

**GENERAL SYNOD  
LEGISLATIVE COMMITTEE**

**Mission and Pastoral etc. (Amendment) Measure**

**Comments and explanations**

The Mission and Pastoral etc. (Amendment) Measure makes amendments to provisions in the Mission and Pastoral Measure 2011 concerned with the procedure for pastoral reorganisation and related matters. It also amends some other enactments to simplify and bring up to date various provisions they contain.

**Introduction**

1. The Legislative Committee of the General Synod, to which the Measure entitled Mission and Pastoral etc. (Amendment) 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 a number of amendments to the Mission and Pastoral Measure 2011. These include amendments concerned with improving the procedures for formulating and making pastoral schemes and orders and other pastoral provision, simplifying the provisions relating to team and group ministries, changing the basis for the calculation of compensation for loss of office resulting from pastoral reorganisation, and simplifying the procedures relating to bishops' mission initiatives.
3. The Measure also makes amendments to procedural aspects of the Endowments and Glebe Measure 1976 and the Patronage (Benefices) Measure 1986.
4. The proposals to which the Measure gives effect were originally proposed by a simplification task group established by the Archbishops' Council. The group's report (GS 1980) was endorsed by the General Synod, as a result of which the Measure was introduced.

**The provisions of the Measure**

*Section 1 Pastoral schemes and orders: consultation*

5. Section 1 amends the consultation provisions of the Mission and Pastoral Measure 2011 ("the 2011 Measure") for pastoral schemes or orders and pastoral church buildings schemes.
6. A pastoral scheme is a legal instrument made by the Church Commissioners which makes changes to benefices, parishes, extra-parochial places, archdeaconries or deaneries. These changes are often referred to as 'pastoral reorganisation' and can, among other matters, include the creation of new benefices and parishes (which may be by union of existing benefices and parishes). A pastoral scheme may also make provision in relation to parish churches and other places of worship, including providing for the closure of a church which will no longer be required; for the use of churchyards and burial grounds; for the designation

of parsonage houses; for the allocation of rights of patronage; and for miscellaneous other matters.

7. A pastoral order is a legal instrument made by the bishop and may be used instead of a pastoral scheme to provide for a more limited range of matters. (A pastoral order cannot be used, for example, to create a new benefice or parish.) The consultation requirements are the same as for a pastoral scheme. The key difference between a pastoral scheme and a pastoral order is that while a person who has made representations in relation to a pastoral scheme may (with permission) appeal to the Judicial Committee of the Privy Council against the scheme, there is no appeal against a pastoral order.
8. A pastoral church buildings scheme is a special type of pastoral scheme which is specifically concerned with closing a church for regular public worship.
9. The 2011 Measure contains detailed provision for consultation prior to the making of pastoral schemes and orders. A frustration with the existing consultation process for making pastoral schemes and orders under the 2011 Measure is that dioceses tend to consult twice on much the same proposal and with much the same paperwork; the draft proposals consulted on in the first statutory stage look much the same in appearance and form as the draft Scheme or Order consulted upon during the second stage. This can be exacerbated where, as is often the case, prior, informal consultation has already taken place.
10. In order to address this section 1 produces a streamlined procedure on the basis of a first stage statutory consultation on issues, and a second stage on the draft proposals in the form of a Scheme or Order.
11. Sections 6 and 21 of the 2011 Measure are amended so that where a scheme or order implements a deanery plan, there is no requirement for the first stage of consultation under the Measure (provided that there has been proper consultation, and that the plan for reorganisation which goes forward to be formulated into a scheme is substantially the same as the deanery plan). (See further on section 4 in relation to deanery plans.)
12. Sections 6 and 21 are also amended so that, where a diocesan mission and pastoral committee is consulting on proposals which have not yet taken final shape, the committee may consult anyone they consider might become affected by the plans as an “interested party”. This allows for the first stage of statutory consultation to take place before proposals have taken shape, enabling the consultation to help shape the proposals.

## *Section 2 Pastoral schemes and orders: preparation by the Commissioners*

13. Section 2 amends section 7 of the 2011 Measure so that dioceses can request the Church Commissioners to draft a scheme or order on their behalf. Not all dioceses have the resources or expertise available to enable them to do this, and therefore a number requested this amendment when they were consulted. Dioceses which have sufficient resources to prepare schemes themselves will be able to continue to do so if they wish, while others will be able to ask the Commissioners to draft them.
14. The effect of the amendments is that the Commissioners are required to draft a scheme or order in any case where they are requested to do so, provided that they are satisfied that the appropriate procedure under the Measure has been followed, and to send the scheme or order to the diocesan mission and pastoral committee.

### *Section 3 Pastoral schemes and orders: notice, publication and amendment*

15. Section 3 makes amendments to the procedure for publication of draft schemes or orders under sections 9 (pastoral schemes and orders) and 24 (pastoral church buildings schemes) of the 2011 Measure.
16. Where the Church Commissioners have drafted a scheme, they (rather than the mission and pastoral committee of the diocese) must serve a copy and the appropriate notice on each of the interested parties.
17. There is a new requirement to publish all draft schemes and orders online. The notice of a scheme or order is required to specify where it may be found online. Additionally, an announcement must be made during services held within a church or place of worship affected by a scheme, to ensure that as many people as possible become aware of the scheme, particularly those directly affected by it because they attend services in the parish.
18. A new power is conferred on the Church Commissioners to make amendments to a draft scheme or order and to carry out such consultation as they see fit, in circumstances where the Commissioners have considered representations about an alternative proposal which they consider more suitable than the proposals contained in the original draft scheme or order. This has the effect that a scheme could be amended without the need in every case for re-running the complete statutory consultation process.

### *Section 4 Pastoral schemes and orders: presumption in favour of deanery plan*

19. Section 4 inserts additional provisions in section 11 and section 26 of the 2011 Measure which create a presumption in favour of proposals for pastoral reorganisation that are the subject of a deanery plan (i.e. a plan for pastoral reorganisation which has been approved by the deanery synod of each deanery which would be affected by implementation of the plan). Unless there are “material considerations” which suggest that the scheme or order should not be made, the Commissioners are to make it.
20. This is subject to certain conditions: in particular, all the interested parties must have been consulted on the deanery plan, and any person whose office might be abolished must have been given the opportunity to meet the diocesan mission and pastoral committee. Finally, the proposals contained in the scheme or order must be “to the same effect, or substantially the same effect, as proposals included in the plan” – so the statutory presumption will not apply if there have been significant changes since the deanery plan was approved.

### *Section 5 Team and group ministries*

21. Section 5 makes a number of amendments to the provisions relating to team and group ministries.
22. First, it removes the provisions from the 2011 Measure which enable a pastoral scheme which establishes a team ministry itself to make provision for certain matters (e.g. the assignment of a special cure of souls to a particular member in the team ministry). Where such provision is made by the scheme, it is very inflexible and can be altered only by an amending scheme. The legislation already provides for an alternative, more flexible approach, namely inclusion of such matters in the bishop’s licence.
23. Secondly, it repeals a number of requirements which do not properly belong in legislation (though they may be very desirable to have as a matter of good practice), because legislation

should not be too prescriptive of the fine detail (e.g. as to the arrangements for team meetings).

24. It also removes a number of obsolete provisions from Schedule 3 to the Measure, relating to patronage for team and group ministries. In particular, while it retains the provision for schemes to establish patronage boards which appoint the team rector and team vicars, it removes provisions – which are no longer used – that enable those appointments to be made by the diocesan board of patronage.

#### *Section 6 and the Schedule Compensation of office holders*

25. Section 6 replaces section 40 of and Schedule 4 to the 2011 Measure, making new provision for compensation for clergy dispossessed of their office following pastoral reorganisation.
26. Under the existing compensation scheme, a person dispossessed of an ecclesiastical office by pastoral reorganisation could apply for compensation for the loss, which could take the form of a lump sum or of periodical payments. If periodical payments were made, the person would be entitled to continue to receive them until appointment to a suitable alternative ecclesiastical office (or refusal to take up a suitable ecclesiastical office). Potentially, compensation could continue to be paid until the person reaches retirement age.
27. The existing compensation provisions have hardly ever been used, suggesting they are not considered workable. Consultation has confirmed a widespread view among dioceses that the current arrangements are highly and unusably generous in a modern context and can be a major deterrent to pastoral reorganisation. As a result, in some cases incumbents may remain in non-viable parishes until retirement, where this is seen as a more cost effective and less time consuming solution than agreeing a compensation package.
28. Under the new scheme, all stipendiary clergy, regardless of the length of time they have been in post, will be entitled to a lump sum equivalent to 12 months' stipend. The lump sum will also include a sum equivalent to 12 months' pension contributions. If the person then obtains another ecclesiastical office, it will be possible for him or her either to make additional voluntary contributions to the Church of England Funded Pension Scheme using the lump sum, or to retain the lump sum for immediate use. (The scheme rules prohibit payment directly into the pension scheme during a period when the person does not hold a stipendiary office.)
29. In addition to the financial compensation, anyone who was entitled to housing immediately before the coming into force of a scheme which results in their losing office will be entitled to housing from the diocesan board of finance for a period of 12 months. Alternatively, the board may agree with the person to make an additional lump sum in lieu of providing housing.
30. The bishop is given the power to authorise the making of an additional payment to a person who is entitled to compensation under the new Schedule 4. The exercise of the power is discretionary. A person who is entitled to compensation can seek a review of the bishop's decision whether to authorise the making of an additional payment but only on the grounds that the bishop's decision, if implemented, would cause exceptional hardship to the person concerned or one or more of the family members with whom he or she lives. The Archbishops must appoint a person to carry out reviews under the relevant provisions.
31. The new Schedule 4 also provides (at paragraph 7) that the Archbishops' Council may in future amend the Schedule by order. This provision is included because, since this represents

a radical departure from the previous scheme, there may be a need for refinements of the scheme in future following practical experience of its use, and therefore it is desirable to enable relatively speedy amendment. The power is limited to making amendments to deal with the way the scheme operates; it cannot be used for a complete repeal and replacement of the compensation scheme. Moreover, an order made under paragraph 7 may not vary the requirements for entitlement to compensation, or the amount of compensation payable (see paragraph 7(2)).

32. The Schedule to the Measure makes consequential amendments to the Incumbents (Vacation of Benefices) Measure 1977 to ensure that there continues to be provision for the appointment of an appeal panel under that Measure (which presently relies on the existence of panels appointed under the current Schedule 4 to the 2011 Measure which is being repealed).

### *Section 7 Bishops' pastoral order*

33. Section 7 introduces a new Part 5A into the 2011 Measure, providing for a new type of order to be known as a "bishop's pastoral order". The new provision enables a bishop to make certain types of provision that could be made by pastoral scheme or pastoral order by "bishop's pastoral order" instead.
34. The classes of provision that can be made under the new orders are listed in subsection (1). The list was arrived at on the basis that a distinction should be made between those issues on which there should rightly and properly be consultation with wider interests who may be affected (which will continue to be dealt with only by pastoral schemes and orders – see paragraphs 5 – 8 above), and matters (set out in the list) which can be regarded as decisions of an "administrative" nature by the Bishop, for which the new, much simpler, procedure for making a bishop's pastoral order would apply. A bishop must consult "such persons, groups of persons or organisations" as he or she thinks fit before making a bishop's pastoral order. Unlike in the case of pastoral schemes and orders, there is no right to make representations to the Church Commissioners if individuals are aggrieved by the proposals contained in a bishop's pastoral order and no provision is made for appeals.
35. Nothing in the draft clause prevents the inclusion of any of these matters in a pastoral scheme or order. There will be no circumstances where a diocese will be required to use the new type of order.

### *Section 8 Churches Conservation Trust: number of members*

36. Section 8 increases the maximum number of trustees of the Churches Conservation Trust by two to ensure that it is able to obtain the breadth of specialist knowledge that it is looking for on its Board.

### *Section 9 Pastoral church buildings scheme: severance*

37. Section 9 modifies the application of sections 58 and 59 of the 2011 Measure. Those provisions enable a single pastoral church buildings scheme to make provision both for the closure of a church building and for its demolition or appropriation to an alternative use (in cases falling outside sections 58 and 59, the church building is closed by one scheme, and a separate pastoral (church buildings disposal) scheme provides for demolition, vesting in the Churches Conservation Trust or appropriation to another use).

38. There is an obvious efficiency in making provision for everything in a single scheme, but it has the disadvantage, under the legislation as it presently stands, that if the proposed use or demolition is rejected by the Church Commissioners the whole scheme falls. Therefore the diocese has to begin again with consultation on the closure of the building, even where no representations have been received against the closure or the Commissioners are satisfied that the closure is appropriate.
39. Section 9 enables the severance of the two parts of the scheme, so that the closure can take effect immediately and then a fresh scheme can be prepared for the use of the building.

### *Section 10 Bishop's mission order*

40. Section 10 amends the procedures for making a Bishop's Mission Order, and simplifies the legislative requirements for such Orders.
41. A Bishop's Mission Order (BMO) is the instrument by which a bishop establishes a mission initiative, an established means by which the mission of the Church of England is carried on, in parallel to the parish system, through fostering or developing other forms of Christian community.
42. When establishing a mission initiative, the Bishop is required to appoint a Visitor who exercises oversight of the initiative and provides encouragement and advice, as well as carrying out a range of statutory duties. Section 10 repeals some of the specific requirements imposed on the Visitor of a mission initiative (e.g. reviewing the initiative at least every 18 months). In place of those specific requirements, it inserts a general power for the Visitor to take such steps as he or she thinks appropriate for "ensuring the proper governance of the mission initiative".
43. Section 10 also:
  - repeals section 81(3) of the 2011 Measure, which provides that any person may draw anything to the Visitor's attention (legislative permission is not required for any person to draw relevant matters to the Visitor's attention);
  - enables a BMO to be made for an indefinite period (whereas at present the maximum duration is five years, after which the order must be renewed if it is to continue in effect);
  - provides for copies of BMOs, and related material, to be sent to the Church Commissioners so that there is a central record of how many BMOs there are, and in which dioceses;
  - makes consequential amendments to section 83 of the 2011 Measure to reflect that some BMOs will be of indefinite duration.

### *Section 11 Dealings in glebe land: removal of duty to consider representations*

44. Section 11 amends section 20 of the Endowments and Glebe Measure 1976, removing the duty on the Church Commissioners to consider representations from incumbents and parochial church councils when a diocesan board of finance proposes to dispose of glebe land. It leaves in place the requirement that incumbents and PCCs be notified of such proposals.
45. The original purpose of the consultation with incumbents and PCCs – and the right to make representations to the Church Commissioners – (it is presumed) was because the diocese would be disposing of what was previously held by the incumbent as benefice property.

Nearly forty years on this should now be regarded as simply a decision for the diocese in the proper management of the funding of its diocesan stipends fund. It is nevertheless accepted that incumbents and PCCs should be notified of a proposal to dispose of glebe land as such transactions sometimes have pastoral implications which need to be addressed at the parish level.

46. The section also makes consequential amendments to section 20 of and Schedule 3 to the 1976 Measure, and repeals a number of provisions which inserted amendments to provisions that are repealed by this section.

### *Section 12 Right of patronage to lapse to diocesan bishop*

47. Section 12 amends section 16 of the Patronage (Benefices) Measure 1986. That section currently provides that where a benefice has been vacant for 9 months and no appointment of an incumbent has been made, the right of presentation to the benefice lapses to the archbishop of the province.
48. The amendments made by section 12 extend the period before lapse occurs to a period of 12 months beginning with the day when the benefice becomes vacant, or with the day on which the bishop commences the statutory process for filling the vacancy, whichever is the later. Experience has shown that a slightly longer period is more practicable.
49. If lapse does occur, the right of presentation to the benefice will now be exercisable by the diocesan bishop rather than the archbishop of the province. In practice, where lapse has occurred, the archbishop has normally left the diocesan bishop to identify a priest who the archbishop has then formally presented for institution. The amendment makes the process more transparent by putting what has in the past been a matter of practice on a statutory footing.
50. However, the parochial church council will be able pass a resolution which has the effect that the archbishop, instead of the diocesan bishop, takes the decision about who to appoint. This is intended to provide for rare cases where there is deadlock following past disagreement between the bishop and the parish representatives and the exercise of the patronage by the archbishop enables the situation to be resolved.

### *Section 13 Age limit on appointments of licensed office-holders after retirement age: clarificatory provision*

51. Section 13 provides for the amendment of section 1 of the Ecclesiastical Offices (Age Limit) Measure 1975 which applies an automatic retirement age of 70 for the holders of certain ecclesiastical offices. The amendment was considered desirable in order to make clearer the relationship between section 1 of the 1975 Measure and regulation 29 of the Ecclesiastical Offices (Terms of Service) Regulations 2009.
52. Regulation 29 of the 2009 Regulations modifies the operation of section 1 of the 1975 Measure by enabling the grant of a fixed-term licence to a person who is beyond retirement age and provides that section 1 of the Age Limit Measure has effect subject to that power. However, regulation 29 did not textually amend section 1, and therefore some readers of the provisions have been confused about whether the grant of a fixed-term licence is compatible with the statutory retirement age. The effect of the amendment would therefore be to remove that source of confusion by way of textual amendment, but not to change the law.
53. However, since section 13 was included in the Measure, it has been overtaken by amendments that have been made to the 2009 Regulations by the Ecclesiastical Offices (Terms of Service) (Amendment) Regulations 2017 (S.I. 2017/316) which came into force on 1<sup>st</sup> July 2017.

54. The 2017 Regulations – made under the Ecclesiastical Offices (Terms of Service) Measure 2009 – now make much wider provision for the holding of office beyond the age of 70. They provide for bishops, deans, archdeacons and residentiary canons to be continued in office up to a maximum age of 75. They also provide for the bishop to authorise incumbents and other parochial clergy to hold office beyond 70, on a renewable time-limited basis, without any upper limit.
55. The 2017 Regulations therefore made consequential amendments to the 1975 Measure and the 2009 Regulations which overlap the more limited amendments that would be made by section 13, making section 13 redundant. It is therefore now intended not to bring section 13 into force and to repeal it by a further Measure at an early opportunity.

#### *Section 14 Short title, commencement and extent*

56. Section 14 provides for the citation of the Measure, for its coming into force and for the making of transitional, transitory and saving provision in connection with its commencement. It also provides for its extent, including by making provision for its extension to the Channel Islands and the Isle of Man in accordance with the provisions of the relevant local legislative procedures.

### **Proceedings in the General Synod**

#### *First Consideration*

57. The Measure was introduced into the Synod for First Consideration in February 2016. A number of points about particular aspects of the Measure were raised but it was generally favourably received and was committed to a Revision Committee.

#### *Revision*

58. 11 members of the General Synod submitted proposals for amendment of the draft Measure within the time allowed by the Standing Orders. The Revision Committee exercised its discretion to consider 5 further proposals that were submitted out of time. It also considered proposals for amendment to the draft Measure made by the Steering Committee.
59. The Revision Committee made a number of amendments to the draft Measure, including the following.
60. It amended section 3 to include the requirement for oral notice of proposals for pastoral schemes and orders to be given at every Sunday service, other than occasional offices, during the notice period, to ensure that the information is disseminated to as many worshippers in the affected parishes as possible. If there is no Sunday service but there is a weekday service, the notice is to be given at the weekday service (or each of them, if there is more than one).
61. It amended what is now section 5 in order to meet concerns raised in the First Consideration debate on the Measure. This involved restoring provisions originally proposed for repeal that provide for the involvement of a patronage board created by a pastoral scheme in the appointment of team vicars, (while removing some obsolete references to the diocesan board of patronage). In the light of submissions it received, the Revision Committee also omitted a provision which would have removed the requirement for the consent of a majority of the team vicars to the making of an appointment of a new member of a team ministry.
62. The Revision Committee received and considered a number of submissions on what is now section 6 and the question of compensation for office holders displaced by pastoral reorganisation. It rejected proposals that the clause should be withdrawn, considering that

the present arrangements for compensation for loss of office were unworkable and too expensive, and constituted a block on otherwise highly desirable pastoral reorganisation. They were of the view that new provision would be needed.

63. The Committee agreed, however, that the period in respect of which an office holder would be entitled to receive compensation for loss of stipend, housing and pension contributions should be 12 months, rather than the 6 months provided for in the draft Measure as introduced. Having decided to amend the draft Measure to that effect, the Committee decided to omit a provision which would have resulted in the making of automatic additional payments for longer stipendiary service and instead amended the Measure to provide that the bishop should have a discretion to make additional payments to any person, with a review by an independent person if refusal would cause exceptional hardship.
64. The Committee received a number of submissions on what is now section 7 (bishop's pastoral order). Some submissions proposed omissions from the list in subsection (1). The Committee considered that the matters listed were not of such significance that they should attract a right to make representations to the Church Commissioners and that they were all suitable for inclusion in the list of matters for which a bishop's pastoral order could make provision. The Committee did, however, agree to insert a requirement that in every case the bishop must consult the diocesan mission and pastoral committee before making an order.
65. The clause which is now section 11 (dealings in glebe land: removal of duty to consider representations) originally provided not only for the removal of the duty of the Church Commissioners to consider representations from incumbents and parochial church councils on proposals to dispose of glebe land, but also for the removal of the requirement to notify incumbents and PCCs of such proposals. In the light of the submissions it heard, the Committee decided to amend the draft Measure to retain the notification requirements.
66. The Committee made a number of amendments to what is now section 12 (right of patronage to lapse to diocesan bishop). The clause in the draft Measure as introduced had provided for lapse, in all cases, to the diocesan bishop where an appointment to a vacancy had not been made within 9 months of the vacancy arising. As a result of submissions it received, including submissions about the potential for a breakdown in the relationship between a parochial church council and bishop, the Committee increased the period to 12 months and provided that the period should not start to run until the bishop had given the relevant statutory notice which enables the patron and parochial church council to take action in relation to the filling of the vacancy. It also amended the draft Measure so that the PCC would be entitled to pass a resolution having the effect that the archbishop, rather than the bishop, would exercise lapsed patronage.
67. In the light of representations received from the National Amenity Societies, the Committee withdrew a clause which would have removed provisions for consultation in relation to the future use of churches that are closed for public worship.
68. The Revision Committee reported to the Synod in July 2016 and the Measure was then considered on the Revision Stage in full Synod. The Synod did not make any further amendments to the draft Measure at that stage.

### *Final drafting*

69. A small number of drafting amendments were made to the Measure at the Final Drafting stage which was taken at the February 2017 group of sessions of the Synod. These included an amendment to subsection (1), and the insertion of subsection (2), in section 7 to clarify the scope of the power of the Archbishops' Council to amend the new Schedule 4 to the 2011 Measure (compensation of office holders). The amendments make it clear that the Council's power to amend the Schedule by order is concerned with making adjustments to

the way in which the compensation scheme operates and cannot be used to change entitlements to compensation or the amount of compensation that is payable under the scheme set out in the Schedule.

### *Final approval*

70. The Final Approval stage immediately followed the Final Drafting stage. The Measure received the approval of all three Houses.

71. The voting on the motion for the final approval of the Measure was as follows—

	In favour	Against
Bishops	23	0
Clergy	90	0
Laity	120	0

### *Conclusion*

72. 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

*G Tattersall*

Deputy Chair

3 September 2017