

**GENERAL SYNOD**  
**LEGISLATIVE COMMITTEE**  
**Legislative Reform Measure**  
**Comments and explanations**

The Legislative Reform Measure makes it possible to remove or reduce burdens resulting from ecclesiastical legislation without going through the protracted legislative process that applies to Measures. It does so by making it possible, in certain cases, to amend or repeal primary legislation by way of order made by the Archbishops' Council with the approval of the General Synod and subject to annulment by either House of Parliament. It additionally makes it possible for amendments to be made by order which facilitate the consolidation of existing legislation.

## **Introduction**

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

## **Overview of the Measure**

2. The draft Legislative Reform Measure will facilitate removing or reducing burdens resulting from ecclesiastical legislation. "Burden" for the purposes of the Measure means a financial cost, an administrative inconvenience, or an obstacle to efficiency.
3. The Measure provides for the removal of burdens by making it possible, in certain cases and subject to a number of safeguards, to amend or repeal some Acts of Parliament and Church Measures by way of orders (i.e. subordinate legislation) without going through the full legislative process that applies to Measures. Orders will nevertheless be subject to annulment by either House of Parliament.
4. The procedure for making an order will consist of the following principal elements:
  - a formal consultation stage
  - the laying of a draft order before the General Synod
  - consideration of and reporting on the draft order by a committee of the Synod
  - consideration of the draft order by the Synod leading to its approval or rejection by the Synod or its reference back to the committee
  - an order that is approved may then be made by the Archbishops' Council following which it must be laid before both Houses of Parliament and is subject to annulment by resolution of either House.

Annex 1 contains a flow chart which shows in diagrammatic form the procedure for making an order under section 1 of the Measure.

5. Annex 2 contains a table showing the legislative process and timescale for passing Measures and a comparison table showing the procedural timescale for orders under the Legislative Reform Measure. It will continue to be necessary to bring forward Measures – using the full legislative procedure – to legislate for matters that do not come within the scope of the order making power.
6. Annex 3 contains some examples of burdens arising from ecclesiastical legislation that could be addressed by way of orders under the Measure.
7. The Measure confers the power to make orders removing legislative burdens on the Archbishops' Council. But the exercise of the power is limited in its scope to the removal of burdens (as defined) and is subject to a number of procedural and substantive safeguards. Some of these were added to the Measure by way of amendment at the Revision Committee stage in the light of representations made to the Revision Committee by the Rt Hon Dame Caroline Spelman MP, the Second Church Estates Commissioner, to provide additional reassurance to Parliament that the Measure would not be used for purposes for which it was not intended.
8. A letter sent to the Chairman of the Ecclesiastical Committee in January 2017 describing additional safeguards that had been included at Revision Committee stage can be found at Annex 4. In summary, the additional safeguards are–
  - further limitation of the scope of the order making power so that it encompasses provisions contained in Acts of Parliament only in so far as they form part of the ecclesiastical law of the Church of England (see further below);
  - a statutory requirement to lay consultation documents before both Houses of Parliament so that members of both Houses receive advance notice of any proposals to make an order under the Measure and have the opportunity to raise objections at an early stage; and
  - a sunset provision under which the order making power expires after 5 years unless it is continued by a special order, a draft of which has been approved by resolution of both Houses of Parliament (i.e. under the affirmative procedure).
9. Substantive safeguards are contained in sections 2 and 3 of the Measure and include:
  - requiring that certain preconditions are met in respect of provisions to be included in an order – these preconditions include:
    - striking a fair balance between the public interest, the interests of the Church of England as a whole, and the interests of any person who might be affected by an order
    - that a provision does not remove any necessary protection
    - that a provision does not prevent a person receiving a financial benefit to which he is entitled
    - that a provision does not prevent a person exercising a right or freedom which he could reasonably expect to continue to exercise
    - that a provision is not of constitutional significance
  - excepting from the scope of the order making power various Acts and Measures that are of particular constitutional significance, including the Reformation statutes concerned with the power of the Church to legislate by Canon and with the appointment of bishops, the Act of Uniformity 1662, the Church of England Assembly (Powers) Act 1919 and the Measure itself.

10. The Measure additionally makes it possible for amendments to legislation relating to ecclesiastical law to be made by order to facilitate the consolidation of that legislation (section 8).

## Policy background

11. The proposals which formed the basis of the Legislative Reform Measure were set out in a General Synod paper entitled *A New Enabling Measure* (GS 2018) in January 2016. Those proposals had been formulated in the light of responses to a consultation paper (GS Misc 1103) which was published in April 2015.
12. At the group of sessions held in February 2016 the General Synod passed a motion inviting the Archbishops' Council to initiate the legislative process to bring forward an 'Enabling Measure'.
13. The proposals set out in *A New Enabling Measure* emerged as part of the Church of England's Renewal and Reform Programme. The Church of England website provides the following summary of Renewal and Reform:

### **About Renewal & Reform**

Renewal & Reform is an ambitious programme of work, which seeks to provide a narrative of hope to the Church of England in the 21st century. It is rooted in a sense of Biblical hope and an understanding of Christ's call to us to pray that the Lord of the harvest will send out workers into the harvest field.

*The harvest is plentiful, but the workers are few. Ask the Lord of the harvest, therefore, to send out his workers into his harvest field. Luke 10:2*

Renewal & Reform aims to build on the 3 goals articulated by General Synod in 2010 to:

- Contribute as the national church to the common good
- Facilitate the growth of the church in numbers and depth of discipleship
- Re-imagine the church's ministry

In doing so it looks specifically to address some of the deep-rooted missional challenges facing the Church of England. And it prayerfully hopes to see a growing church as fruit of all these labours, growth understood in its fullest sense. Renewal & Reform seeks to build on the excellent work already taking place across the church to articulate a hopeful future for our churches and, more particularly, the communities we serve. But it doesn't seek to duck the serious challenges we face but rather is based on a realistic assessment of where we are and how we might respond.

And one of the clear and intended outcomes of this work is to reverse the decline of the Church of England so that we become a growing church, in every region and for every generation; a church open to and for everyone in England, building up the Body of Christ and working for the common good; a confident church, equipping new generations of leaders, ordained and lay, for ministry and mission.

14. *A New Enabling Measure* referred to the "complex legal framework within which the Church operates and the problems this creates". It went on to describe the historic context of that situation, the particular problem which needed to be addressed and the proposed approach to addressing it, as follows:

## **“The historic context**

3. *The legal framework within which the Church operates is complex. It consists not only of the general statutory and common law of the land – for example in relation to charity and property law – but also of ecclesiastical law. The latter is itself a branch of English law and comprises: common law, which predates the Reformation; canon law, which has its roots in pre-Reformation canon law; and statute law passed during and since the Reformation by Parliament.*
4. *Since 1920 the Church of England has had its own legislative assembly (initially the Church Assembly, since 1970 the General Synod), which has power to pass Measures relating to any matter concerning the Church of England. These may include amendments to Acts of Parliament. Once Measures have received parliamentary approval and Royal Assent, they become part of the law of the land, having the same force and effect as an Act of Parliament. The constitutional convention since 1920 has been that Parliament does not initiate legislation affecting the internal running of the Church of England without the Church’s consent.*
5. *Over the past 95 years the Church of England has used this right of initiative to bring forward a large number of Measures. Some of these have been about reforming the Church’s liturgy. Most, however, have been about revising and modernising the framework of rights and duties within which the various office holders and bodies within the Church operate, about property and resource issues and about modifying structures that are no longer well adapted for today’s world.*
6. *Despite all the reform that has been attempted the Church of England remains subject to an astonishingly large volume of statute law. Volume 14 of Halsbury’s Statutes (4th edition), which includes only the primary legislation (Acts of Parliament and Measures passed since 1920) relating to the Church of England from 1533 to 2003, runs to nearly 1,400 pages.*
7. *This is just one part of the total framework of law that applies to the Church of England since the figure of 1,400 pages excludes general Parliamentary legislation relevant to the Church, the Church’s Canons, its liturgy, provisions of the common law and all secondary legislation (orders, regulations etc.) whether made by Parliament or the Synod.*

## **The problem**

8. *The Archbishops’ Council issued the consultation document because it concluded that this situation was not merely unsatisfactory theoretically but also presented some practical difficulties:*
  - *In the past, far more detail was included on the face of primary legislation than would be the case today, where the practice would be to put much more of the detail in regulations or guidance. Since primary legislation can normally be amended or repealed only by fresh primary legislation the effect of that is that changes to this large corpus of legislation are time-consuming, costly and onerous.*
  - *In a fast-changing world institutions need, without compromising their core values, to be adaptable and fleet of foot. That is much harder if the surrounding framework of law is burdensome and the processes for changing any of it are very elaborate. As regards the latter, the legislative processes for Measures typically take three groups of sessions to complete, with the result that that part of the process usually takes 12 to 18 months. The parliamentary stages then normally take several months*

*to complete. So the legislative process itself typically takes around two years – and can take longer – in addition to the time needed to develop policy proposals in the first place.*

- *Law is essential for safeguarding key rights and duties but over-regulation through primary legislation can stifle creativity and give insufficient weight to trust and relationship. Legislating for everything can also reduce the focus on those areas where the law does have a key role to play.*

### **Proposed approach**

9. *The Archbishops' Council considered whether it might be possible to simplify the processes by which Measures are considered by the Synod and then, after final approval, are scrutinised by the Ecclesiastical Committee of Parliament before being approved by the House of Commons and House of Lords and receiving the Royal Assent. It concluded, however, that there was no scope for any significant shortening. Where Measures are needed, as they will continue to be in many cases, the present stages each add value and need to be retained.*
10. *Instead, the Archbishop's Council identified a different solution, which was the subject of the consultation. This was to enact a new Enabling Measure, making it possible to amend or repeal some primary legislation by secondary legislation, in other words by an order approved by the Synod rather than by a Measure. Such a power for the Synod would be similar in some respects to that which Parliament created for itself in the Legislative and Regulatory Reform Act 2006 in relation to amending Acts of Parliament (see further below).*
11. *Before the Enabling Measure itself became law it would first need to have gone through all the normal legislative stages in the General Synod, and then, if given final approval there, have been submitted to the Ecclesiastical Committee and approved by both Houses of Parliament in the usual way.*
12. *The consultation document envisaged that the Measure would contain a number of safeguards. These included:*
  - *Certain tests and preconditions that would have to be met before the power could be exercised – for example that it was directed to the removal and reduction of burdens and that it did not involve the removal of rights or freedoms.*
  - *Certain pieces of Church legislation would be outside its scope and would therefore continue to be amendable only by means of a fresh Measure. These would include legislation dealing with constitutional or doctrinal matters.*
  - *A prescribed procedure would be put in place involving, among other things, a new Scrutiny Committee of the Synod which would examine proposals from the Archbishops' Council before they came to the Synod for approval."*
15. *A New Enabling Measure then discussed Part 1 of the Legislative and Regulatory Reform Act 2006 as a legislative precedent for what was proposed but noted that the Measure would need to be specifically tailored to the particular context of the Church of England and the respective roles of the General Synod and the Archbishops' Council. A New Enabling Measure went on to outline the content of the proposed Measure. The Measure as introduced in the General Synod for first consideration in July 2016 followed what had been outlined there.*

## Proceedings in the General Synod

### First Consideration

16. The Measure was introduced into the Synod for First Consideration in July 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

17. 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 exercised its discretion to consider one further proposal that was submitted out of time. It also considered proposals for amendment to the draft Measure made by the Steering Committee.
18. The Revision Committee made a number of amendments to the draft Measure, including the following.

### *Section 1 (power to remove or reduce burdens)*

19. **The Revision Committee amended the definition of “ecclesiastical legislation” in section 1(3) so that, in relation to Acts of Parliament, it was confined to an Act “so far as it forms part of the ecclesiastical law of the Church of England”.**
20. This amendment was made in the light of concerns that had been raised informally by members of the Ecclesiastical Committee that the powers conferred by the Measure as originally drafted could be used to enable Acts of Parliament at large to be amended by way of an order.
21. The Revision Committee noted that even as the Measure was originally drafted, the order making power did not encompass every provision made in an Act of Parliament. It was confined only to a provision of an Act that “relates to matters concerning the Church of England”. That expression was taken from the Church of England Assembly (Powers) Act 1919 where it is used to define the scope of provision which can be made by Measure. It therefore had a clear pedigree.
22. The Revision Committee considered whether, in the light of the concerns that had been raised, the reference to Acts of Parliament in section 1(3) should be removed altogether. The Committee noted that all ecclesiastical enactments passed prior to 1920 took the form of Acts of Parliament (as the power to pass Measures did not come into operation until that year). If Acts of Parliament were outside the order making power altogether that could significantly reduce the ability to remove or reduce burdens, as it would exclude the possibility of removing or reducing burdens that arise from ecclesiastical Acts, of which a number that were passed in the nineteenth century and earlier remain in force.
23. The Revision Committee nevertheless recognised that the order making power was primarily intended to deal with burdens created by the ecclesiastical law of the Church of England, rather than by statute law generally, and that there was therefore a reasonable case for limiting the scope of the order making power so far as Acts were concerned. The Committee therefore agreed to amend the definition of “ecclesiastical legislation” in section 1(3) so that, in relation to Acts of Parliament, it was confined to an Act “so far as it forms part of the ecclesiastical law of the Church of England”.
24. The Revision Committee recognised that this amounted to a narrowing of the scope of the order making power so far as Acts of Parliament were concerned but were satisfied that it

was nevertheless consistent with the policy objective of the Measure – which was essentially to deal with burdens arising from ecclesiastical law.

### *Section 2 (preconditions)*

25. **The Revision Committee amended section 2(1) by inserting an additional precondition to the exercise of the order making power.**
26. The additional condition prevents the order making power being used to remove financial benefits – for example by removing pension entitlements – which might fall within the definition of “burden” for the purposes of section 1.

### *Section 3 (exceptions)*

27. **The Revision Committee amended section 3(5) to confine its scope to the making of consequential provision.**
28. Section 3(1) lists a number of ‘constitutional’ enactments which are excluded from the power to make amendments or repeals by order. Nevertheless, section 3(5) had originally permitted the making of amendments to the excluded ‘constitutional’ enactments if the amendments amounted to the making of consequential, supplementary, incidental, transitional, transitory or saving provision.
29. The Revision Committee considered that this was too wide. It accepted that a power to make consequential amendments to the excluded enactments was necessary so that, for example, cross references in the excluded enactments to legislation which was being amended could be updated to take account of those amendments. Without a power to make consequential amendments the law could become incoherent. But the Revision Committee agreed that it should not be possible to amend the excluded enactments in order to make supplementary, incidental, transitional, transitory or saving provision.

### *Section 4 (consultation)*

30. **The Revision Committee inserted an additional subsection into section 4 to require the Archbishops’ Council to lay the consultation documents before each House of Parliament before beginning a process of consultation on a proposal to make an order.**
31. The Revision Committee wished to make it clear that the purpose of the order making power was not to displace Parliamentary oversight of ecclesiastical legislation; rather it was concerned with creating a streamlined process. The Measure already provided for orders, once made, to be laid before both Houses of Parliament and to be subject to annulment by resolution of either House. That meant that Parliament could override the order making power in any case where it chose to do so.
32. However, the Committee considered that it would be right for members of both Houses of Parliament additionally to be made aware of, and have the opportunity to object to, proposals to make an order when those proposals were at an early stage, not only at the end of the legislative process.
33. The effect of the new subsection (4) inserted into section 4 would be that Parliament would be given prior notice that a consultation process on a proposal to make an order was to be undertaken. Any member of either House of Parliament could, if he or she wished, raise concerns or objections with the Archbishops’ Council during the consultation period. This opportunity to object would be in addition to the ability of a member of either House to table a motion for the annulment of an order once it had been made and subsequently laid before Parliament under the negative procedure.

### *Section 6 (scrutiny)*

34. **The Revision Committee amended section 6 so that any person – and not just members of the General Synod – would have the right to make representations to the committee of the General Synod which would scrutinise and report on draft orders.**
35. The Committee considered that it would be in the interests of greater transparency and give greater confidence to Parliament and others if the right to make representations to the committee was not limited to members of the General Synod. The Committee noted that it had already amended the Measure to require the laying of the consultation documents before Parliament before the consultation process began and that it would be possible for members of either House of Parliament to respond to a consultation. The Committee considered that members of either House and anyone else who wished to do so should also be able to make representations to the committee once a draft order had formally been laid before the Synod.
36. **The Revision Committee inserted a new subsection (3) in section 6 to specify the matters which the General Synod’s scrutiny committee must assess in the case of each draft order referred to it.**
37. This was on the basis that the functions of the committee should be set out with greater particularity in the Measure. The committee should be required to assess the extent to which an order would meet the criteria set out in sections 1-3 of the Measure and whether the statutory consultation requirements had been met. The committee should also be required to assess whether it was appropriate for the relevant provision to proceed by way of order rather than by Measure.

### *New provision*

38. **The Revision Committee inserted a sunset provision into the Measure (section 10).**
39. As a result of submissions made to the Revision Committee by the Second Church Estates Commissioner – which included concerns as to how members of both Houses of Parliament might regard the Measure – the Committee considered that the Measure should be further amended to provide additional reassurance to Parliament that it would not be used for purposes for which it was not intended and to which Parliament might take exception.
40. The Revision Committee considered that the most effective way to achieve this was by inserting a sunset provision in the Measure. The effect of the sunset provision would be that the order making power would automatically lapse five years after the first order had been laid before the General Synod. The order making power could, however, be preserved by way of a special order made by the Archbishops’ Council which provided that the power was to continue in force, either for a further specified period or indefinitely.
41. A special order under the sunset provision which provided for the order making power to continue in force after the initial 5-year period would have to be approved both by the General Synod and by Parliament under the affirmative procedure. That would mean an extending order could not be made unless a draft of the order had been positively approved by resolution of both Houses of Parliament.
42. The Committee considered that this sunset provision would provide both the General Synod and Parliament with an opportunity to consider how the order making power had been used before deciding whether to extend its life beyond the initial 5-year period.

### *Rejected proposals*

43. **The Revision Committee rejected proposals for amendment which would have enabled the General Synod itself (as opposed to the committee of the Synod established under section 6) to amend a draft order which had been laid before the Synod.**

44. The Revision Committee was concerned that the content of an amendment made on the floor of the Synod might not have been consulted on under the procedure for consultation set out in section 4 or have been scrutinised by the committee under the procedure provided for in section 6. If it were possible for a draft order to be amended at a late stage, that could undermine confidence in the consultation and scrutiny process from the point of view of Parliament and others outside the Synod.
45. The Revision Committee also considered that if such an amendment could be moved, and was agreed to, it might well be necessary for the Archbishops' Council to carry out a further round of consultation (either after withdrawing the draft and beginning the consultation process again, or consulting on the amendment on an informal, non-statutory basis). It was therefore doubtful whether any saving of time would in fact result from enabling amendments to draft orders to be moved in the Synod.
46. **The Revision Committee rejected a proposal for amendment which would, in certain circumstances, have required the application to orders of the synodical procedure for Measures.**
47. The rejected proposal was for the insertion of a new provision providing that 40 or more members of the General Synod, prior to the beginning of the process of consultation provided for in section 4, could require that a proposal to make an order should instead proceed in the General Synod under the procedure for Measures. Under what was proposed, the legislation would nevertheless continue to take the form of an order rather than a Measure, and would not fall to be considered by the Ecclesiastical Committee.
48. The Steering Committee for the Measure opposed the proposal. It pointed out that if the proposed procedure were to be engaged, that would remove the requirement for the legislative proposals to be consulted on and would result in the legislation being treated by the Synod as having the importance of a Measure but without any possibility of its being considered by the Ecclesiastical Committee.
49. The Committee had serious concerns about creating what amounted to a hybrid approach to legislating. If provisions proposed to be contained in legislation were potentially controversial because they raised significant policy questions, then those provisions should not be contained in an order in any event. They should be contained in a Measure which would go through the various synodical stages for a Measure and then be considered by the Ecclesiastical Committee before being laid before Parliament where the Measure would become law only if resolutions in each House were passed that it be presented for Royal Assent.
50. Moreover, the Committee considered that the report of the committee provided for in section 6 would provide a sufficiently early indication of any potential controversy. The Committee could not therefore see any real advantage, in terms of saving time, in providing a procedure under which a minority of members of the General Synod could require an order to be treated procedurally as if it were a Measure from the outset.

### *Other amendments*

51. The Revision Committee rejected a number of other, less significant, proposals for amendment. It made a number of drafting amendments to the Measure.

### Report

52. The Revision Committee reported to the Synod in February 2017 and the Measure was then considered at the Revision Stage in full Synod. The Synod did not make any further amendments to the draft Measure at that stage.

### Final drafting

53. Two drafting amendments were made to the Measure at the Final Drafting stage which was taken at the July 2017 group of sessions of the Synod. These were an amendment to section 4 (consultation) to clarify the interaction between subsections (4) and (5); and an amendment to the opening words of section 6(3) to require that the list of matters to be assessed by the committee of the Synod are incorporated into the Synod's standing orders.

### Final approval

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

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

	In favour	Against
Bishops	16	0
Clergy	92	0
Laity	96	0

### Amendments to the General Synod's Standing Orders

56. At the July 2017 group of sessions, the General Synod also made amendments to its Standing Orders by the addition of SOs 69A-69J, which provide for the composition and operation of the Scrutiny Committee and the consideration of Legislative Reform Orders by the Synod. These changes will come into effect in the event that the Legislative Reform Measure receives the Royal Assent. The new Standing Orders are reproduced in full at Annex 5.

## Commentary on sections

### **Section 1 Power to remove or reduce burdens**

57. Section 1 provides the power to make orders removing or reducing legislative burdens.
58. The power to make orders is conferred on the Archbishops' Council: see subsection (1). But an order cannot be made by the Council under section 1 unless it has been approved by the General Synod following a process of consultation and scrutiny set out in sections 4 to 7.
59. The power to make orders must be exercised for the purpose of removing or reducing burdens resulting directly or indirectly from ecclesiastical legislation. For this purpose, "burden" is defined in subsection (2) as:
- a financial cost;
  - an administrative inconvenience; or
  - an obstacle to efficiency.
60. "Ecclesiastical legislation" is defined by subsection (3) so that it includes Church Measures, Acts of Parliament so far as they form part of the ecclesiastical law of the Church of England, and subordinate legislation.
61. Subsection (4) makes it clear that for the purposes of the order making power, a burden may result from inconsistencies or anomalies in existing legislation or from the form of existing legislation (for example, because it is hard to understand).
62. Other examples of burdens involving financial cost or administrative inconvenience could include burdens resulting from ecclesiastical legislation which—
- establishes bodies that are unnecessarily large for their purpose;
  - prescribes unnecessarily complex administrative processes;
  - puts in place safeguards (e.g. consent or consultation requirements) of a kind that are disproportionate.
63. Subsection (5) provides that provision that can be made by order under the Measure includes—
- provision abolishing, conferring or transferring, or providing for the delegation of, functions of any description,
  - provision creating a body or office,
  - provision conferring a discretion (so that the legislation itself need not prescribe for every eventuality), and
  - provision amending, repealing or revoking an enactment.
64. Provision abolishing an office can be made only under subsection (1) of section 9 (which enables orders to include consequential provision). That means that an order can abolish an office only if the abolition of that office is consequential on one or more of the main provisions in the order. There is no free-standing power to abolish offices by order. So for example, it would be possible for an order to abolish an office if the order transferred all the functions of that office to another office; but not if there remained functions that were to be exercised by the holder of the office in question.

## **Section 2 Preconditions**

65. Section 2 imposes conditions on the exercise of the order making power provided by section 1.
66. The Archbishops' Council may include provision in an order only if it considers that each of the following conditions is met—
- that the policy objective intended to be secured by the provision could not be satisfactorily secured by non-legislative means;
  - that the effect of the provision is proportionate to the policy objective;
  - that the provision, taken as a whole, strikes a fair balance between the public interest, the interest of the Church of England as a whole, and the interests of any person adversely affected by the provision;
  - the provision does not remove any necessary protection;
  - the provision does not prevent a person from receiving or continuing to receive a financial benefit to which the person is entitled or could reasonably expect to become entitled;
  - the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;
  - the provision is not of constitutional significance.
67. Determining whether the conditions are met necessarily involves an element of subjective judgement. While it is in the first instance for the Archbishops' Council to form a view on whether the conditions are met, it is open to the committee provided for in section 6, and the General Synod as a whole exercising its powers under section 7, to form its own view. (See further below.)
68. The conditions are not applicable where a provision in an order merely restates an existing legislative provision: see subsection (2). Restating an existing provision has the effect of preserving the law as it is and there is therefore no need for preconditions where that is being done.

## **Section 3 Exceptions**

69. Certain Acts of Parliament and Measures are expressly excluded from the scope of the order making power by subsection (1) of section 3. These are—
- the Submission of the Clergy Act 1533 (which provides that canons cannot be contrary to the general law)
  - the Appointment of Bishops Act 1533 (which sets out the procedure for appointing diocesan bishops)
  - the Suffragan Bishops Acts 1534 to 1898 (which set out the procedure for appointing suffragan bishops and related matters)
  - the Act of Uniformity 1662 (the unrepealed provisions of which prevent those who have not received episcopal ordination as priests from being appointed as incumbents etc. and require preachers to be licensed)
  - the Church of England Assembly (Powers) Act 1919 (which devolves legislative power to the General Synod)
  - the Synodical Government Measure 1969 so far as it relates to the General Synod and the Convocations

- the Church of England (Worship and Doctrine) Measure 1974 (which enables the General Synod to approve forms of service alternative to those in the Book of Common Prayer, subject to certain safeguards)
  - the Legislative Reform Measure itself.
70. The repeal or amendment of some of these Acts and Measures will be outside the scope of the order making power anyway on the basis that provision made by an order must not be ‘of constitutional significance’ (see section 2). But the specific exclusion of certain Acts and Measures will make it unnecessary to form a view as to whether any proposal to amend them is ‘of constitutional significance’.
71. Subsection (2) excludes from the order making power provision which is subject to Article 7<sup>1</sup> or Article 8<sup>2</sup> of the Constitution of the General Synod.
72. Subsection (3) prevents an order from making provision which would extend, reduce or alter the purposes for which the Church Commissioners are able to make payments from their general fund.
73. Although the Synodical Government Measure 1969 is one of the Acts and Measure excluded from the scope of the order making power by subsection (1), it will be possible – by virtue of subsection (4) – for an order to make provision which relates to the constitution or functions of diocesan and deanery synods.
74. The exceptions contained in subsections (1) to (3) do not apply to consequential provision made under subsection (1) of section 8. So, for example, were an order to make new provision in relation to guild churches which replaced the City of London (Guild Churches) Acts 1952 and 1960, it would be possible for the order to make a consequential amendment to the definition of “guild church” in the Church of England (Worship and Doctrine) Measure 1974 so that it referred to the new provision.

#### **Section 4 Consultation**

75. Section 4 imposes an obligation on the Archbishops’ Council to carry out consultation if it is proposing to make an order under section 1.
76. The Council must consult–
- the members of the General Synod,
  - persons who have or exercise functions to which the proposals relate,
  - other persons whose interests would be substantially affected, and
  - any other persons the Council considers appropriate.
77. Where the persons to be consulted are represented by an organisation (as for example, in the case of retired clergy, ecclesiastical judges, or cathedrals, which have established representative bodies), subsection (2) allows the Council to discharge its duty of consulting those persons by consulting the relevant organisation.

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<sup>1</sup> Article 7 applies to “provision touching doctrinal formulae or the services or ceremonies of the Church of England or the administration of the Sacraments or the sacred rites thereof”. Any such provision must be referred to the House of Bishops and may be submitted for final approval by the Synod only in terms approved by the House of Bishops. Provision to which Article 7 applies may also be subject to references to the Convocations and the House of Laity.

<sup>2</sup> Article 8 applies to a Measure or Canon “providing for permanent changes in the Services of Baptism or Holy Communion or in the Ordinal” and to certain ecumenical schemes. Any such provision has to be referred to the diocesan synods and cannot be finally approved by the General Synod unless it has been approved by a majority of diocesan synods. In certain cases Article 8 also requires special majorities in the General Synod at final approval.

78. Subsection (3) deals with the situation where the Council concludes, following consultation, that it should change its proposals. Where that is the case, the Council is required to carry out such further consultation on the changes as it considers appropriate.
79. Subsection (4) requires the Council to lay the consultation documents before both Houses of Parliament before beginning the consultation process.
80. Subsection (5) deals with the possibility that the Council may have carried out consultation pending the coming into force of the Measure which would, to any extent, have satisfied its consultation requirements. Where that consultation would have satisfied all the requirements as to consultation in section 4, those requirements are taken to have been met and the consultation does not need to be repeated. If the consultation already carried out would have satisfied those requirements only to a certain extent, the consultation requirements in the Measure are taken to have been carried out to that extent and those parts of the consultation do not need to be repeated; but the remaining consultation requirements will need to be undertaken.
81. Where a consultation that would have satisfied the requirements of section 4 to any extent has been carried out pending the commencement of the Measure the Council must, as soon as reasonably practicable after commencement, lay the documents on which it has consulted before each House of Parliament.

### ***Section 5 Laying proposals before the General Synod***

82. If, having completed the consultation under section 4, the Archbishops' Council decides to proceed with its proposals, it must lay a draft of an order before the General Synod together with an explanatory document: see subsection (1).
83. Subsection (2) sets out the matters which must be addressed in the explanatory document. These are—
- an introduction to, and reasons for, the provision contained in the order,
  - an explanation of why the Council considers that relevant conditions in Section 2 are satisfied,
  - an assessment of the extent to which the provision contained in the order would remove or reduce burdens,
  - details of the consultation undertaken under section 4, the representations received, and the changes (if any) made as a result.
84. Subsections (3) to (5) make provision about circumstances in which the Council must or may decline to disclose information received by it in response to consultation under section 4. Those circumstances include where a person making representations in response to a consultation asks the Council not to disclose that person's representations. Where that is the case, the Council must not disclose the representations if to do so would result in the person concerned being able to bring a claim for breach of confidence against the Council. Where the information provided relates to a person other than the person who provided it, the Council is not required to disclose information if it would adversely affect the interests of the other person and the Council has not been able to obtain his or her consent.
85. These restrictions on disclosure do not affect any disclosure that is made to the committee of the General Synod provided for in section 6 where the information is requested by the committee for the purposes of its consideration of a draft order.
86. Subsection (6) provides for the Council to withdraw a draft order that has been laid before the General Synod.

## **Section 6 Scrutiny**

87. Section 6(1) provides for the establishment, by the General Synod in its Standing Orders, of a committee to consider and report on draft orders laid before the Synod under section 5.
88. In accordance with subsection (2), the relevant Standing Orders must–
- provide for the membership and chairing of the committee;
  - provide for all draft orders laid before the Synod under section 5 to be referred to the committee;
  - enable representations to be made to the committee on a draft order;
  - enable the committee to amend a draft order.
89. The provision to be made by the General Synod in its Standing Orders under subsection (1) must require the committee to assess–
- the extent to which the order would remove or reduce burdens as defined by section 1;
  - the extent to which the conditions under section 2 are satisfied;
  - whether the draft order includes provision of a kind that is prohibited by section 3;
  - the extent to which the consultation required by section 4 has been undertaken;
  - whether it is appropriate for the provision contained in the draft order to be made by way of an order rather than by Measure.

## **Section 7 Decision by General Synod**

90. Once the committee has reported, the General Synod has 3 options under section 7(1). It may–
- approve the draft order (with any amendments made by the committee),
  - reject the draft order,
  - refer the draft order back to the committee.
91. If, in the light of the committee’s report or otherwise, the Synod takes the view that a provision at which the order was directed is not a “burden” or that any of the pre-conditions to the exercise of the order making power are not in fact met, the Synod can give effect to its view either by rejecting the order or by referring the order back to the committee with a view to its amendment.
92. If the General Synod refers a draft order back to the committee, the Standing Orders must provide for the committee to consider and report on the draft order again and must enable the committee to make amendments. The Synod then has the same 3 options in relation to the order of approving it, rejecting it or referring it back. (See subsection (2).)
93. Subsection (4) provides that if the General Synod approves a draft order, the Archbishops’ Council may exercise its power under section 1 and make an order in the form of the draft as approved by the Synod.

## **Section 8 Pre-consolidation amendments**

94. Section 8 provides a separate order making power which may be used only in conjunction with consolidation Measures.
95. Consolidation Measures restate the statutory provisions contained in several Acts and/or Measures in a single Measure, usually with ‘corrections and minor improvements’. As well

as drawing all the relevant statute law in a particular area into a single Measure, they provide an opportunity to present it in a more helpful way.

96. It is often necessary, as a preparatory step, to make some pre-consolidation changes to put the law into a fit state to enable it to be consolidated. As consolidation Measures themselves do not change the law, the General Synod's Standing Orders provide that once introduced, a consolidation Measure can pass through the Synod quickly, normally by-passing the Revision Committee and Revision Stages. But any pre-consolidation amendments to an Act or Measure can only be made by Measure under the normal procedure. That means that it currently takes up to 2 years to make changes to existing legislation that are of a technical or otherwise uncontroversial nature before that legislation can be consolidated.
97. The power in subsection (1) is concerned with facilitating pre-consolidation changes. It enables the Archbishops' Council, with the approval of the General Synod, to make orders that amend Acts of Parliament, Measures and subordinate legislation relating to a particular area of ecclesiastical law. But the order making power is exercisable by the Council only in so far as it considers that the amendments would facilitate, or would otherwise be desirable in connection with, a related consolidation of existing legislation.
98. Subsection (2) enables pre-consolidation amendments made by order to have retrospective effect in certain circumstances. Those circumstances are limited to those where the purpose of the provision is to remove a doubt, or to remove an anomaly that is not of substantial importance. A provision made under this power would, for example, enable an amendment to be made which stated that a particular provision in existing legislation was to be treated as always having had a particular meaning. Where existing legislation contains provisions the meaning of which are doubtful, it is often helpful to remove that doubt, not only for the future but also in order to cover action already taken in reliance on the provision in question.
99. Subsections (3) and (4)(a) require that an order containing pre-consolidation amendments be laid before the Synod for approval, with or without amendment.
100. If the Synod approves the order, it nevertheless does not come into force unless the related consolidation Measure is also passed: see subsection (4)(b). Subsection (5) provides that if the related consolidation Measure is passed, the order comes into force immediately before the consolidation Measure comes into force.
101. Subsection (6) enables the Business Committee to determine that an order under section 7 does not need to be debated and to make it subject to the procedure for deemed approval by the Synod. This is, as usual, subject to the right of any member to require that the order be debated or to move an amendment to the order.

## **Section 9 Orders**

102. Subsection (1) enables an order made under section 1 or section 8 to contain provision which is consequential on, or supplementary or incidental to, its main provisions. It also enables an order to make transitional, transitory and saving provision to ensure that it is clear whether the old legislation, the new legislation or other specially tailored provision is applicable in cases which overlap the change from the old legislation to the new.
103. Subsections (2) and (3) make special provision for the way in which orders under section 1 or Section 7 have effect in the Isle of Man.
104. Subsection (4) requires that an order made under section 1 or section 7 must take the form of a statutory instrument. Once an order has been made, it must be laid before both Houses of Parliament and is subject to the 'negative procedure' under which it can be annulled by resolution of either House within 40 days.

## **Section 10 Sunset**

105. Subsection (1) is a sunset provision. It provides for sections 1 to 7 of the Measure to expire at the end of the period of 5 years beginning with the day on which the first draft order under section 1 is laid before the General Synod.
106. Subsection (2) provides for the Archbishops' Council to make an order that provides that sections 1 to 7 are not to expire as provided for in subsection (1). That order may continue sections 1 to 7 in force either indefinitely or for a specified period. If the order continues sections 1 to 7 in force for a specified period, it will be possible for the Council to make a further order (or orders) continuing those sections in force.
107. Subsection (3) makes consequential amendments to section 9 in the event that sections 1 to 7 expire.
108. Subsection (4) enables an order continuing sections 1 to 7 in force to contain transitional, transitory or saving provision.
109. Subsection (5) requires orders continuing sections 1 to 7 in force to be laid before the General Synod and provides that such orders are not to come into force unless they are approved by both the General Synod and by Parliament.
110. Subsection (6) applies the Statutory Instruments Act 1946 to orders that continue sections 1 to 7 in force with the effect that such an order cannot be made unless a draft has been laid before and approved by resolution of both Houses of Parliament (i.e. under the affirmative procedure).

## **Section 11 Short title, commencement and extent**

111. Section 11 provides for the short title of the Measure. It provides that the Measure comes into force on the day it is passed (i.e. the day on which it receives Royal Assent). It also provides for the Measure to extend to the whole of the Province of Canterbury except the Channel Islands (where it may be applied in accordance with the legislative procedures relating to those Islands) and to the whole of the Province of York (including the Isle of Man).

## **Conclusion**

112. 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.

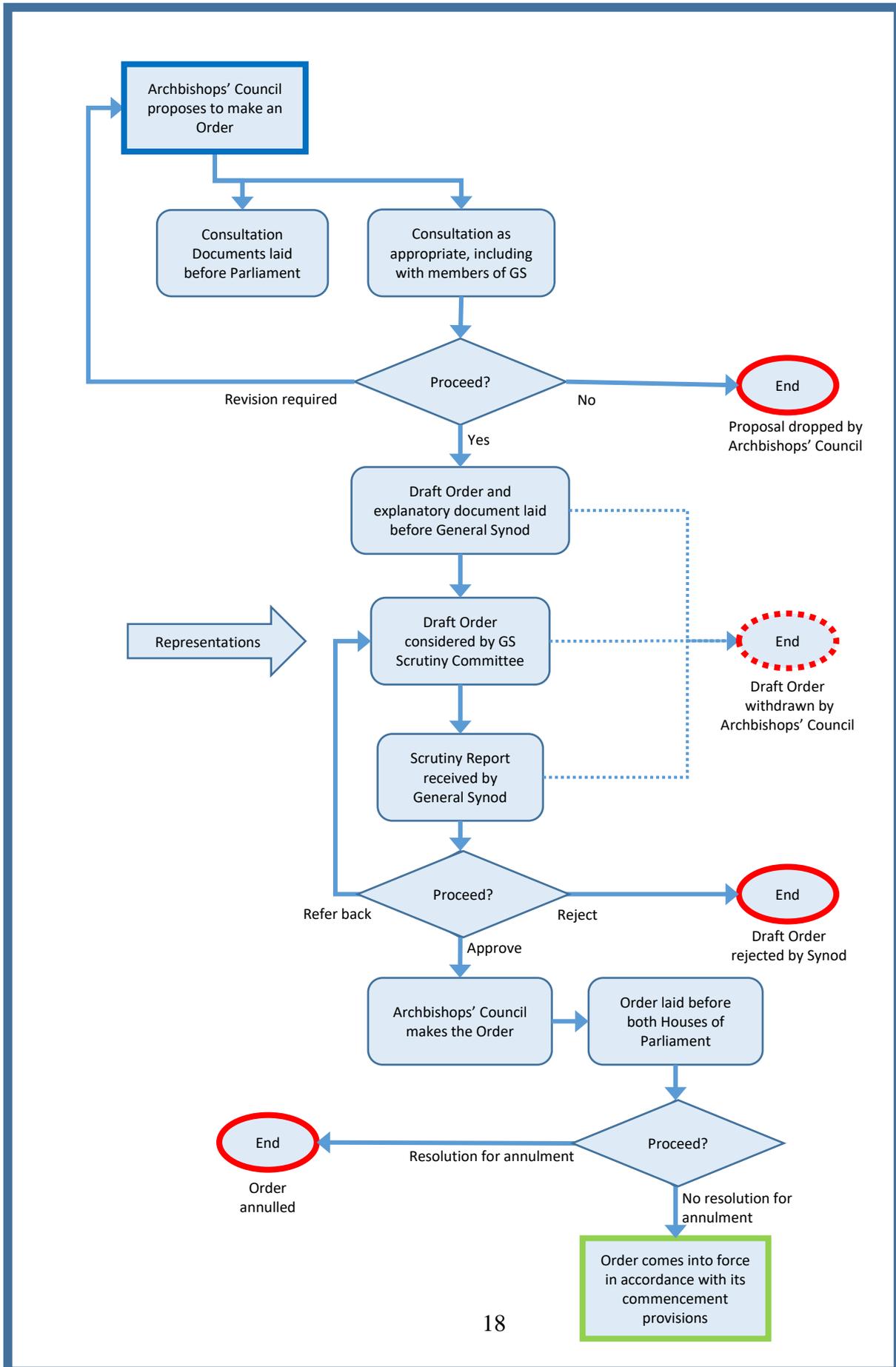
On behalf of the Legislative Committee

*G Tattersall*

Deputy Chair

21 November 2017

**PROCEDURE FOR MAKING AN ORDER UNDER SECTION 1 OF THE MEASURE  
IN DIAGRAMMATIC FORM**



### GENERAL SYNOD PROCEDURE FOR MEASURES

<b>Measure procedure stage</b>	<b>Illustrative time line</b>	<b>Equivalent stage in Parliamentary Bill procedure</b>
Optional (but usual) pre-legislative motion calling for legislation to be introduced to give effect to recommendations in a report from the Archbishops' Council (or another official body)	July 2018	<i>White paper</i>
[No Synodical equivalent]		<i>First Reading</i>
First Consideration	February 2019	<i>Second Reading</i>
Revision Committee	April – July 2019	<i>Committee Stage</i>
Revision Stage in Synod	February 2020	<i>Report Stage</i>
Final Drafting	July 2020	<i>No Commons equivalent; Lords Third Reading Amendments</i>
Final Approval	July 2020	<i>Third Reading</i>
Legislative Committee	October 2020	
Ecclesiastical Committee	December 2020	
Resolutions in each House	February 2021	
Royal Assent	April 2021	<i>Royal Assent</i>

### PROPOSED PROCEDURE FOR ORDERS

<b>Stage</b>	<b>Illustrative time line</b>
Statutory consultation	July 2018 – September 2018
Draft order laid before Synod	November 2018
Scrutiny Committee report	March 2019
Motion for approval of draft Order	July 2019
Order made and published as SI	July 2019
Order subject to annulment by Parliament until	40 days after laying before both Houses

## ILLUSTRATIVE EXAMPLES OF BURDENS RESULTING FROM ECCLESIASTICAL LEGISLATION THAT COULD BE ADDRESSED BY ORDER

1. **Ecclesiastical Fees Measure 1986, section 1(7)** defines “parochial church council” and “diocesan board of finance” for the purpose of ascertaining the destination of parochial fees in different cases. The definitions are very complicated and make the legislation difficult for PCCs, the clergy, funeral directors and others to apply in practice. This is an administrative inconvenience and an obstacle to efficiency. If fees are wrongly paid, a financial cost can be incurred. The definitions could be simplified by Order, making the destination of parochial fees more straightforward.
2. **Mission and Pastoral Measure 2011, sections 80-84** provide for establishing mission initiatives under the authority of bishops’ mission orders. These provisions are hard to understand because of the form in which they were drafted. They also involve procedures that are unduly complex or protracted and which therefore involve a financial cost and are an obstacle to efficiency. The 2011 Measure could be amended by Order to replace these sections with an improved set of provisions which were set out in a form that was easy to understand and with less onerous procedural requirements.
3. **Diocesan Boards of Finance Measure 1925, section 1(2)(d)**. This provision contains detailed prescription about the proportion of the members of a diocesan board of finance (DBF) who must be elected, who have to be members of the diocesan synod, and who have to be “laymen”. This amounts to an administrative inconvenience and/or an obstacle to efficiency for a diocese which wishes to constitute its DBF differently to meet its particular circumstances and needs. These highly prescriptive requirements could be relaxed by way of provision made by Order.
4. **Parochial Church Councils (Powers) Measure 1956, section 3** makes outdated provision for the formal acts of a PCC to be “signified by an instrument executed pursuant to a resolution of the council and under the hands or if an instrument under seal is required under the hands and seals of the chairman and two other members of the council present at the meeting at which such resolution is passed”. An Order could be used to replace this with more up to date provision, e.g. so that a copy of any resolution of the PCC could simply be authenticated by the signature of the chairman or secretary.
5. **Parochial Church Councils (Powers) Measure 1956, section 4** expresses the powers and duties of PCCs by reference to the powers and duties that were formerly exercisable by the parish vestry and by the churchwardens before 1 July 1921. This makes the legislation hard to understand. An Order could amend section 4 to spell out the powers and duties of a PCC so that it was apparent to the reader what they encompassed.
6. **Parochial Church Councils (Powers) Measure 1956, section 6** requires the PCC to obtain consent from diocesan authority for the acquisition of, or to deal with, property. Currently the only exception is where the value of the transaction does not exceed a limit prescribed by Order. It would be possible to use the new order making power to prescribe additional cases where diocesan consent was not required, on the basis that the need to obtain such consents represented a burden both to the PCC and to the diocesan authority.

7. **Diocesan Stipends Funds Measure 1953, section 2** requires the DBF to allocate to the capital account of the diocesan stipends fund any legacy that is not expressly directed by the testator to be applicable as income. This is an unduly restrictive requirement and is inconsistent with the modern approach to gifts and their application. It can result in a financial cost to a diocese which receives a legacy but cannot apply it to current stipend costs. The section could be amended by Order so that only legacies that are expressly directed to be treated as capital must be allocated to the capital account of the diocesan stipends fund.
8. **Parochial Registers and Records Measure 1978, section 4** contains an onerous procedure for the correction of errors in register books of baptisms or burials. If a member of the clergy discovers that he has made an error it can only be corrected within one month of the discovery and it must be corrected in the presence of the parents (in the case of baptism) or, if they are deceased, the churchwardens; and in the case of a burial, in the presence of at least two of the persons who were present at the burial and the churchwardens. This provision places an unduly burdensome requirement on the clergy which could be replaced, by Order, with a less exacting procedure.
9. **Patronage (Benefices) Measure 1986, sections 7, 11 and 12** impose convoluted procedural requirements on parish secretaries and PCCs as to notices and the holding of meetings. Where a benefice becomes vacant, the bishop is required to serve notice on his or her designated officer; the designated officer is then required to serve notice on the PCC secretary; the PCC secretary then has just 4 weeks in which to arrange “one or more” meetings of the PCC. And if there is to be a section 12 meeting (i.e. a meeting involving the PCC, bishop and patron), it has to be held at least two weeks, but no more than six weeks, after the date on which it is requested. Failure to comply with the timetable can result in the lay representatives of a parish losing their right of veto in relation to an appointment. These procedures could be simplified by Order.
10. **Conduct of funeral services** – As the law stands, only an incumbent is lawfully able to conduct a funeral service at a crematorium that is situated in another parish (section 2, Church of England (Miscellaneous Provisions) Measure 1992). This is an administrative inconvenience and an obstacle to efficiency; provision should be made to enable other members of the clergy (e.g. assistant curates, retired clergy with permission to officiate) and licensed lay ministers to conduct such funerals.
11. **Burial of cremated remains in closed churchyard** – Existing legislation suggests that this requires a faculty (section 3, Church of England (Miscellaneous Provisions) Measure 1992). An Order could remove this requirement.
12. **Clerical Disabilities Act 1870, sections 3 and 4** require a member of the clergy who wishes to relinquish his legal status as a clerk in holy orders to execute a deed of relinquishment and enrol it “in the High Court of Chancery”. The procedure for enrolling such deeds is difficult to discover and involves the payment of court fees. The requirement for enrolment in court – which is in addition to a requirement that the deed be registered in the relevant diocesan registry – is an administrative inconvenience and involves a financial cost. An Order could remove the requirement for the enrolment of the deed in the High Court.



The Rt Hon Baroness Butler-Sloss  
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London SW1A 0PW

The Reverend  
Alexander McGregor  
*Deputy Legal Adviser to  
the Archbishops' Council  
and the General Synod*

24 January 2017

### Legislative Reform Measure

Last November, the then Clerk to the Ecclesiastical Committee, Jake Vaughan, helpfully sent us a note setting out points on the draft Legislative Reform Measure raised by members of the Ecclesiastical Committee. The General Synod's Revision Committee for the draft Measure met in November and December to consider the draft Measure. The Revision Committee gave particular attention to the points raised by members of the Ecclesiastical Committee and was assisted in doing so by Dame Caroline Spelman MP who addressed the Revision Committee.

As a result, the Revision Committee made three significant amendments to the Measure which it hoped would address the points that had been raised. Details of those and other amendments are set out in the Committee's report to the General Synod which will be debated by the Synod at next month's group of sessions. But I thought I should let you have a summary of the three amendments which were specifically made to address points raised by members of the Ecclesiastical Committee.

One of the points was concerned with the order making power under the Measure extending to the making of amendments to **Acts of Parliament**. The Revision Committee did not think that Acts should be excluded altogether from the order making power because all ecclesiastical enactments prior to 1920 were made by Acts of Parliament, many of which remain in force and impose burdens which it might be a good idea to remove.

The Revision Committee did, however, accept that members of the Ecclesiastical Committee had a good point. The order making power created by the draft Measure is intended to address burdens resulting from ecclesiastical legislation, rather than legislation generally. It has therefore **amended the draft Measure so that the order making power only encompasses provisions contained in Acts of**

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**Parliament so far as they form part of the ecclesiastical law of the Church of England.** Any provision of an Act which does not come within that category is accordingly excluded from the scope of the order making power.

Some members of the Ecclesiastical Committee raised **concerns about the use of the negative procedure for Statutory Instruments** when orders made under the Measure are laid before Parliament. Officials here gave careful consideration to the question of whether the Measure should instead provide for the application of the affirmative procedure. It was considered that the low priority the Government's business managers in the Commons were likely to give to orders made under the draft Measure would result in serious difficulty in obtaining parliamentary time for orders to be debated and voted on, thus undermining the policy objective of creating a streamlined method for making legislative changes that do not involve significant policy considerations. We did not, therefore, propose to the Revision Committee that the affirmative procedure should be adopted.

The Revision Committee was, however, of the view that **members of both Houses of Parliament should receive advance notice of any proposals to make an order** under the draft Measure, and have the opportunity to raise objections to them at an early stage in the process. It has therefore inserted an additional provision in the draft Measure which requires that before the Archbishops' Council carries out a consultation on a proposal to make an order, **the Council must first lay the consultation documents before both Houses of Parliament.** As we understand it, this will mean that in the Commons, notice that consultation documents have been laid will appear in Votes and Proceedings under *Papers presented or laid upon the Table*. In the Lords, notice will appear in the House of Lords Business under *Papers laid*. The opportunity for a member of either House to raise an objection to a proposal for an order at the consultation stage which this procedure affords is in addition to the ability of a member to table a motion for annulment of an order once it has been made and laid as a Statutory Instrument.

The Revision Committee has also inserted a **sunset clause**. Under this provision the order making power will expire 5 years after the first draft order made under the power is laid before the General Synod. But the order making power will not expire if the Archbishops' Council makes a special order extending the life of the power, and that special order is approved by resolution of both Houses of Parliament (i.e. under the affirmative procedure). This sunset provision should provide Parliament with an opportunity to consider how the order making power has been used before deciding whether to agree to extend its life beyond the initial 5-year period.

I hope the above summary is of assistance to members of the Ecclesiastical Committee. There are further stages for the draft Measure to go through in the Synod before it is presented to the Ecclesiastical Committee and we will keep you abreast of any developments. In the meantime, please let me know if there is anything further we can usefully provide at this stage.

**A S McGregor**

cc Christine Salmon Percival

**New Standing Orders 69A-69J (Legislative Reform Orders)**

At its July 2017 group of sessions, the General Synod approved the amendment of its Standing Orders by the addition of new SOs 69A-69J, as reproduced below, the amendment to be made with effect from the date of the Legislative Reform Measure receiving the Royal Assent.

**69A. *Scrutiny Committee***

- (1) There is to be a Scrutiny Committee of the Synod.
- (2) The function of the Scrutiny Committee is to consider and report to the Synod on each draft of an order under the Legislative Reform Measure 2017 (referred to in these Standing Orders as a “Legislative Reform Order”) that is laid before the Synod under section 5(1) of that Measure.
- (3) Where a draft Legislative Reform Order is so laid, it automatically stands referred to the Scrutiny Committee.
- (4) If the draft order is not laid at a group of sessions, it is to be regarded as laid as soon as the Clerk, on the instructions of the Archbishops’ Council—
  - (a) has caused the draft order to be published on the Synod website, and
  - (b) has sent a copy of the draft order to each member of the Synod.

**69B. *Membership and Chair***

- (1) The members of the Scrutiny Committee are—
  - (a) a Chair determined in accordance with this Standing Order,
  - (b) three members of the Synod elected by the Synod,
  - (c) three members of the Synod appointed by the Appointments Committee, and
  - (d) at least one but no more than two members of the Synod appointed by the Archbishops’ Council.

- (2) A person who is a member of the Archbishops' Council is not eligible to be a member of the Committee under paragraph (1)(a), (b) or (c).
- (3) The Chair is—
  - (a) the Dean of the Arches and Auditor, or
  - (b) if the Dean declines or is unable to act as such, the Vicar-General of the Province of Canterbury or the Vicar-General of the Province of York, or
  - (c) if each of them declines or is unable to act as such, such other member of the Synod as the Dean nominates.
- (4) The elected members of the Committee are to be elected in accordance with SOs 132 to 135.
- (5) The first election of the members to be elected must take place as soon as reasonably practicable after this Standing Order comes into operation.
- (6) A casual vacancy among the elected members is to be filled in accordance with SO 134.
- (7) A casual vacancy among the appointed members is to be filled by a fresh appointment in the same manner.
- (8) The Scrutiny Committee may not co-opt additional members.

**69C.** *Duration of membership: elected members*

- (1) An elected member of the Scrutiny Committee holds office for a fixed term of five years; but that is subject to the following provisions of this Standing Order.
- (2) A member elected to fill a casual vacancy holds office for the unexpired portion of the term of office of the member who has been replaced.
- (3) An elected member—
  - (a) is eligible for re-election, but
  - (b) may not serve for more than two consecutive five-year terms or, if elected to fill a casual vacancy, part of two such terms.

- (4) A person who has ceased to be eligible for election becomes eligible again after an interval of five years.
- (5) If a member of the Synod who is an elected member of the Scrutiny Committee does not stand for re-election to the Synod or is not re-elected, the member may nonetheless continue to act as a member of the Committee in order to complete consideration of a draft Legislative Reform Order on which the Committee had already embarked; and the point at which a casual vacancy occurs in the Committee in respect of that member is to be determined accordingly.

**69D.** *Duration of membership: appointed members*

- (1) An appointed member of the Scrutiny Committee holds office for the period which—
  - (a) begins when a draft Legislative Reform Order is referred to the Committee, and
  - (b) ends when the Committee has completed its consideration of the draft order (including its consideration on a referral back under SO 69H).
- (2) When acting under SO 69B(1)(c), the Appointments Committee must, so far as reasonably practicable, appoint persons each of whom, in its opinion, has an interest or expertise which is relevant to the subject-matter of the draft order.

**69E.** *Representations*

- (1) Where a draft Legislative Reform Order is referred to the Scrutiny Committee, a member or other person may, within the period of 35 days after the day on which the draft order was laid before the General Synod, make written representations on the draft order to the Committee.
- (2) The Clerk must cause every representation made under paragraph (1) to be published on the Synod website, subject to the deletion of such personal information as the Clerk considers it appropriate to delete and of such

content as the Clerk considers libellous, insulting or unseemly.

- (3) A member who makes a representation under paragraph (1) may attend any meeting of the Committee while the representation is being considered and may speak to it; but the member may, if unable to be present, authorise another member of the Synod to attend and speak on his or her behalf.
- (4) Where a person who is not a member makes a representation under paragraph (1), the Committee may invite the person to attend any meeting of the Committee while the representation is being considered and to speak to it.
- (5) Where a member is entitled to attend a meeting under paragraph (3) or a person who is not a member is invited to attend a meeting under paragraph (4), the Clerk must, not less than 21 days before the meeting, send the member or other person notice of its date, time and place.
- (6) If the member or other person wishes to attend the meeting, or (in the case of a member) to authorise another member to attend on his or her behalf, the member or other person must give not less than 7 days' notice to the Clerk; and, except with the permission of the Chair of the Committee, no member or other person may attend unless due notice has been given.
- (7) The period for making representations under paragraph (1), and the rights conferred by this Standing Order, must be posted on the Synod website and specified in a notice accompanying each draft order sent under SO 69A(4)(b).

**69F.** *Assessment and consideration*

- (1) This Standing Order applies once the period for making representations under SO 69E(1) in relation to a draft Legislative Reform Order has come to an end.
- (2) The Scrutiny Committee must assess—

- (a) the extent to which the order would remove or reduce burdens as defined by section 1 of the Legislative Reform Measure 2017 (“the Measure”),
  - (b) the extent to which the conditions under section 2 of the Measure (so far as relevant) are satisfied,
  - (c) whether the draft order includes provision of a kind prohibited by section 3 of the Measure,
  - (d) the extent to which the consultation required by section 4 of the Measure has been undertaken, and
  - (e) whether it is appropriate for the provision contained in the draft order to be made by way of Legislative Reform Order rather than by Measure.
- (3) The Committee must consider the draft order, together with any representations, Article by Article; and any Schedules are to be considered in the same way.
  - (4) The Committee may make such amendments to the draft order as are relevant to the general purport of the draft order; and an amendment to an Article or Schedule must be within the scope of the Article or Schedule in question.
  - (5) If the Chair considers that the Committee has business which can properly be conducted by correspondence, the Chair may instruct the Secretary to circulate to the members of the Committee written proposals requiring the approval of the Committee, which may include a draft report to the Synod, within such number of days after the date on which they were posted or delivered as the Chair may specify; and the number of days so specified must be at least seven.
  - (6) If the period so specified is less than 14 days, the proposals circulated are deemed to have been approved by the Committee as if they had been approved at a duly convened meeting, unless a written objection is received from any member of the Committee.
  - (7) If the period so specified is 14 days or more, the proposals circulated are deemed to have been approved by the Committee as if they had been approved at a duly

convened meeting, upon a majority of the members of the Committee giving their written approval to the proposals.

- (8) The power conferred by paragraph (5) may not be exercised so as to prevent a member who has made a representation under SO 69E, and who wishes to do so, from—
  - (a) attending a meeting of the Committee at which the representation is considered, and
  - (b) speaking to the representation or authorising another member of the Synod to attend the meeting and speak on his or her behalf.
- (9) The Chair has power to determine conclusively any question of order, business or procedure relating to the Committee.
- (10) The Committee may, subject to that, regulate its own business and procedure.

**69G.** *Report*

- (1) On completion of its assessment and consideration of a draft Legislative Reform Order, the Scrutiny Committee must submit a report on the draft order to the Synod, with or without amendments or recommendations.
- (2) The provisions of SO 105 do not apply to a report under this Standing Order.
- (3) Recommendations under paragraph (1) may include the advice that the draft order be rejected.
- (4) The report of the Committee must be in writing and must include—
  - (a) the Committee's assessment under SO 69F(2),
  - (b) a list of the representations received under SO 69E which raise points of substance,
  - (c) the Committee's response to each of those representations, and

- (d) a list of such amendments as the Committee has made to the draft order and an explanation of the intended effect of each amendment.

**69H.** *Motion for approval or referral back*

- (1) Where the Scrutiny Committee submits a report on a draft Legislative Reform Order to the Synod, the Archbishops' Council must, unless it has withdrawn the draft order (see SO 69J), cause one or other of the following motions to be tabled—
  - (a) the motion “*That the draft [Title] be approved*”;
  - (b) the motion “*That the draft [Title] be referred back to the Scrutiny Committee for further consideration of...*”.
- (2) Where the motion under paragraph (1)(a) or (b) has been tabled, a member may give notice of a motion “*That the draft [Title] be referred back to the Scrutiny Committee for further consideration of...*”.
- (3) The motion under paragraph (1)(b) or a motion under paragraph (2) may relate either to the whole of the draft order or to such of its provisions as are specified in the motion.
- (4) Notice under paragraph (2) must be given no later than 5.30 p.m. on the day which falls three clear days before the first day appointed for debate on the motion under paragraph (1)(a) or (b).

**69I.** *Procedure on motion under SO 69H*

- (1) When the item on the agenda for the motion under SO 69H(1)(a) or (b) is reached, the Chair must call upon a member of the Archbishops' Council to move the motion.
- (2) Where the motion has been moved, it is not in order to move an amendment to it.
- (3) If notice of a motion under SO 69H(2) has been given, the Chair must call the mover of the motion to speak to the motion; and he or she may do so for no more than five minutes.

- (4) The Chair must call on a member of the Archbishops' Council to speak in reply.
- (5) If the member of the Council indicates that the Council supports the motion under SO 69H(2), the debate on it continues.
- (6) If the member of the Council indicates that the Council does not support the motion under SO 69H(2), the Chair must declare the motion to have lapsed unless at least 40 members stand in their places or, if unable to do so, indicate by some other means that they wish the debate on the motion to continue.
- (7) If notice of more than one motion has been given under SO 69H(2), paragraphs (3) to (6) apply in relation to each motion.
- (8) A motion under SO 69H(2) may be moved in respect of a provision of the draft order even if that provision is already specified in the motion under SO 69H(1)(b) or in another motion under SO 69H(2).
- (9) If the motion under SO 69H(1)(b) or a motion under SO 69H(2) is carried, the draft order, once all such motions have been dealt with, stands automatically referred back to the Scrutiny Committee for further consideration of each provision specified in the motion or motions carried; and SOs 69F and 69G accordingly apply with such modifications as are necessary for the purposes of the further consideration.
- (10) If the motion under SO 69H(1)(b) is not carried and no motion under SO 69H(2) is carried, the Chair must call upon a member of the Archbishops' Council to move the motion "*That the draft [Title] be approved*".
- (11) Where the motion under paragraph (10) has been moved, it is not in order to move an amendment to it.

**69J. Withdrawal**

- (1) This Standing Order applies where the Archbishops' Council decides to withdraw a draft Legislative Reform Order.

- (2) If the decision is taken during or pending a group of sessions, the Clerk must, on the instructions of the Council, inform the Synod of the decision in an appropriate agenda or notice paper.
- (3) If the decision is taken at any other time, the Clerk must, on the instructions of the Council, send every member of the Synod notice of the decision.
- (4) In every case, the Clerk must, as soon as practicable after taking action under paragraph (2) or (3), cause notice of the decision to be published on the Synod website.
- (5) Information given under paragraph (2) and any notice sent or published under paragraph (3) or (4) must be accompanied by an explanation of the Council's reasons for the decision.
- (6) The withdrawal of a draft Legislative Reform Order takes effect—
  - (a) in a case within paragraph (2), on the date on which the agenda or notice paper is published,
  - (b) in a case within paragraph (3), on the date on which the notice is sent.
- (7) On the withdrawal of a draft Legislative Reform Order, the proceedings on the draft order come to an end.