GENERAL SYNOD

LEGISLATIVE COMMITTEE

Church Funds Investment Measure

Comments and Explanations

The draft Church Funds Investment Measure provides for the transfer of CBF Church of England Funds to a charity authorised investment fund with the result that those funds, which are currently unregulated, will become regulated funds.

Introduction

1. The Legislative Committee of the General Synod, to which the Measure entitled Church Funds Investment 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 provides for the transfer of CBF Church of England Funds to a charity authorised investment fund with the result that those funds, which are currently unregulated, will become regulated funds.

Background

3. The CBF Church of England Funds were established under the Church Funds Investment Measure 1958. The six current funds in operation have total assets of over £3bn and are managed on behalf of over 11,500 Church investors including many Parochial Church Councils, cathedral chapters and diocesan charities. They are currently structured as Unregulated Collective Investment Schemes (UCIS). UCIS are not subject to the requirements that apply to authorised UK investment schemes and ‘recognised’ schemes from other countries in terms of their investment powers and how they are run.

4. The Church of England’s Central Board of Finance was originally the trustee for the CBF Church of England Funds. This role passed to the Archbishops’ Council on its establishment in 1999 (under the National Institutions Measure 1998). The trustee role for the Funds was then subsequently transferred to CBF Funds Trustee Limited (CBFFT) in 2007.

5. Historically, most pooled investment funds operated by investment managers for charities were structured as Common Investment Funds (CIFs), a structure which was introduced by the Charities Act 1960. CIFs are registered charities and as such are regulated by the Charity Commission but, in common with the CBF Church of England funds, are not regulated or authorised by the Financial Conduct Authority

(FCA) – the principal UK body for regulation of investment products. Under the provisions of the Church Funds Investment Measure 1958, the CBF Church of England funds could not become CIFs.

6. A new Charity Authorised Investment Fund (CAIF) structure for charity investment vehicles was established in 2016 by the FCA working with the Charity Commission. The principal advantages of this structure for charity investors are twofold. First, CAIFs are jointly regulated by the Charity Commission and the FCA, offering investors greater protection and reassurance that the funds are regulated and overseen in accordance with industry best practice as well as maintaining their charitable status. Secondly, VAT is not charged on investment managers' fees resulting in a modest cost benefit for charities investing in such funds.

7. Since 2016 many investment managers have moved pre-existing CIFs to CAIFs and some new funds established by investment managers have been created as CAIFs.

8. It is not possible to convert the CBF Church of England Funds to CAIFs under the framework of the Church Investment Funds Measure 1958 as it stands, so Church investors are currently unable to benefit from the advantages set out above.

9. The draft Church Funds Investment Measure ("the Measure") enables the trustee of a CBF Church of England Fund to transfer its assets to a CAIF. The result will be that the CBF Church of England Funds, instead of being unregulated (as is currently the case), will become authorised and regulated jointly by the Financial Conduct Authority and the Chairty Commission. Value Added Tax will also cease to be payable on investment managers' fees, resulting in a cost saving to charity investors.

The provisions of the Measure

Clause 1 Scheme of transfer of assets of certain Church Funds

10. Clause 1 enables the transfer of the CBF Church of England Funds – which are currently unregulated collective investment schemes – to a charity authorised investment fund that is regulated by the Financial Conduct Authority and the Charity Commission.

11. Clause 1(1) empowers the trustee of the CBF Church of England Funds to make a scheme for the transfer of the assets belonging to those funds to a charity authorised investment fund. Such a scheme is usually referred to as a "scheme of arrangement". It will be for the trustee – CBF Funds Trustee Limited (itself a registered charity) – to decide whether to exercise the power. As trustee, it will be able to exercise the power to transfer a CBF Church of England Fund to a charity authorised investment fund if it considers that doing so is in the interests of the charity investors in the relevant funds (but not otherwise).

12. Clause 1(2) defines a "CBF Church of England Fund" as a fund to which the Church Funds Investment Measure 1958 applies and which is known by one of the following names:

- the CBF Church of England Investment Fund
- the CBF Church of England Short Duration Bond Fund
- the CBF Church of England Deposit Fund
- the CBF Church of England Property Fund
- the CBF Church of England UK Equity Fund

- the CBF Church of England Global Equity Fund.

These are the funds which will be capable of being transferred by a scheme of arrangement made under clause 1(1).

13. Clause 1(3) enables a scheme of arrangement made under clause 1(1) to include additional provisions to ensure that the scheme has full legal effect and can operate in a practical way. It does that by providing that a scheme of arrangement may contain "supplementary, incidental, consequential, transitional or saving provision". It provides that a scheme may, in particular, include provision for the dissolution of a fund once its assets have been transferred to the new charity authorised investment fund, the retention of assets from a former fund that are necessary to meet any liabilities that fund may have, and for the payment of fees and expenses (as some costs will be incurred in bringing about the transfer of funds).

14. Clause 1(4) defines "charity authorised investment fund" as meaning a fund which is both an "authorised fund" (i.e. authorised by the Financial Conduct Authority: see clause 1(5)) and which is established under a common investment scheme under section 96 of the Charities Act 2011 (and therefore subject to regulation by the Charity Commission). A fund to which CBF Church of England Funds are transferred must meet this description.

15. Clause 1(5) defines "authorised fund" by reference to relevant provisions of the Financial Services and Markets Act 2000. Those provisions are section 243 (which provides for the authorisation of unit trust schemes), section 261D(1) (which provides for the authorisation of contractual schemes) and section 262 (which provides for certain collective investment schemes to be authorised under regulations). Each type of authorised fund is authorised and regulated by the Financial Conduct Authority.

Clause 2 Short title, commencement and extent

16. Clause 2 provides for the short title of the Measure, its commencement and extent.

Proceedings in the General Synod

First Consideration

17. The Measure was introduced into the Synod for First Consideration in February 2024. It was favourably received and was committed to a Revision Committee in the usual way.

Revision

18. No proposals for the amendment of the Measure were received by the Revision Committee and it made no amendments of its own.

Final approval

19. The Final Drafting and Final Approval Stages took place at the July 2024 group of sessions of the Synod. The Measure received the approval of all three Houses.

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

	In favour	Against
Bishops	13	0
Clergy	77	0
Laity	93	0

1 member of the House of Laity recorded an abstention.

Conclusion

21. 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

+Martin Cicestr:

Deputy Chair

November 2024