

**GENERAL SYNOD**  
**LEGISLATIVE COMMITTEE**  
**Cathedrals Measure**  
**Comments and Explanations**

The Cathedrals Measure provides a new statutory framework for the governance and regulation of cathedrals and will replace the framework in the Cathedrals Measure 1999 (the **1999 Measure**).

The Cathedral Working Group (**CWG**), in its final report in June 2018 (the **CWG Report**), set out its recommendations for the future regulation of cathedrals. The most significant of these recommendations related to the governance structure of cathedrals, including changes to the composition of a cathedral's Chapter and the bringing of cathedrals within the definition of "charity" in the Charities Act 2011, to enable the Charity Commission to exercise its regulatory and facilitative powers in relation to cathedrals.

The General Synod endorsed the recommendations in the CWG Report in July 2018 and a draft Measure was brought to the General Synod for First Consideration in July 2019. This draft Measure implements those recommendations in the CWG Report that require legislative change, subject to amendments made by the General Synod.

### **Introduction**

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

### *Background*

2. The Archbishops' Council set up the CWG in response to a request from the Bishop of Peterborough in his January 2017 Visitation Charge on Peterborough cathedral, to look carefully at how the current legislation governing cathedrals is operating and whether any improvements could be made. The CWG was tasked with reviewing the sufficiency of the 1999 Measure in relation to governance structures in cathedrals, with particular reference to financial management, major buildings projects, safeguarding, accountability, oversight and scrutiny.

### *Regulation of cathedrals by the Charity Commission*

3. The CWG, in its final report<sup>1</sup> in June 2018, set out its recommendations for the future regulation of cathedrals. One key recommendation was that cathedrals should be regulated by the Charity Commission in the same way as other bodies in the Church of England. Historically, certain classes of charitable institution were exempt from Charity Commission regulation and did not have any principal regulator. Over the last 20 to 30 years, those classes of institutions have been brought within the Charity Commission's jurisdiction, but cathedrals have not. Therefore, cathedrals are an anomaly, as a significant class of institution recognised as charitable

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<sup>1</sup> [https://www.churchofengland.org/sites/default/files/2018-06/Cathedrals%20Working%20Group%20-%20Final%20Report\\_0.pdf](https://www.churchofengland.org/sites/default/files/2018-06/Cathedrals%20Working%20Group%20-%20Final%20Report_0.pdf)

by HMRC but not regulated by an independent third-party regulator. The General Synod endorsed the CWG Report's recommendation that, as a matter of policy, cathedrals should no longer be exempt from the Charity Commission's jurisdiction.

4. The Legal Office of the Church of England has worked closely with senior staff at the Charity Commission throughout the drafting process. The Charity Commission was consulted on proposed amendments to the Measure and issues raised were addressed. Where the Charity Commission raised issues in relation to specific provisions of the Measure, they were considered by the Revision Committee and agreement was reached as to how the Measure would be amended to address them.

#### Co-regulation of cathedrals by the Church Commissioners and the Charity Commission

5. The CWG Report recommends more, rather than less, oversight of cathedral finances and financial transactions. As many of the Church Commissioners' regulatory powers in the 1999 Measure relate to areas of cathedral activity that are not regulated by the Charity Commission or charity law, the Church Commissioners will continue to regulate such activities under the Measure. Therefore, the Measure provides for the Church Commissioners to co-regulate cathedrals with the Charity Commission.
6. The Measure also makes certain amendments to the Ecclesiastical Offices (Terms of Service) Measure 2009<sup>2</sup> to require the bishop to remove or suspend a dean or residentiary canon from ecclesiastical office, should they be removed or suspended by the Charity Commission from acting as a charity trustee of the Chapter, using its statutory enforcement powers.
7. A Memorandum of Understanding (**MoU**) between the Charity Commission and the Church Commissioners is in the process of being agreed to support the co-regulation of cathedrals. The Heads of Terms for this MoU were approved by both the Charity Commission's Board and the Church Commissioners' Board of Governors in September 2020 and the detailed MoU is now in the process of being drawn up.

#### Process for bringing cathedral Chapters within the Charity Commission's regulatory jurisdiction and their registration with the Charity Commission

8. One specific concern raised by the Charity Commission during the Revision process related to the timing for bringing cathedral Chapters within the Charity Commission's jurisdiction. As a result, it was agreed by the Revision Committee and the Charity Commission that the draft Measure as introduced at First Consideration (to be referred to throughout this document as "**the Measure as introduced**") would be amended so that the "charity provisions" (being those provisions listed in section 53(7)) would come into force for each Chapter only once its new governance structures were in place. Therefore, the date on which the "charity provisions" will come into force for a Chapter must be a minimum of three months after the date on which the new Constitution and Statutes have come into force for that Chapter.
9. The Charity Commission also asked for the Measure to provide flexibility on the setting of the date on which the "charity provisions" come into force for a Chapter. This flexibility will facilitate administrative arrangements, such as the "grouping" of Chapters, to enable registration in groups rather than individually. It will also enable a Chapter to be given longer before the charity provisions come into force for it where there may be outstanding issues to be resolved from the due diligence undertaken on that cathedral. Therefore, the Revision Committee and the Charity Commission agreed that the Measure be amended to provide that the Church Commissioners would set a specific date on which the "charity provisions" would come into force for a Chapter. This amendment embeds flexibility so that the MoU can set out how the date on which the "charity provisions" will come into force for each Chapter can be agreed by the Church Commissioners and the Charity Commission.

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<sup>2</sup> Section 42.

10. During discussions between the Church Commissioners and the Charity Commission it became evident that more was needed to address the general concerns raised by the Charity Commission in relation to the standards of safeguarding, governance and financial stability of Chapters when they apply for registration and should problems emerge in the future. Therefore, to reassure the Charity Commission that the Church Commissioners would take an active role in supporting Chapters in their preparation for registration with the Charity Commission and provide on-going support to cathedrals once registered, the Church Commissioners provided the following two Assurance Statements to the Charity Commission in September 2019:

Assurance Statement One:

*As part of the preparation by Chapters for their registration with the Charity Commission, the Church Commissioners agree to:*

- (a) provide such assurance to the Charity Commission as may be within the Church Commissioners' powers to confirm that, having made all reasonable inquiries, to the best of the Church Commissioners' knowledge each cathedral Chapter has fully resolved any past governance, financial management, safeguarding and other failings which would warrant reporting to the Charity Commission as a serious incident; and*
- (b) provide such reasonable support to the Charity Commission as may be within the Church Commissioners' powers, to secure any specific assurances as they may require from each cathedral Chapter directly.*

Assurance Statement Two:

*The Church Commissioners confirm that they will provide Cathedrals with such reasonable funding and other support as may be within the Church Commissioners' legal powers to provide, to support a Cathedral to deal promptly, and to the Charity Commission's satisfaction, with historic or other substantial regulatory issues identified after Cathedral Chapters are brought within the regulatory jurisdiction of the Charity Commission.*

*In providing the support set out above the Church Commissioners confirm that, where the Church Commissioners have the legal powers to do so, they will as co-regulator:*

- a) take the lead role to support Cathedrals to resolve significant governance failings and financial or other regulatory issues;*
- b) work with the Church of England body with responsibility for supporting Cathedrals in relation to safeguarding where needed, to support a Cathedral to resolve any significant safeguarding regulatory issues; and*
- c) support the Charity Commission in the exercise of its statutory powers in relation to a Cathedral;*

*in accordance with the terms of any Memorandum of Understanding agreed between the Charity Commission and the Church Commissioners.*

11. The Church Commissioners have taken (and will continue to take) significant steps to support and encourage cathedrals to improve their governance, financial management and safeguarding processes. One key way in which this support is provided by the Church Commissioners is by making grants to cathedrals from the Cathedral Sustainability Fund. Set up in 2017 with an initial £3m, in 2020 the fund was topped up by £10m to support cathedrals to improve their financial sustainability and general governance, as well as to assist with additional support costs incurred in relation to the implementation of the Measure. The financial impact of the pandemic on cathedrals has been significant, with many cathedrals experiencing a very sharp fall in income. This not only threatens their viability, but also their ability to implement the envisaged reforms. Therefore, the Church Commissioners have agreed to provide a further £10m to the Cathedral Sustainability Fund to ensure that cathedrals have the resources and support they need to make improvements to their governance and resolve any past failings prior to coming within the Charity Commission's regulatory jurisdiction. This includes direct grants for key staff, as well as indirect

support to provide the resources they need to help them adopt new Constitution and Statutes and to prepare for registration.

## *Safeguarding*

### Provisions in the Measure

12. In accordance with the recommendations in the CWG Report, the Measure provides that Chapters will be subject to the same statutory requirements in relation to safeguarding as PCCs and other Church bodies. This has been achieved by:
  - a) amending the Safeguarding and Clergy Discipline Measure 2016 to include Chapters in the list of relevant persons which must have due regard to the House of Bishops' safeguarding guidance<sup>3</sup>; and
  - b) providing that similar provisions to the disqualification provisions for PCC members in the Church Representation Rules apply to Chapter members<sup>4</sup>.
13. In addition, providing leadership on matters relating to safeguarding has been added to the list of the dean's responsibilities in a cathedral<sup>5</sup>.

### Other steps being taken to support safeguarding improvements in cathedrals

14. As part of the Church of England's work to improve safeguarding practices, the Social Care Institute for Excellence ("SCIE") was appointed by the House of Bishops as independent auditors of safeguarding in cathedrals following a successful programme of diocesan safeguarding audits. Twenty-three of the independent SCIE audits of cathedral safeguarding have taken place so far. Once a Chapter has considered the recommendations and findings of a SCIE audit report, action plans are drawn up to implement the changes needed to address any concerns identified. This process means that cathedrals are already taking the necessary steps to address past and current failings in their safeguarding processes and procedures.
15. Although the pandemic has required the SCIE audit process to be temporarily paused, it is expected to restart as soon as possible. So long as they can be undertaken safely and lawfully, it is anticipated that all SCIE audits will have been completed before the end of 2023 and the Church Commissioners will take such steps as they are able to support the completion of the SCIE audits.
16. In addition, following the publication of a report into safeguarding in the Church of England by IICSA in October 2020, the General Synod adopted all the recommendations in that report to improve safeguarding in the Church of England, including in cathedrals. The National Safeguarding Team had already been preparing an entirely new suite of safeguarding guidance to reflect current best practice and this new suite of guidance will reflect the recommendations in the IICSA Report. It is expected that the new safeguarding guidance will have been approved by the end of the summer of 2021, so that the updated and improved processes and procedures can be embedded in cathedrals before the first group of cathedrals are brought within the regulatory jurisdiction of the Charity Commission.

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<sup>3</sup> See section 35 of the Measure. Should the draft Safeguarding (Code of Practice) Measure complete its passage through the Synodical and Parliamentary processes, the duty to have "due regard" to safeguarding guidance will be replaced with a duty to comply with the requirements in a safeguarding code of practice.

<sup>4</sup> See sections 36 to 39 of the Measure. These provide additional disqualification provisions to those provided under the secular law.

<sup>5</sup> Section 12(2)(f)

### *Councils and Chapters*

17. The 1999 Measure confers a number of statutory functions on the cathedral Council, for example receiving and considering the cathedral's budget, annual report and accounts, as well as proposals for the revision of a cathedral's Constitution and Statutes. However, a cathedral Council has no power to take action if it considers there are problems with the way a cathedral is being governed and this split in trustee functions between two separate bodies has not been conducive to good governance in cathedrals.
18. In order to improve the governance of cathedrals, the CWG Report proposed that all trustee functions should sit with an expanded Chapter which has a majority of non-executive members. The new Measure provides that the members of the Chapter are charity trustees and the dean and residentiary canons continue to be *ex officio* members of the Chapter.
19. Whilst the Measure does not include a statutory requirement for each cathedral to have a Council, a Chapter will have the option of setting up advisory bodies<sup>6</sup>, which may take the form of an advisory council of stakeholders should it wish to do so. Such a council would have the functions conferred on it by the Chapter, which could include the non-statutory functions currently undertaken by many Councils. The details as to its composition, functions and proceedings of any advisory body, such as a council, would be set out in that cathedral's Statutes.
20. The CWG Report also recommended that a Vice Chair of Chapter be appointed by the bishop. Such a Vice Chair may be lay or ordained but must not be "executive"<sup>7</sup>. This recommendation, which was included in the Measure as introduced, caused significant concern in the cathedral community and was amended so that the Measure now requires the bishop to appoint a senior non-executive member of Chapter, following consultation with the Chapter on the proposed appointee.

### **The provisions of the Measure**

#### *Section 1: Duty to have regard to cathedral's ecclesiastical purpose*

21. This section reflects and builds on section 1 of the 1999 Measure. It sets out the duty to exercise functions under the Measure with due regard to the fact that the cathedral is the seat of the bishop and a centre of worship and mission and adds a further limb that due regard must be had to the importance of each cathedral's role in providing a focus for the life and work of the Church of England in the diocese.

#### *Section 2: The Chapter of the cathedral*

22. The 1999 Measure confers a number of statutory functions on the cathedral Council. To improve the governance of cathedrals, the CWG Report recommended that all trustee functions should sit with an expanded Chapter, rather than being split between the Chapter and the Council, with the College of Canons also ceasing to be part of the cathedral's body corporate. In order to implement this recommendation, subsection (1) provides that there is to continue to be a Chapter for each cathedral and subsection (2) provides that the body corporate established by virtue of section 9(1)(a) of the 1999 Measure is to continue to exist and is to consist only of the Chapter. Cathedral Councils in their current form will cease to exist. The statutory functions currently carried out by Councils will, under the Measure, be carried out by the Chapter as the charity trustees of the Cathedral. However, Chapters will still have the option of setting up advisory bodies, which may include a council of stakeholders (see section 18). Such a council would not have any statutory functions but would have those functions conferred on it by the Chapter.
23. Details as to the composition of the Chapter and related matters are set out in Schedule 1.

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<sup>6</sup> See section 18.

<sup>7</sup> See paragraph 111 of this document.

### *Section 3: The College of Canons*

24. Section 3 provides that, although the College of Canons will continue to exist with the same membership as under the 1999 Measure, it will no longer form part of the body corporate of the cathedral. In addition, the College of Canons will have such functions as are conferred on it by the Constitution and Statutes of the relevant cathedral, rather than by the Measure and so it will be up to each individual Chapter, in consultation with the bishop, to decide how best to use its College of Canons, based on the needs and particular circumstances of each cathedral and diocese. Subsection (6) provides that this section is modified by Schedule 2 in relation to the three cathedrals in the diocese of Leeds.

### *Section 4: Constitution: objects*

25. Subsection (1) requires all cathedral Constitutions to include the objects of the cathedral, which are set out in subsections (1) to (3). A separate object relating to heritage has been included at subsection (1)(b) to make it easier for cathedrals to apply for grants from those grant makers which expect to see a standalone object relating to heritage. The general object in subsection 1(c) provides reassurance to the Chapter that it can continue to undertake those activities which may be in furtherance of paragraph (a) or (b) but in a way which is ancillary to those objects rather than directly in furtherance of those objects. Subsection (3) requires the objects to be furthered for the public benefit.

### *Section 5: Constitution: general provision*

26. Subsections (1) and (8) to (10) set out what the Constitution must include, which is based on the list set out in section 9 of the 1999 Measure but has been somewhat updated. Subsections (2) to (7) provide more detail as to the specifics of some of the requirements set out in subsection (1).

### *Section 6: Constitution: provision for community rolls*

27. Subsections (1) to (3) require the Constitutions of those cathedrals which are not a parish church to provide for the formation and maintenance of a roll of the members of their community who would, if the cathedral had a parish, fulfil the requirements for being included in the electoral roll of the parish.
28. Subsection (4) requires the Constitution of a cathedral without a parish to permit the formation and maintenance of a roll of the members of the cathedral community who are not eligible to be included in the roll created for the purposes of subsection (1), but who are members of the cathedral community.
29. Subsection (5) requires the Constitution of a cathedral with a parish to permit the formation and maintenance of a roll of the members of the cathedral community who are not eligible to be included in the parish electoral roll, but who are members of the cathedral community.

### *Section 7: Statutes*

30. This section sets out what must be provided for in a cathedral's Statutes. This is based on the list in section 11 of the 1999 Measure but also includes the functions of the chief officers, the establishment of a group of senior managers and provision for the fostering of the corporate and spiritual life of the Chapter and its members.

### *Section 8: Application of the Charities Act 2011*

31. This section amends section 10 of the Charities Act 2011 so that cathedrals will no longer be excluded from the jurisdiction of the Charity Commission and from the Charities Act 2011 and provides for the members of the Chapter to be the charity trustees.

### *Section 9: The bishop*

32. Subsections (1) and (2) confirm that the bishop continues to have the principal seat and dignity in the cathedral and provides that the bishop may, after consultation with the Chapter, officiate in the cathedral and use it for diocesan and other occasions.

33. Subsection (3) requires the bishop to attend the annual special meeting of the Chapter held under section 11(2).
34. Subsection (4) provides that the bishop appoints those residentiary canons who are not Crown appointments. The bishop may also seek the advice of the Chapter on any matter (subsection (5)).
35. Subsections (6) to (9) confer power on the bishop to commission a review of such aspects of the cathedral's finance, governance, management, operations or mission as he or she considers necessary and appropriate. When exercising this power, the bishop must have due regard to any guidance issued by the Church Commissioners. The Chapter is required to cooperate with such a review and must have due regard to the review's conclusions and recommendations.
36. Subsection (10) provides that, for the purposes of Schedule 6 to the Charities Act 2011, the diocesan bishop (in his or her corporate capacity) is "*a person who is or may be affected by the order*" and so has the right to appeal against a decision of the Charity Commission in relation to their cathedral and to make an application in the Charity Tribunal accordingly.

#### *Section 10: The Visitor*

37. Section 10 confirms that the bishop continues to be the Visitor for the cathedral, with similar powers to conduct a Visitation as in the 1999 Measure. Subsection (6) requires the bishop, in the exercise of his or her functions as Visitor, to have due regard to any guidance issued by the Church Commissioners in relation to those functions. This subsection enables the Church Commissioners to agree how the bishop will exercise his or her Visitation powers in the MoU with the Charity Commission<sup>8</sup>.

#### *Section 11: The Chapter*

38. Subsection (1) reflects the provisions in section 4(8) of the 1999 Measure, which have been updated to remove any references to the Council or the College of Canons, as they will no longer form part of the body corporate of the cathedral.
39. Subsections (2) and (3) require the Chapter to hold a special annual meeting with the bishop at which the Chapter must consult the bishop on the general direction and mission of the cathedral, and the bishop may seek the advice of the Chapter on any particular matter. This special meeting replaces the requirement in the Measure as introduced for the bishop to attend some Chapter meetings.

#### *Section 12: The dean*

40. Subsections (1) and (2) set out the ecclesiastical status and duties of the dean, reflecting section 7(1) and (2) of the 1999 Measure, with the addition of duties which require the dean to oversee the work undertaken by cathedral clergy and staff and to provide leadership on safeguarding in the cathedral.
41. Subsections (3) to (5) set out when the dean's consent is required, reflecting the position in section 7(3) of the 1999 Measure.
42. Subsections (6), (7) and (10) to (12) provide that the dean is accountable to the Chapter for his or her (non-trustee) cathedral duties and that the clergy and staff of the cathedral are accountable to the Chapter, through the dean, for their (non-trustee) cathedral duties. Subsections (8) and (9) require each of the dean, the cathedral clergy and the Chapter to have due regard to any guidance issued by the Church Commissioners on accountability.

#### *Section 13: Interim dean*

43. This section widens the bishop's powers under sections 7(4) and (5) of the 1999 Measure and requires the bishop, in consultation with the Chapter, to appoint a residentiary canon, or another clerk in Holy Orders, who is qualified to hold the office of dean to carry out the functions of the

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<sup>8</sup> See paragraph 7 of this document.

dean where that office is vacant or the dean is unable to discharge functions because of illness, absence or any other reason.

44. Subsection (8) provides that, where a dean has been suspended, removed (pending appeal) or disqualified (pending appeal or an application for a waiver) from acting as a charity trustee by the Charity Commission, the dean is automatically considered to be unable to discharge any of his or her functions for the purposes of section 13.

#### *Section 14: Residentiary canons*

45. The provisions of this section are similar to those in section 8 of the 1999 Measure but provide greater flexibility to facilitate job sharing as the requirement is now for two full-time equivalent residentiary canons.

#### *Section 15: Nominations Committee*

46. Subsections (1) to (4) provide that the Chapter appoints the members of the Nominations Committee and makes provision as to the eligibility for membership and chairing of the Nominations Committee. Subsections (5) and (6) set out the functions of the Nominations Committee.
47. Subsections (7) and (8) provide that the Statutes may make further provision in relation to the composition and functions of the Nominations Committee and that the Chapter may set terms of reference which supplement such provision.

#### *Section 16: Finance Committee and Audit and Risk Committee*

48. Subsection (1) provides that the Chapter appoints the members of the Finance Committee and, if there is one, the Audit and Risk Committee. Subsections (2) to (6) make provision as to the eligibility for membership and chairing of both committees.
49. Subsections (7) to (11) require both committees to keep under review the activities and management of the cathedral in relation to such matters as the Chapter may specify in terms of reference for the committee. When setting such terms of reference, the Chapter must have due regard to any guidance issued by the Church Commissioners and, when issuing such guidance, the Church Commissioners must consult the relevant representative bodies (being such bodies as appear to the Church Commissioners to represent cathedrals in relation to their financial affairs). In addition, the Statutes must make provision as to the composition, functions and proceedings of the Finance Committee and (if there is one) the Audit and Risk Committee.

#### *Section 17: Other committees*

50. Subsections (1) and (2) confer a power on the Chapter to provide in its Constitution for the establishment of committees and sub-committees of the Chapter and that, although the membership of such committees may include persons who are not members of the Chapter, whether such committees must be chaired by a Chapter member.
51. Subsections (3) to (5) require the details of the composition, functions, proceedings and reporting mechanisms to Chapter for any such committees to be set out in a cathedral's Statutes.
52. Subsection (6) requires the Chapter to set terms of reference for each such committee.

#### *Section 18: Advisory bodies*

53. This section permits the Chapter to provide for the establishment of one or more advisory bodies in its Constitution, such as a stakeholder council. An advisory body is not a committee of the Chapter. The Statutes may include provision as to the composition, functions or proceedings of an advisory body (such as a stakeholder council) and the Chapter may set terms of reference for any such advisory body.

### *Section 19: Senior management group*

54. Subsection (1) lists the roles of those who must be included in the membership of the senior management group, such as the dean, those residentiary canons with responsibility for a particular department, the person or persons holding the “chief officer” roles and such other senior members of staff (both clerical and lay) as the Chapter considers appropriate. Subsection (2) requires the Statutes to provide for how this group is to operate and be held accountable to the Chapter.

### *Section 20: Property held by Chapter as trustee*

55. Subsection (1) provides that the cathedral church building and any outstanding inventory object<sup>9</sup> may not be charged with any debts or liabilities of the Chapter and are inalienable. Subsection (2) clarifies that no value is to be given on the Chapter’s balance sheet for the cathedral church building or any outstanding inventory object.
56. Subsections (3) to (5) provide that, should the Chapter cease to exist for any reason, the trusteeship of the cathedral church building and any outstanding inventory object automatically vests in the diocesan board of finance (**DBF**), to be held on the same trusts they were held on immediately before the transfer. The trusteeship of the cathedral church building and of any outstanding inventory object can then only be transferred on by the DBF with the consent of the diocesan bishop.

### *Section 21: Acquisition of land*

57. Subsections (1), (2) and (4) to (6) are similar to those in section 15 of the 1999 Measure in relation to the acquisition of land by Chapters. A Chapter may not acquire land without the consent of the Church Commissioners unless the acquisition is by gift, or the transaction falls within an Excepting Order made by the Church Commissioners under subsection (4), so that consent is not required for certain acquisitions.
58. Subsection (3) confers a new power on Chapters to disclaim a gift of land with the consent of the Church Commissioners. It is anticipated that this power would be exercised in circumstances where the gift would be onerous, or the donor’s identity was such that the reputational damage of accepting the gift would outweigh the benefit to the cathedral of accepting gift.

### *Section 22: Disposal of land*

59. Subsections (1) to (5) are similar to the provisions in section 15 of the 1999 Measure in relation to the disposal of land by Chapters. The consent of the Church Commissioners is still required for all property transactions other than those which are either excluded in the Measure or are subject to an Excepting Order made by the Church Commissioners under subsection (4) which can exclude specific types of transactions from requiring consent. Subsection (3) provides that subsections (1) and (2) do not apply to a house occupied by an office holder who is subject to common tenure, because protection is provided to clergy on common tenure by the Ecclesiastical Offices (Terms of Service) Regulations 2009.
60. Subsection (6) provides that those dispositions for which the Church Commissioners’ consent is not required (pursuant to the Excepting Order in force at that time) must comply with the general charity law requirements with which charities must comply when disposing of an interest in land in sections 117 – 126 of the Charities Act 2011.
61. Section 20(7) permits the Church Commissioners to consent to a disposition at an undervalue, reflecting section 15(3) of the 1999 Measure. However, such consent is not needed if the Church Commissioners give a statement in writing that the disposal is of the kind described in section 117(3)(c) or (d) of the Charities Act 2011 (transaction at an undervalue).

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<sup>9</sup>Defined in subsection (6) as an object which is included in the inventory compiled and maintained for the cathedral for the purposes of section 24(1)(a) of the Care of Cathedrals Measure 2011 and is designated in that inventory as outstanding.

*Section 23: Questions as to whether property is permanently endowed*

62. This section confers a new power on the Church Commissioners to determine whether or not property held by the Chapter is permanently endowed where its status is unclear. This new power is designed to address the problem that, due to the age of some historic funds and properties, Chapters do not always have records of the trusts on which certain funds were originally gifted. Where the Church Commissioners exercise this power, the classification of that property would be determined definitively. The Church Commissioners already exercise a similar power to determine whether or not land is glebe and this power is designed to act in a similar way. This power does not permit the Church Commissioners to re-categorise property or funds which are known to be permanently endowed as non-endowment property.

*Section 24: Investment powers, etc.*

63. Subsections (1) to (4) and (6) are similar to the investment powers in section 16 of the 1999 Measure. Subsection (5) makes it clear that the power of investment cannot be used to invest endowment monies (capital) in improving non-endowment properties.
64. At present, cathedrals may use the powers in the 1999 Measure to adopt a total return approach to investment. However, once cathedrals become subject to the Charities Act 2011, they will, instead, use the provisions in section 104A and section 104B of the Charities Act 2011 and the Total Return Regulations 2013 to adopt a total return approach to investment. Regulation 4 of the Total Return Regulations 2013 permits charities to borrow up to 10 percent of their permanent endowment and to make such arrangements as they think fit to repay the borrowing. Subsection (7) requires cathedrals to obtain the Church Commissioners' consent before they can borrow up to 10 percent from their endowment under Regulation 4.
65. Subsection (8) is a transitional provision so that cathedrals which adopted a total return approach under the 1999 Measure can continue as before without needing to pass a new resolution under the Charities Act 2011.

*Section 25: Proceeds of disposal forming part of endowment*

66. This section is similar to section 17 of the 1999 Measure, with clarification that it refers to the permanent endowment of a cathedral. Subsection (2) confirms that this section does not relate to property that is inalienable pursuant to section 20(1).

*Section 26: Allocation of housing*

67. This section is similar to section 19 of the 1999 Measure and confers power on the Chapter to allocate a house vested in the Chapter for the use of a person holding office in connection with the cathedral as a residence from which to perform their duties.

*Section 27: Inspection of cathedral property*

68. This section requires a five-yearly inspection of the property a Chapter is liable to repair and maintain. It is similar to section 20 of the 1999 Measure, with section 27(3)(c) including a new requirement for a copy of the inspection report to also be sent to the Church Commissioners.

*Section 28: Payments from Church Commissioners' general fund*

69. Subsection (1) requires the Church Commissioners to pay the stipends of the dean and two full-time equivalent residentiary canons. Any additional payments by the Chapter to the dean or those residentiary canons need the approval of the Church Commissioners under subsection (2) and the Church Commissioners may make grants towards the removal costs for a dean or those residentiary canons pursuant to subsection (3).
70. This section also confers power on the Church Commissioners to make other grants for cathedral clergy housing and to pay the stipend or salary of any other member of the cathedral clergy or of a person who is employed by the Chapter or who is engaged to provide services in connection with the cathedral. This section also confers power on the Church Commissioners to make grants

to cover chancel repair costs and to such bodies as represent cathedrals, for the purpose of supporting cathedrals.

#### *Section 29: Borrowing powers*

71. Subsections (1) and (2) reflect the provisions of section 26 of the 1999 Measure to confer power on the Chapter to borrow money for any purpose connected with the cathedral. This power is subject to the proviso that, if the purpose for which the borrowed money is being applied is such that, had the Chapter used money forming part of the cathedral's endowment for that purpose the Chapter would have had to seek the Commissioners' prior consent, the Chapter would also require the Commissioners' consent to borrow that money.
72. Subsection (3) is a new protection recommended by the CWG Report. In addition to complying with the charity law requirement that the Chapter can demonstrate that any prospective debt can be serviced and repaid, Chapters will need to seek the Church Commissioners' consent if the new borrowing would cause the cathedral's total borrowings to exceed such thresholds as may be set by the Church Commissioners from time to time by Order.

#### *Section 30: Accounting matters*

73. Once cathedrals are subject to the Charities Act 2011, they will be required to prepare accounts in accordance with the Charities Act 2011, the Charity SORP<sup>10</sup> and any applicable regulations in the same way as all other charities. Chapters will not be subject to any additional accounting requirements in the Measure.
74. Subsection (1) is an enabling power so that the Church Commissioners can set the financial year end date for Chapters.
75. Subsection (2) requires Chapters to file their accounts with the Church Commissioners and the bishop within 10 months of the end of their financial year. Chapters will also be required under subsection (3) to provide the Church Commissioners with such other financial information as they may specify by Order. However, if such an order is to apply to all cathedrals, subsection (4) requires the Church Commissioners to consult those bodies which represent cathedrals in relation to their financial affairs.

#### *Sections 31 to 34: Amendment of Governing Instruments*

76. Sections 31 to 34 are broadly similar to the provisions in sections 28 to 32 of the 1999 Measure, with the power to amend the Constitution and Statutes being conferred on the Chapter under section 31(1).

#### Section 31: Revision of Constitution and Statutes

77. Subsections (1) and (2) provide that any changes to (or the replacements of) the Constitution and Statutes require the consent of the bishop and of the Church Commissioners (who must consult the Secretary General of the General Synod under subsection (4)). Subsection (7) permits the bishop to propose such changes for consideration by the Chapter, too.
78. Subsection (3) confirms that amendments which would be "regulated alterations" under charity law may not be made to the Statutes.
79. Subsection (6) provides that, should the Chapter so request, the Church Commissioners can prepare the amendments to the Constitution and/or Statutes as well as draft Instrument for the Chapter.

#### Section 32: Consultation

80. The consultation procedures for the revision of Constitutions and Statutes in sections 29 and 30 of the 1999 Measure are broadly reflected in section 32, with updates to provide for the use of technology in the consultation process.

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<sup>10</sup> Statement of Recommended Practice.

### Section 33: Consents

81. This section requires Chapters to obtain consent from the Church Commissioners, the diocesan bishop and, where consent is required in relation to the amendments proposed under charity law, from the Charity Commission. Subsection (3) provides that any amendments which affect any right or interest of the Crown require Her Majesty's consent.

### Section 34: Formalities

82. This section requires the instrument amending the Constitution or Statutes to be signed by the dean and sent to the Church Commissioners. If the Church Commissioners are content with the Instrument, they must certify that to the Chapter and the Instrument comes into operation on the date of that certificate. The Chapter must file a copy of any Instrument which makes changes to their Constitution with the Charity Commission within 15 working days of receiving the certificate from the Church Commissioners.

### *Sections 35 – 39: Safeguarding*

83. These new safeguarding provisions are designed to impose safeguarding restrictions on who may be a Chapter member in addition to those imposed by charity law. They are similar to the safeguarding provisions in the Church Representation Rules.

### Section 35: Duty to have due regard to guidance

84. This section requires the Chapter to have “due regard” to House of Bishops’ safeguarding guidance. Should the draft Safeguarding (Code of Practice) Measure complete its passage through the Synodical and Parliamentary processes, the duty to have “due regard” to safeguarding guidance will be replaced with a duty to comply with the requirements in a safeguarding code of practice.

### Section 36: Disqualification

85. Subsections (1) to (3) set out when a person will be disqualified from being a member of the Chapter and subsections (4) to (8) provide how a bishop may waive this disqualification in consultation with the diocesan safeguarding adviser.

### Section 37: Suspension

86. Subsections (1) and (2) enable the bishop to act quickly to suspend a person who is considered to pose a significant risk of harm (as defined in subsection (5)) as soon as a concern is raised. The remaining subsections set out when and how a person may be suspended, that suspension expires and that suspension may be revoked.

### Section 38: Appeal against suspension

87. This section sets out how a person may appeal against a suspension to the President of Tribunals.

### Section 39: Interpretation (sections 36 and 37)

88. This section contains a number of definitions of terms used in sections 36 and 37. These definitions are the same as those used in the Safeguarding and Clergy Discipline Measure 2016.

### *Section 40: Modification of Church Representation Rules, etc*

89. This section relates to cathedrals all or part of which are a parish church and is broadly similar to the provisions of section 12 of the 1999 Measure, updated as required. Subsections (3) and (4) list specific Rules in the Church Representation Rules and sections of the Parochial Church Council (Powers) Measure 1956 which are modified by this section.

### *Section 41: Scheme for a cathedral to cease to be parish church*

90. This section confers power on the Church Commissioners to make a scheme if a cathedral, all or part of which is a parish church, would like to cease to have a parish.

*Section 42: Removal etc. from cathedral office*

91. This section amends section 3 of the Ecclesiastical Offices (Terms of Service) Measure 2009 to require a bishop:
- a) to remove a dean or residentiary canon from ecclesiastical office, within 30 days, if he or she has been disqualified from acting as a charity trustee by the Charity Commission and that disqualification has not been waived and all and any appeal processes have been exhausted.
  - b) to suspend a dean or residentiary canon from ecclesiastical office where they have been suspended under the Charities Act 2011, until the end of the period of suspension.
92. Subsection (3) provides that the bishop has powers to remove or suspend a dean or residentiary canon under the same circumstances where that person holds freehold office.

*Section 43: Termination of senior management role*

93. This section provides for the termination of employment of a chief officer or other person employed by the Chapter with senior management functions should they be disqualified from holding that position by the Charity Commission.

*Section 44: Exemption from liability in damages*

94. As the Church Commissioners will play an increased role in regulating cathedrals, this section exempts the Church Commissioners from any liability in damages for anything which the Church Commissioners (or its officers) may do (or omit to do) in discharge of their statutory powers and regulatory functions under the Measure.

*Section 45: Interpretation*

95. This section defines a number of words and phrases used in the Measure. Subsection (5) provides for certain changes to the Measure in relation to the three cathedrals in the diocese of Leeds, as it is the only diocese with more than one cathedral.

*Section 46: Preparatory steps by Councils*

96. Subsections (1) and (2) provide that the procedures under sections 31 to 34 of the Measure must be followed, to adopt the new Constitution and Statutes to comply with the requirements of the Measure, as if the references to the Chapter in sections 31 to 34 were references to the Council.
97. Subsections (3) to (5) provide that, if the Church Commissioners are satisfied that the cathedral Council has prepared compliant Constitution and Statutes, they must certify to the Charity Commission and the Chapter that the Constitution and Statutes have been revised in readiness for the implementation of the Measure. The certificate will provide the date on which the revised Constitution and Statutes take effect and most of the provisions of the Measure will come into force in relation to that cathedral on that date. The certificate must also specify the date on which the charity provisions will come into force for that cathedral, which must not be earlier than three months after the date on which the new Constitution and Statutes come into force and must not be later than three years after the date on which the Measure is passed.
98. Subsections (6) and (7) confer power on the Church Commissioners to step in to provide the new Constitution and Statutes if there is, in the opinion of the Church Commissioners, an “unreasonable” delay in a Council adopting a new Constitution and Statutes. An appeal by a Chapter against such a decision made by the Church Commissioners would be determined by the Archbishop of the Province.

*Section 47: Transfer of trust property*

99. A number of (fairly) small trusts are held by the Church Commissioners on trust in connection with certain cathedrals. This section transfers each of these small trusts (listed in Schedule 3) to the relevant cathedral’s Chapter to be applied for that cathedral’s general purposes. Any funds

transferred under this section are automatically released from any restriction on the expenditure of the fund's capital that may have been in place prior to the transfer.

*Section 48: Saving for existing interests*

100. This section sets out saving provisions for cathedral clergy on freehold tenure.

*Section 49: Special provision for Ripon Cathedral*

101. For historical reasons, Ripon was not a parish church cathedral for the purposes of the Cathedrals Measure 1963, but it is a cathedral which has a parish. As a result, Ripon is the only cathedral which has both a Chapter and a PCC (which is itself a registered charity). This section places Ripon in the same legal position as parish church cathedrals for these purposes so that Ripon's Chapter also operates as the parish's PCC. This section has the support of the Chapter of Ripon Cathedral and of the PCC of the relevant parish and will come into force on the date Ripon adopts its new Constitution and Statutes.

*Sections 50 and 51: Consequential amendments and Repeals*

102. Section 50 refers to the consequential amendments set out in Schedule 4.

103. Section 51 repeals the 1999 Measure and lists the repeals in consequence of the repeal of the 1999 Measure.

*Section 52: Application and extent*

104. This Measure applies to all cathedrals in England, other than to Christ Church, Oxford (as is the case for the 1999 Measure).

*Section 53: Commencement*

105. Subsection (1) lists the provisions that come into force on the day the Measure is passed.

106. Subsection (2) provides that sections 31 to 34 will be come into force as if references to the Chapter were references to the Council.

107. Subsections (3) to (5) provides that the rest of the Measure's provisions, other than the charity provisions, come into force in relation to each cathedral on the day on which its new Constitution and Statutes are certified as adopted.

108. Subsections (6) to (8) provide for the charity provisions to come into force for each cathedral on the date specified in the Church Commissioners' certificate.

109. Subsection (9) requires the Archbishops Council to publish the date the Measure comes into force in relation to each cathedral, as well as the date the charity provisions come into force for each cathedral.

*Schedule 1: The Chapter of a cathedral*

Paragraph 1: Membership

110. Sub-paragraph (1) sets out who the members of the Chapter are.

111. Sub-paragraphs (2) to (4) provide that all references to "executive" Chapter members are to the dean and to each residentiary canon who carries out cathedral duties, with any question as to the nature of a residentiary canon's duties being determined by the bishop as Visitor. All other Chapter members are referred to as "non-executive" (sub-paragraph (5)).

112. Sub-paragraphs (6) to (8) require the Chapter to have a majority of non-executive members and the Chapter should have at least eight but not normally more than twelve members, unless the Cathedral is required to have a larger Chapter in order to ensure that a majority of the Chapter's members are non-executive. In addition, two thirds of the non-executive Chapter members are required to be lay.

#### Paragraph 2: Eligibility, etc.

113. Sub-paragraphs (1) and (2) provide that a person who is disqualified from acting as a charity trustee (by charity law), or pursuant to section 36 of the Measure, is not eligible to be a member of the Chapter.
114. Sub-paragraphs (3) to (5) provide that a chief officer cannot be a member of the Chapter. However, a transitional provision was included to provide that, where a chief officer is a member of a Chapter immediately before the new Constitution and Statutes come into force for that cathedral, the Chapter can apply to the Charity Commission for permission for that Administrator to continue to be a member of the Chapter.
115. Sub-paragraph (6) requires all Chapter members to be aged 16 or over.
116. Sub-paragraphs (7) and (8) require all non-executive Chapter members to be Christian, the majority of whom should be actual communicants under Rule 83(2) of the Church Representation Rules.
117. Sub-paragraph (9) requires at least one non-executive member of the Chapter to have recent and relevant financial experience.

#### Paragraph 3: Non-executive members: appointment or election

118. Sub-paragraph (1) provides that all but one of the non-executive Chapter members (other than the residentiary canons) are appointed by the other Chapter members, subject to the bishop's approval. Sub-paragraph (5) provides that the bishop appoints one non-executive member of the Chapter (who is not a residentiary canon) and the bishop must consult the Chapter before making the appointment.
119. Sub-paragraphs (2) to (4) provide that, if the Chapter's Constitution so provides, up to one-third of the non-executive Chapter members can be elected in accordance with the procedures set out in these sub-paragraphs and that Chapter's Statutes.

#### Paragraph 4: Emoluments and expenses

120. Sub-paragraphs (1) and (2) authorise the executive Chapter members to receive stipends and other emoluments in relation to their non-trustee functions.
121. Sub-paragraphs (3), (4) and (7) provide that non-executive Chapter members, or persons "connected" to them, are not permitted to receive emoluments from the Chapter in respect of any functions (whether as a charity trustee or otherwise) relating to the cathedral.
122. Sub-paragraphs (5) and (6) permit all Chapter members to be reimbursed for reasonable expenses, but disapplies section 185 Charities Act 2011, so that Chapter members cannot be paid under a contract with the Chapter to provide services to the cathedral.

#### Paragraph 5: Senior non-executive member

123. Sub-paragraph (1) provides that the one non-executive member of the Chapter appointed by the bishop is the Senior Non-Executive Member (the **SNEM**) of the Chapter and may be lay or ordained. Sub-paragraph (2) prevents the SNEM being a suffragan or assistant bishop or archdeacon in the diocese or the bishop's chaplain or the diocesan secretary.

#### Paragraph 6: Meetings

124. Sub-paragraph (1) provides that the dean chairs the Chapter's meetings and, in the dean's absence, the SNEM does so. If both the dean and the SNEM are absent, a non-executive member chosen by the members of the Chapter chairs the meeting. Sub-paragraph (2) provides that, where an interim dean has been appointed pursuant to section 13 of the Measure, it is the interim dean and not the SNEM who chairs Chapter meetings.
125. Sub-paragraph (3) enables the Chapter to meet as often as it considers necessary.

126. Sub-paragraph (4) provides that the chief officers must attend Chapter meetings unless the Chapter considers there are circumstances which justify excluding or excusing either or both of the chief officers from the whole or part of the meeting. A chief officer may speak but may not vote at a Chapter meeting.

127. Sub-paragraph (5) gives the dean a casting vote where a vote is tied.

Paragraph 7: Trust corporation

128. This paragraph confers trust corporation status on the Chapter, so that it can act as sole corporate trustee of land.

Paragraph 8: Transfer of Council's trusteeships etc.

129. This paragraph makes provision for the transfer of any trusteeships and rights of appointment etc from the current Council of the cathedral to the Chapter, as the Council (in its current form) will cease to exist.

*Schedule 2: Diocese of Leeds: The College of Canons*

130. Schedule 2 sets out an amended section 3 (College of Canons) for the three cathedrals in the diocese of Leeds, reflecting the provisions in Part 2 of Schedule 2 to the 2013 Reorganisation Scheme made by the Dioceses Commission which created the diocese of Leeds.

*Schedule 3: Transfer of Property*

131. The table in Schedule 3 sets out the list of trusts to be transferred to various cathedrals pursuant to section 47 of the Measure.

*Schedule 4: Consequential amendments*

132. Schedule 4 sets out the consequential amendments to be made to other legislation.

**Proceedings in the General Synod**

*First Consideration*

133. The Measure was introduced into the General Synod for First Consideration in July 2019. A number of points of concern about particular aspects of the Measure were raised but it was generally favourably received and was committed to a Revision Committee.

*Revision Committee*

134. Thirty members of the General Synod submitted proposals for amendment of the Measure within the time allowed by the Standing Orders. The Revision Committee exercised its discretion to consider two further proposals which were not from Synod members, as well as a number of submissions from the Charity Commission which were received during the revision process, as discussions were held between the Legal Office and the Charity Commission throughout.

135. A joint submission from the Association of English Cathedrals and the Cathedrals Administration and Finance Association was submitted through the dean of Sheffield and many of the submissions stated that they are made either on behalf of the Chapter of a specific cathedral or followed discussions with the Chapter. The Revision Committee also considered proposals for amendment to the Measure made by the Steering Committee and by the Legal Office.

136. The Revision Committee made many amendments to the Measure, of which the most significant are summarised below.

The cathedral's role in the diocese

137. The Committee considered several submissions that it was important for the Measure to be clear about the cathedral's central role in the diocese. The Committee accepted this amendment but

considered that the most suitable place to include this reference was in section 1, which now includes a reference to the diocese in the expanded statement of the ecclesiastical purpose of cathedrals.

### Councils

138. Clause 2(2) of the Measure as introduced provided that cathedral Councils in their current form will no longer exist. Although the Revision Committee rejected an amendment proposed to the drafting of this subsection, the Committee decided to amend section 17 of the Measure to make it clear that Chapters could set up advisory bodies that were not committees of the Chapter. Therefore, the Committee agreed an amendment to insert a new section 18 which confers an explicit power on Chapters to set up advisory bodies which are not committees of the Chapter. This power would facilitate Chapters to set up a council of stakeholders<sup>11</sup> should a Chapter wish to do so. Such an advisory council would not have any statutory functions but would have those functions conferred on it by the Chapter, which could include many of the advisory functions currently undertaken by Councils.

### Cathedral community roll

139. A member of Synod drew the Revision Committee's attention to the fact that the Measure as introduced would have continued the position that the community roll in a non-parish church cathedral comprises those engaged in regular work in the non-parish church cathedral (staff and volunteers) as well as those who are habitual worshippers in that cathedral. Taken together with the Church Representation Rules, this would mean that all those on a cathedral's community roll would continue to be represented on the deanery synod, whether or not they were habitual worshippers, which is not consistent with parish representation. This is because it is the habitual worshippers in a cathedral, rather than all those on the cathedral's community roll, who are equivalent to those on the parish electoral roll. As a result of this anomaly, the calculation of the number of lay representatives on a deanery synod for a non-parish church cathedral is artificially inflated by the number of those who are not habitual worshippers on the cathedral's community roll, as the calculation is based on the number of people on that cathedral's community roll, rather than on the number of its habitual worshippers.
140. In order to address this concern, the Revision Committee amended paragraph 3 of Schedule 1 to the Measure to require all non-parish church cathedrals to maintain a roll which lists habitual worshippers. It was also agreed that an amendment resolution under section 7 of the Synodical Government Measure 1969 would be proposed for Synod's consideration (which was passed at February 2020 General Synod). As a result of these amendments, only the number of persons on a non-parish church cathedral's list of habitual worshippers would be used to calculate the number of lay representatives on the deanery synod for that cathedral.<sup>12</sup>
141. The Committee also agreed to the submission to amend paragraph 3 to extend the option to maintain a community roll to parish church cathedrals, to reflect the reality that cathedral communities are common to many cathedrals, regardless of whether or not they happen to operate within a parish setting.

### Bishops attending Chapter meetings

142. Clause 7(3) of the draft Measure as introduced conferred an entitlement on the bishop to attend Chapter meetings and to speak but not vote, with the additional requirement that the bishop attends one Chapter meeting each year.
143. Following consideration of the concerns raised by some 18 submissions on this issue, the Revision Committee amended the Measure to leave out clause 7(3) and (4) of the draft Measure as introduced and inserted a new section 11(2) of the Measure to require the Chapter to hold a

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<sup>11</sup> see section 18.

<sup>12</sup> Note: these provisions were amended further by an amendment proposed by a member of the Synod during Revision on the floor of Synod in February 2020. Following the approval of this further amendment, all provisions relating to community rolls are now in section 6 of the Measure.

“special” meeting of Chapter each year which the bishop is required to attend pursuant to a new section 9(3). Section 11(2) provides that, at the special Chapter meeting each year, the Chapter consults the bishop on the general direction and mission of the cathedral and the bishop may seek the advice of the Chapter on any particular matter. The Revision Committee also considered it appropriate to add a further power to enable the Chapter to invite other clergy and lay people to this meeting, after consultation with the bishop, in a new section 11(3).

#### Accountability of the dean and residentiary canons to the Chapter for their executive functions

144. The Committee received a number of proposals for amendment relating to the accountability of residentiary canons for their executive cathedral duties. Whilst the Committee rejected a number of suggested amendments, it did agree to amend section 12 of the Measure to provide more clarity as to how residentiary canons are to be held accountable to the Chapter for their executive (i.e. non-trustee) functions and section 12(8) and (9) were added to require cathedral clergy to have due regard to guidance issued by the Church Commissioners on accountability.
145. The Committee also considered it appropriate to provide parity between the dean and the residentiary canons on the issue of accountability and so amended the Measure to include a new parallel requirement for the dean to be accountable to the Chapter for his or her executive functions at section 12(6).

#### Finance Committee and Audit and Risk Committee

146. The Committee received a number of submissions on this issue and considered guidance available on good practice in relation to the separation of the finance and the audit and risk functions in charities. The Committee also noted that, although it may be preferable from a good governance perspective for all Chapters to have two separate committees (i.e. a Finance Committee and an Audit and Risk Committee) there was no legal imperative to require all Chapters to do so. In particular, the Committee noted the concern that some of the smaller cathedrals would, in practice, struggle to populate two committees with people who have appropriate expertise. Therefore, the Committee amended sections 5(1)(i) and (j) and 16 of the Measure to allow each Chapter to make its own decision as to whether it should have an Audit and Risk Committee in addition to a Finance Committee. However, the amended Measure does require a Chapter which decides not to set up an Audit and Risk Committee to make alternative arrangements to provide for the management of risk and the oversight of external and internal audit.
147. In addition, the Committee amended the Measure so that section 16 provides that, where a Chapter does set up two separate committees, the chairs of the two committees must not be the same person. This was achieved by section 16(2) requiring the chair of the Finance Committee to be a non-executive Chapter member and section 16(4) requiring that the chair of the Audit and Risk Committee must not be a member of the Chapter.

#### Committees of Chapter – membership and reporting requirements

148. Clause 15(2)<sup>13</sup> of the Measure as introduced provided that Chapter committees may have members who are not also members of the Chapter but required all such committees to be chaired by a Chapter member. The Committee considered seven submissions in relation to such committees and proposals to amend the Measure to provide for their accountability to and oversight by the Chapter, without requiring an unreasonable level of time to be committed by Chapter members by having to serve on numerous committees.
149. The Committee agreed to amend the Measure to provide that Chapters must make provision in their Statutes for the chairing of each committee or sub-committee, including whether the chair must be a member of the Chapter, as well as for how each such committee or sub-committee is to report its proceedings to the Chapter. The Committee considered that these amendments would enable Chapters to be more flexible as to how they provide for the chairing and membership of

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<sup>13</sup> Section 17 of the Measure

their various Chapter committees to reflect local circumstances and the roles and functions of the various committees.

#### Financial Year End

150. Section 30(1) confers an enabling power on the Church Commissioners to set the financial year end date (**FYE**) for cathedrals. Four submissions requested that the Measure be amended to leave out this power as it was contrary to the principle of providing the maximum flexibility to cathedrals to reflect their local circumstances. The Committee sought the views of those ten cathedrals which do not currently have a FYE of 31 December. Three cathedrals confirmed that they would not object to moving their FYE to 31 December (provided they had adequate notice) and three confirmed they had strong objections.
151. Therefore, the Committee rejected this amendment and decided that the enabling power should be retained on the basis that, although the Church Commissioners indicated that they do not intend to exercise this power when the Measure comes into force, it would be prudent to retain it so that it could be exercised should it be expedient to do so, in the future.

#### Removal from Office

152. Section 42 of the Measure amends section 3 of the Ecclesiastical Offices (Terms of Service) Measure 2009. As originally introduced (at clause 40), the Measure required a bishop to remove a dean, a residentiary canon or an incumbent from ecclesiastical office, within 30 days, if they have been disqualified from acting as a charity trustee by the Charity Commission and that disqualification has not been waived and all and any appeal processes have been exhausted. The Committee received four submissions that the inclusion of incumbents in this clause was too wide and that it should be limited to cathedral clergy only. Following consideration of comments from Synod members and discussions with the Charity Commission on how this section would work in practice, the Committee amended this clause so that section 42 of the Measure:
- a) only refers to cathedral clergy, as the Committee considered that a separate Measure should provide for the removal and suspension of non-cathedral clergy;
  - b) provides that a bishop suspends a person from office whilst they appeal against/apply for a waiver from any removal or disqualification under charity law; and
  - c) provides that if a person is suspended by the Charity Commission, they are suspended from ecclesiastical office for the same period.

#### Commencement of the Measure and Chapters becoming charities in law

153. The Charity Commission requested that no Chapter is brought within its regulatory jurisdiction until after it has adopted its new Constitution and Statutes so that its new governance structure is in place. The Committee considered this request carefully and agreed to make significant amendments to clauses 32, 43 and 48<sup>14</sup> of the Measure as introduced to provide for the staged commencement of the Measure as requested by the Charity Commission.
154. In addition, following discussions around the practicalities of registration of Chapters with the Charity Commission, and to facilitate the Charity Commission to undertake due diligence on Chapters to ascertain that they are “ready” for registration, the Committee also agreed a number of further amendments to facilitate the way in which the Charity Commission envisages processing registration applications by Chapters. Therefore, the Committee amended the Measure so that sections 34, 46 and 53 provide as follows:
- a) The provisions enabling new Constitutions and Statutes to be adopted will come into force on Royal Assent.
  - b) Once a new Constitution and Statutes have been adopted by a Chapter, the Church Commissioners must issue a certificate confirming that the Constitution and Statutes have

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<sup>14</sup>Now sections 34, 46 and 53 of the Measure.

been adopted and state the date on which the new Constitution and Statutes come into force for that Chapter. The remaining provisions of the Measure will then come into force for that Chapter on the date specified in the certificate as the date on which the Constitution and Statutes come into force, with the exception of the “the charity provisions”.

- c) The “charity provisions” come into force for each Chapter on the date specified as such in a certificate provided by the Church Commissioners. This date must be a minimum of three months after the date on which the new Constitution and Statutes came into force, to enable the new governance structures to be fully in place. It is on that certified date that the Chapter will be brought within the regulatory jurisdiction of the Charity Commission and the law relating to charities will apply to that Chapter. This amendment embeds flexibility so that the Charity Commission and Church Commissioners can agree in the MoU on the registration process how the date on which the “charity provisions” will come into force for each Chapter will be set. For example, it may be that Chapters will be grouped for convenience or, where there are any concerns relating to the readiness of a specific Chapter and so it needs more time to resolve certain issues, a later date can be agreed between the Charity Commission and Church Commissioners for that certificate.
- d) Once the charity provisions come into force for a Chapter, that Chapter is then required to apply to the Charity Commission for registration as a charity.
- e) All Chapters must be brought within the Charity Commission’s regulatory jurisdiction by 31 March 2023<sup>15</sup>.

#### Who are the “executive” Chapter members?

- 155. Paragraph 1(2) of Schedule 1 of the Measure sets out which Chapter members are the “executive” members of the Chapter. The Committee considered three submissions which raised concern about the definition in the Measure as introduced on those residentiary canons who were primarily engaged on diocesan business as well as those residentiary canons who chose to be Self Supporting Priests or House for Duty Priests.
- 156. Following much discussion on the issues raised, the Committee agreed that whether a residentiary canon is an executive or a non-executive Chapter member should depend on their role in the cathedral, rather than on their being remunerated for undertaking it. This means that a residentiary canon who has operational responsibilities and management functions in the cathedral is an executive Chapter member even if they are a self-supporting priest, a house for duty priest or if their stipend is paid in whole or in part by a third party (e.g. the diocese or a charity). Therefore, the Committee agreed to amend paragraph 1(2)(b) to define an executive residentiary canon as one who carries out “cathedral duties”, which is defined in section 45 of the Measure.

#### Administrators

- 157. The 1999 Measure provides cathedrals with the option to appoint the Administrator as a member of Chapter but, at present, only a small number of cathedrals do so. Paragraph 2(3) of Schedule 1 explicitly prevents a chief officer from being a member of the Chapter. The Committee considered a number of submissions that Administrators be permitted to be members of the Chapter but rejected them as the purpose of removing the option for a chief officer to be a Chapter member was to facilitate good governance by providing, insofar as was possible, a separation between the governance and management functions in the cathedral.
- 158. However, the Revision Committee decided to amend the Measure to include transitional provisions in paragraph 2(4) and (5) of Schedule 1 to enable those Administrators who are members of their Chapter when the Measure comes into force to continue to be a member of the Chapter until the Charity Commission decides whether or not it authorises the Administrator to continue to be a member of the Chapter.

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<sup>15</sup> Note – this was amended at Final Drafting to three years after Royal Assent (see paragraph 173 below),

### The vice-chair and the appointment of non-executive Chapter members

159. The Committee considered a significant number of concerns and proposals for amendment relating to paragraphs 3, 5 and 6 of Schedule 1 and the proposal that a vice-chair be appointed by the bishop. The Committee considered these concerns together with the many submissions received on the proposals in the Measure for the appointment of non-executive Chapter members, as they underpin and support key aspects of the relationship between the bishop and the Chapter. The Steering Committee set up a working party sub-group to consider these issues and propose amendments to the Revision Committee, accordingly.
160. The Committee considered that the use of the term “vice-chair” had contributed to a misunderstanding of the intended role which was, in fact, that of a senior non-executive member. Following careful consideration, the Committee agreed to recast this role as a Senior Non-Executive Member (SNEM) as it more accurately expressed the role being appointed by the bishop. Although the SNEM’s role description includes chairing Chapter meetings in the dean’s temporary absence, the change of title clarifies that the SNEM’s role is quite distinct from that of the sub-dean (where such a role exists).
161. Other material amendments made by the Committee to paragraph 3 are:
- a) Sub-paragraph (3) now requires that the bishop, the Chapter and the Nominations Committee approve the candidates standing for election as non-executive Chapter members by the cathedral community;
  - b) those elected “by” the cathedral community do not also need to be “from” the cathedral community, to widen the pool of eligible candidates; and
  - c) sub-paragraph (5) requires the bishop to consult the Chapter before appointing the SNEM.

### *Revision Stage at General Synod*

162. The Revision Committee reported to the General Synod in February 2020 and the Measure was then considered at the Revision Stage in full Synod. Further amendments were tabled at Revision Stage.
163. Synod members tabled the following amendments:
- a) An amendment to section 1(b), to leave out the words “and work” and insert “, work and unity” was tabled but did not receive the support of 40 members of Synod and therefore lapsed without debate.
  - b) Three amendments were tabled to add a new clause after clause 5 and to amend paragraph 3 of Schedule 1 and paragraph 12 of Schedule 5 in relation to cathedral community rolls. These amendments would replace the requirement to create an “habitual worshipper” list for non-parish church cathedrals with a requirement to create a list which reflects the requirements in the Church Representation Rules for a person to be on the electoral roll of a parish church. As a result, only those persons who would be eligible for inclusion on a parish electoral roll, rather than those who would be eligible for inclusion on the habitual worshipper list in a Royal Peculiar, would be taken into account when deciding how many lay representatives a non-parish church cathedral has in the deanery synod. Another important result of this change is that the same test would apply to all cathedrals, whether they have a parish or not. All three amendments were supported by the Steering Committee and were carried by the General Synod.
  - c) An amendment to section 10(1) was tabled to add a reference to finances after “affairs”, but it did not receive the support of 40 members of Synod and therefore lapsed without debate.

- d) An amendment was tabled to paragraph 5(2)(a) of Schedule 1 to provide that the Senior Non-Executive Member may not be a suffragan or assistant bishop or archdeacon in the diocese or the bishop’s chaplain or the diocesan secretary. This amendment was supported by the Steering Committee and was carried by the General Synod.

164. The Steering Committee tabled the following amendments:

- a) The Steering Committee tabled three amendments to clause 41 (now section 42) so that the bishop has the same power to remove and suspend a dean or residentiary canon who holds a freehold office as they do for a dean or residentiary canon on common tenure. As there are a very small number of residentiary canons who still hold freehold office, this was necessary to ensure that, should the Charity Commission need to exercise its statutory powers to remove or suspend any dean or residentiary canon as a charity trustee, the Measure will provide for them to be removed from their ecclesiastical office in the cathedral too. This amendment was carried by the General Synod.
- b) The Steering Committee tabled an amendment to paragraph 1 of Schedule 1 to enable the Chapter to determine whether the “cathedral duties” of any residentiary canon are of such minor nature that they should be disregarded for these purposes; and provides that, if there is a dispute on this issue, the bishop, as Visitor, has the power to determine the question. This amendment was carried by the General Synod.
- c) The Steering Committee tabled an amendment to leave out paragraph 5(2)(b) as introduced and new paragraph 5(3) of Schedule 1. This amendment was to reflect an amendment made to paragraph 2 of Schedule 1 by the Revision Committee, at the request of the Charity Commission, in order not to limit inadvertently the role or function of the Senior Non-Executive Member in their capacity as a charity trustee. As new paragraph 5(3) of Schedule 1 was introduced to clarify paragraph 5(2)(b), the amendment tabled was to remove both paragraph 5(2)(b) and (3) as, without paragraph 5(2)(b), paragraph 5(3) served no purpose. This amendment was carried by the General Synod.

### *Final Drafting*

- 165. The Final Drafting Stage and Final Approval Stage were taken in November 2020. At Final Drafting, the Synod took note of the Steering Committee’s report, which set out a number of drafting amendments which had been made to the Measure:
- 166. The Steering Committee also proposed a number of special amendments, all of which were accepted by the General Synod. These special amendments are explained below.

### The existing body corporate of the cathedral to continue as the Chapter

- 167. A special amendment and eleven consequential amendments were made to a number of clauses to provide that, instead of the existing corporate body of the cathedral ceasing to exist, so that all its employees and assets need to be transferred to a new corporate entity (i.e. the Chapter), the existing corporate body would continue to exist but two of its three constituent parts (i.e. the Council and the College of Canons) will no longer be part of that body corporate. The continuing corporate body would only comprise the Chapter.
- 168. These special amendments were necessary because the Measure as originally drafted provided for the existing body corporate of a cathedral to cease to exist and all its assets, liabilities etc to be transferred to the Chapter, as the new corporate entity. Under secular pensions law<sup>16</sup> this process would normally trigger a pension scheme debt liability, known as a “section 75 debt”, that can be considerable. Although the Church of England’s Clergy and Church Workers’ Pension Schemes both include specific provisions which enable steps to be taken in this situation to avoid any section 75 debt being triggered, it was brought to the Steering Committee’s attention

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<sup>16</sup> Section 75 Pensions Act 1995

that some cathedrals do not use the Church Workers Pension Scheme. Therefore, these special amendments were made to avoid incurring a section 75 debt for those cathedrals which do not use the Church Workers Pension Scheme.

169. Specialist pensions advice was sought by the Church of England Pension Board which confirmed that these amendments make it clear that the current body corporate will continue in existence. As the current body corporate will continue to employ the current active members of the various pension schemes, no debts will arise under section 75 in relation to the operation of the Measure as now drafted.
170. A helpful consequence of these special amendments is that it has simplified the implementation process of the Measure for cathedrals, as there will be no need to transfer any employees (i.e. no TUPE<sup>17</sup> process), contracts, properties etc from the existing body corporate to a new body corporate.

#### Visitation

171. A special amendment was made to enable the Church Commissioners to agree how the bishop will exercise his or her Visitation powers in discussion with the Charity Commission, through statutory guidance to which the bishop would be required to have due regard. This is necessary as the MoU will be entered into by the Church Commissioners and not the bishops.

#### Endowment

172. A special amendment was made to clarify that the power of investment cannot be used to invest endowment monies (capital) in improving non-endowment properties.

#### Longstop date for registration

173. The Steering Committee proposed a special amendment to extend the longstop date as it was concerned that the delay to Final Approval and the Parliamentary stages of the legislative process due to the pandemic, as well as the financial crisis resulting from it, would make it difficult for all cathedrals to be ready to register with the Charity Commission by 31 March 2023. Therefore, it was agreed with the Charity Commission that the long-stop date should be extended to three years after the date on which the Cathedrals Measure receives Royal Assent.

#### Ripon Cathedral

174. For historical reasons, Ripon was not a parish church cathedral for the purposes of the Cathedrals Measure 1963 (the “**1963 Measure**”), but it is a cathedral which has a parish. As a result, Ripon is the only cathedral which has both a Chapter and a PCC (which is itself a registered charity). This historical anomaly is administratively onerous and costly and raises complex governance issues. Therefore, special amendments were made to put Ripon in the same legal position as parish church cathedrals for these purposes so that Ripon’s Chapter also operates as the parish’s PCC. These special amendments were supported by the Chapter of Ripon Cathedral and by the PCC of the relevant parish and will come into force on the date Ripon adopts its new Constitution and Statutes.

#### Newcastle Chapter Endowment Fund

175. A special amendment repealed the reference to the Newcastle Cathedral Endowment Fund in section 40 of the 1963 Measure because it is one of the funds listed in Schedule 3 to the Measure which will be transferred from the Church Commissioners to a cathedral by the Measure.
176. In addition, because of the changes made to resolve the pension issue, there will no longer be a transfer from the existing cathedral corporation to a new Chapter corporate entity. This means that there is no reason to delay the transfer of the funds listed in Schedule 3 to the date on which the new Constitution and Statutes come into force for that cathedral. Therefore, further special amendments provide for section 40 of the 1963 Measure to be repealed on Royal Assent and for

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<sup>17</sup> Transfer of Undertakings (Protection of Employment) Regulations.

clause 47, which provides for the transfer of all the funds in Schedule 3, to come into force on Royal Assent.

#### Southwark Cathedral

177. It appears that the legal title to the cathedral was not vested in the Chapter under the process provided for in section 44 of the 1963 Measure. Therefore, it was still vested in the Rectory Trustees when the trusts of the Rectory Trustees charity were brought to an end recently. However, as the Rectory Trustees were unaware that they still held the legal title to the cathedral, there was no deed of transfer of the cathedral itself to the Chapter. Therefore, this anomaly was resolved by special amendments which declare that the legal title is vested in the Chapter (which is the beneficial owner) and so ensures that the transfer anticipated by the 1963 Measure is finally given effect. This declaration will come into force on Royal Assent day so that the anomaly is resolved without further delay.
178. Special amendments also amend the 1963 Measure to update the reference to consents etc required to the relevant provisions in the Measure.

#### *Final Approval*

179. At Final Approval support was expressed for the Measure by the members of Synod.
180. The voting on the motion for the final approval of the Measure was as follows:

	<b>In favour</b>	<b>Against</b>
Bishops	32	0
Clergy	125	0
Laity	151	0

Two members in the House of Clergy and three members in the House of Laity recorded abstentions.

#### **Conclusion**

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

On behalf of the Legislative Committee

*Geoffrey Tattersall*

Deputy Chair

January 2021