 amends rule 6 so as to allow notices or documents to be sent or served by electronic means as well as in paper form.
60. Paragraph 4 amends rule 11 so that, in the event of a tied decision on an application for legal aid, the Chair has a second, casting vote.
61. Paragraph 5 amends rule 15 in a similar manner in relation to decisions to discharge or revoke a legal aid certificate. It also corrects a textual error.
62. Paragraph 6(1) amends rule 26 by inserting a new paragraph (4A) to enable the Chair, in consultation with the secretary, to assess costs where a certificate has been granted under the interim procedure or where costs do not exceed £2,000. Paragraphs (4) to (6) make consequential amendments.
63. Paragraph 6(2) inserts a new paragraph (4B) into rule 26 so that the Commission has power to request certain information and documentation in relation to an assessment.
64. Paragraph 6(3) increases the threshold below which an assessment of costs by the Commission (instead of a taxation of costs) may take place from £1,000 to £3,000.
65. Paragraph 7 inserts a new rule 28 to give the Commission the power to revoke a legal aid certificate if, without good reason, there is a delay of greater than 3 months in submitting a bill of costs.

## *Section 11 Execution of documents*

66. Subsections (1) and (2) of section 11 amend section 9 of the Church Commissioners Measure 1947 by the insertion of new subsections (3A) and (3B) which provide that two officers of the Church Commissioners, who have been authorised by the Board for that purpose, may execute documents by signature to take effect as if made under common seal. Any relevant delegation of authority has effect subject to any limitations or conditions as are specified. This amendment provides an additional method by which the Commissioners may execute documents and would allow the Board to carry out its functions with greater efficiency.
67. Subsection (3) amends section 21 of the Clergy Pensions Measure 1961 by the insertion of new subsections (13A) to (13E) which make analogous provision for the execution of documents by the Church of England Pensions Board and which make section 21 consistent with section 9 of the Church Commissioners Measure 1947.
68. Subsection (4) amends Schedule 1 to the National Institutions Measure 1998 by the insertion of new paragraph 12A which makes analogous provision for the execution of documents by the Archbishops' Council and which makes Schedule 1 consistent with section 9 of the Church Commissioners Measure 1947.
69. Subsection (5) amends section 3 of the Parochial Church Council (Powers) Measure 1956 by the insertion of new subsections (3) to (5) which make analogous provision for the execution of instruments by parochial church councils and which make section 3 consistent with the provisions set out above.
70. Subsections (6) and (7) clarify that where a relevant body, as defined in subsection (7), executes a document or instrument by signature under a relevant provision, as defined in subsection (7), such execution will take effect as if the document were made under seal. The document or instrument comes into force when it is signed in accordance with the relevant provision, i.e. in each case when the second signature is made.
71. Subsection (8) makes a minor amendment in relation to the specified enactments. By convention, instruments do not come into force before they are laid before Parliament in accordance with the Statutory Instruments Act 1946. At present, the relevant enactments require that in each case a subordinate instrument comes into force when sealed, rather than laid. This technically requires a relevant instrument to be laid on the date on which it is sealed which may not be possible. This amendment imports greater flexibility as to commencement.
72. Subsection (9) gives the amendments made by subsection (8) retrospective effect.

## *Section 12 Delegation and casual vacancies*

73. Subsection (1) of section 12 amends section 37 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 by the insertion of a new subsection (9A) which provides that a diocesan advisory committee may delegate the exercise of any its functions to an officer. In an appropriate case, this would allow a committee to delegate a decision where it would be disproportionate to convene a meeting of the committee or for the decision to await the next scheduled meeting of the committee.
74. Subsection (2) amends Schedule 4 to the Dioceses, Pastoral and Mission Measure 2007 by the insertion of a new paragraph 22A which allows the Church Buildings Council to delegate functions to an officer. In an appropriate case, this would allow the Council to delegate a

decision where it would be disproportionate to convene a meeting of the Council or for the decision to await the next scheduled meeting of the committee.

75. Subsection (3) amends paragraph 10 of Schedule 1 to the Dioceses, Pastoral and Mission Measure 2007 so that a person may be appointed to fill a casual vacancy in the office of chair of the Dioceses Commission in the same manner as the chair being replaced (i.e., by the Archbishops with the approval of the General Synod). This avoids an anomaly whereby, under paragraph 10 as presently in force, a chair must be selected from the House of Laity or Clergy to fill a casual vacancy but ordinarily the person appointed need not be chosen from among the members of either House.

### *Section 13 Disqualification as trustee*

76. Subsection (1) of section 13 amends section 4(4) of the Cathedrals Measure 1999 to provide that a person is disqualified from service as a member of a cathedral chapter if he or she has been disqualified from serving as a charity trustee by an order of the Charity Commission under section 181A of the Charities Act 2011.
77. Subsection (2) is a transitional provision in respect of the effect of subsection (1).
78. Subsection (3) amends section 2(1) of the Churchwardens Measure 2011 to provide that a person is disqualified from service as a churchwarden if he or she has been disqualified from serving as a charity trustee by an order of the Charity Commission under section 181A of the Charities Act 2011.
79. Subsection (4) is a transitional provision in respect of the effect of subsection (3).

### *Section 14 Provision of services to PCC by member*

80. A parochial church council is a charity and its members are in the position of charity trustees. As such, they are not entitled to receive any benefit from the PCC unless they are lawfully authorised to do so. One way in which the necessary authority can be obtained is by exercising the power conferred by section 185 of the Charities Act 2011, which allows charity trustees generally, and persons connected with them, to receive remuneration for services provided to their charity, as long as certain conditions are met. However, that power does not extend to benefits in the form of remuneration under a contract of employment.
81. In order to provide a similar procedure which did extend to benefits received under contracts of employment, section 5(2) of the Church of England (Miscellaneous Provisions) Measure 2014 introduced a new section 3A into the Parochial Church Councils (Powers) Measure 1956 allowing a PCC to enter into a paid contract of employment or other contract with a member of the PCC, or a person connected with them, again provided certain conditions were met.
82. It has since become clear that the power conferred by the 2014 Measure is unsatisfactory in certain respects. Clause 14 will accordingly repeal it and secure the end it was intended to achieve by inserting a new section 7A into the 1956 Measure which will provide that, in its application to a PCC, section 185 of the 2011 Act will apply *as if it did not* exclude benefits in the form of remuneration for services provided under a contract of employment. PCCs will therefore be able to rely on the procedure set out in section 185 even in cases in which the remuneration is to be provided under a contract of employment.

83. Subsection (4) will preserve the effect of the power conferred by the 2014 Measure in relation to contracts that have previously been entered into in reliance on it.

### *Section 15 Pastoral schemes and orders: notice and approval, etc.*

84. Section 15 makes miscellaneous amendments of a technical nature to provisions of the Mission and Pastoral Measure 2011 concerned with pastoral schemes and orders.

85. Subsection (1) amends sections 9(3) and 24(3) of the 2011 Measure. Those provisions were amended by the Mission and Pastoral etc. (Amendment) Measure 2018 to add a requirement in respect of draft pastoral schemes and orders that the secretary of the parochial church council ensure that the person conducting church services informs the congregation of the content of written statutory notices that have been displayed at the church and which invite written representations on the draft scheme or order.

86. Those amendments have not been brought into force as a result of the view being taken by the Church Commissioners that the new requirements are likely to result in practical difficulties, for example if the PCC secretary was unable to ensure that an announcement was made because he or she was not present at the service and the person officiating had not been made aware of the requirement. Subsection (1) therefore replaces the requirement for the PCC secretary to *ensure* that the person conducting the service informs the congregation of the contents of the notice of the draft scheme or order with a requirement “to make such arrangements as are practicable” for announcements to be made as church services “with a view to ensuring that as many of those who habitually attend public worship there as is practicable are aware of the contents of the notice”.

87. Subsection (2) amends sections 11(4A) and 26(5) of the 2011 Measure which were inserted by amendments contained in the Mission and Pastoral etc. (Amendment) Measure 2018. Those amendments – which create a presumption in favour of pastoral schemes which give effect to proposals contained in a deanery plan – have not been brought into force because they did not take account of the possibility of an appeal to the Judicial Committee of the Privy Council against a decision to make such a scheme. The amendments made by subsection (2) ensure that the amended provisions are consistent with provisions that confer a right on a person who made representations in respect of a draft scheme to apply for leave to bring an appeal to the Judicial Committee. Subsection (4) makes consequential and supplementary provision.

88. Subsection (3) amends sections 11(8) and 26(7) of the 2011 Measure to improve the definition of ‘deanery plan’ contained in those provisions so that it is clear that to qualify as a deanery plan, the plan must have been approved by the mission and pastoral committee of the diocese in addition to the deanery synod.

89. Subsection (5) corrects printing errors in the text of the 2011 Measure.

### *Section 16 Bishop’s mission order*

90. Section 16 amends provisions in the Mission and Pastoral Measure 2011 concerned with bishop’s mission orders. Bishop’s mission orders are made by bishops under Part 7 of the 2011 Measure to authorise mission initiatives in the diocese (which might, for example, take the form of a non-parochial worshipping body).

91. Subsection (1) amends section 82 of the 2011 Measure to repeal a redundant provision which enables the leader of a mission initiative to make representations to the diocesan mission and pastoral committee where the bishop proposes to vary or revoke the bishop's mission order for the initiative. As the diocesan mission and pastoral committee does not have any powers in relation to the variation or revocation of an order, and is only itself a consultee, it was anomalous for one consultee – the leader of the mission initiative – to have a right to make representations to another consultee. It continues to be the case that the bishop must consult the mission and pastoral committee and the leader of the mission initiative before varying or revoking an order.
92. Subsection (2) amends section 83 of the 2011 Measure which is concerned with the procedure for renewing a bishop's mission order that is of limited duration. Following amendments made to the 2011 Measure by the Mission and Pastoral etc. (Amendment) Measure 2018, a bishop's mission order may now be either of limited or indefinite duration. Formerly they had to be of limited duration which could not exceed 5 years.
93. At present, when a bishop's mission order that is of limited duration is due to expire, the bishop may only make a further order if the bishop considers that the mission initiative should continue, and "that there are no other suitable means by which the mission initiative or its objectives can be achieved". This provision was clearly relevant when all bishop's mission orders had to be of limited duration and were only seen as a provisional means of providing for a mission initiative. However, now that it is possible for a bishop to make an order without limit of time, there is no good reason why the bishop should be required to apply the 'no other suitable means' test when considering the extension of a mission initiative that is provided for in a time-limited order. Accordingly, subsection (2) removes that requirement.

### *Section 17 Short title, commencement and extent*

94. Section 18 makes provision for the short title of the Measure, its coming into force and the making of transitional, transitory or saving provision in that connection, and for the Measure to extend to the provinces of Canterbury and York except for the Channel Island and the Isle of Man (where the Measure will apply only so far as provided under the relevant local legislative procedures).

## **Proceedings in the General Synod**

### *First Consideration*

95. The Measure was introduced into the Synod for First Consideration in July 2017. A number of points about particular aspects of that Measure were raised but it was generally favourably received and was committed to a Revision Committee.

### *Revision*

96. Three members of the General Synod submitted proposals for amendment of the draft Measure within the time allowed by the Standing Orders. The Revision Committee considered those proposals along with other possible amendments the need for which was raised with the Committee by officials.
97. The Revision Committee considered and rejected amendments proposed to section 1 (power of Church Commissioners to make grants to Archbishops' Council). The proposed

amendments involved making the grant-making power subject to a sunset provision under which it would expire after seven years; and imposing a statutory obligation on the Commissioners to report annually to the General Synod on the exercise of the power.

98. The Committee considered that a sunset provision would have significant practical implications for the effective use of the power. It would mean that the Church Commissioners would not be able to commit to the provision of any grant to the Archbishops' Council beyond the end of the seven-year period, which would have a consequential effect on provision made by the Council for initiatives it wished to support. An inability for the Commissioners and Council to commit to funding beyond a limited period – which would progressively decrease as the sunset date became closer – would significantly reduce the effectiveness of the new power to further the work and mission of the Church.
99. As to reporting, the Committee noted that the Church Commissioners and the Archbishops' Council were already subject to statutory duties to make annual reports in which their financial transactions were identified: any grants made under section 1 would therefore be included in those reports. The Commissioners' annual report has to be laid before Parliament as well as the General Synod.
100. The Revision Committee rejected a proposed amendment to section 4 (funerals) to omit the requirement that a member of the clergy who intended to officiate at a funeral, having been asked to do so by the persons concerned, should seek the goodwill of the deceased's minister. The Committee considered that removing that requirement could result in parish clergy being bypassed, and prevent the possibility of providing pastoral care. The Committee noted that the requirement was to seek the minister's goodwill which was not the same as being required to obtain it.
101. The Committee made an amendment to add an additional requirement so that a member of the clergy who intends to officiate at the funeral must so far as practicable inform the deceased's own minister (as well as seeking his or her goodwill).
102. The Revision Committee made an amendment to section 7 (provincial courts: decisions to be treated as taken by each Court) to clarify the effect of the new section 14A that is to be inserted in the Ecclesiastical Jurisdiction and Care of Churches Measure 2018. The amendment simplified the new section and avoided possible misunderstanding of it that had been drawn to the Committee's attention by the Dean of the Arches and Auditor of the Chancery Court of York.
103. The Revision Committee made an amendment to section 9 (timing of sessions and membership of House committees) so that the power to cancel a group of sessions of the General Synod was exercisable jointly by the Presidents, the Prolocutors of the Convocations and the Chair and Vice-chair of the House of Laity, rather than by the Presidents alone. (This was subject to further amendment at the Revision Stage: see below.)
104. The Revision Committee inserted what are now sections 15 (pastoral schemes and orders: notice and approval etc.) and 16 (bishop's mission order) following representations received from the Church Commissioners' Pastoral and Closed Churches Division.
105. The Revision Committee reported the Measure to the Synod in February 2018 and it was then considered on the Revision Stage in full Synod.
106. A motion by a member of the Synod for the re-committal of the Measure to enable the Revision Committee to insert provision to protect the ringing of church bells from statutory abatement notices was lost.
107. An amendment to what is now section 9 (timing of sessions of General Synod) that would have given concurrent powers to the Synod and to the Joint Presidents in relation to the

fixing of meetings of the Synod was rejected. An amendment to section 9 to leave out provision enabling the cancellation of a meeting of the Synod was also rejected.

108. An amendment was, however, made to section 9 so that who may exercise the power to vary or cancel a meeting of the Synod will depend on who made the relevant provision for the meeting. If the Synod itself has provided for the time or place for the Synod to meet, only the Synod may vary the time or place or cancel the meeting, the Synod's power being exercisable on its behalf jointly by the Presidents, the Prolocutors of the Convocations and the Chair and Vice-chair of the House of Laity. If the Presidents have provided for the time or place for the Synod to meet, the Presidents may vary the time or place, or cancel the meeting.
109. An amendment was made to section 15(1) (notice of pastoral schemes and orders) so that where there is more than one service in a church during the notice period for a draft pastoral scheme or order, announcements about the notice are to be made at as many services as is practicable (rather than at just one service).

### *Final drafting*

110. A number of amendments to clarify remaining uncertainties of meaning or to improve the drafting were made to the Measure at the Final Drafting stage which was taken at the July 2018 group of sessions of the Synod.

### *Final approval*

111. Because section 4 of the Measure (funerals: conduct) makes provision "touching ... the services and ceremonies of the Church of England or the administration of the Sacraments or sacred rites thereof" it was referred to the House of Bishops under article 7 of the Constitution of the General Synod. The House of Bishops resolved to return the Measure for final approval without making any further amendments to it. Neither of the Convocations nor the House of Laity required a reference under article 7 of the Synod's Constitution.
112. The Final Approval Stage took place at the July 2018 group of sessions of the Synod. The Measure received the approval of all three Houses.
113. The voting on the motion for the final approval of the Measure was as follows—

	In favour	Against
Bishops	23	0
Clergy	105	0
Laity	124	0

### *Conclusion*

114. The Legislative Committee invites the Ecclesiastical Committee to issue a favourable report on the Measure. Should the Ecclesiastical Committee require any further information or explanation, the Legislative Committee stands ready to provide it.

On behalf of the Legislative Committee

*Geoffrey Tattersall*

Deputy Chair

September 2018