

GENERAL SYNOD
DRAFT CATHEDRALS MEASURE
Explanatory Notes

A. Introduction

1. The Cathedrals Measure 1999 (the “**1999 Measure**”) sets out the statutory framework for Cathedrals and provides for the regulation of a number of Cathedral activities by the Church Commissioners. 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 which relate 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 2011 Act, to enable the Charity Commission to exercise its regulatory and facilitative powers under the Charities Act 2011 in relation to Cathedrals.
2. The General Synod endorsed the CWG Report¹ in July 2018 and passed a motion requesting that the Archbishops’ Council bring forward a draft Measure for First Consideration at the General Synod in July 2019 to give effect to those recommendations that involve legislative change.
3. This draft Measure has been produced, as requested by Synod, to reflect the recommendations in the CWG Report. The drafting therefore reflects the recommendations made in the CWG Report as approved by Synod in July 2018. The Revision process allows these recommendations to be amended as required. Following First Consideration, Synod members are able to table such amendments as they consider necessary in relation to any provisions in the draft Measure, for consideration by the Revision Committee and the approval of Synod in February 2020.

Proposed co-regulation of Cathedrals by the Charity Commission of England and Wales and the Church Commissioners

4. The CWG Report recommends that Cathedrals should be brought within the definition of “charity” in the 2011 Act, to enable the Charity Commission to exercise its regulatory and facilitative powers under the Charities Act 2011 in relation to them and also that there should be more, rather than less, oversight of Cathedral finances and financial transactions. As the Charity Commission does not regulate many of those activities which are currently regulated by the Church Commissioners, if the draft Measure only provided for Cathedrals to be brought within the definition of “charity” in the 2011 Act, to enable the Charity Commission to exercise its regulatory and facilitative powers under the Charities Act 2011 in relation to them, much of the regulation and scrutiny of (in particular) significant financial transactions made by Cathedrals would be lost.
5. Following discussions with the Charity Commission, it is proposed that the Church Commissioners co-regulate various aspects of Cathedral activity with the Charity

¹ https://www.churchofengland.org/sites/default/files/2018-06/Cathedrals%20Working%20Group%20-%20Final%20Report_0.pdf

Commission. This means that the Charity Commission would be the registrar and regulator of the Cathedrals so far as they are charities in accordance with the framework set out in the Charities Act 2011 and related legislation. However, the Church Commissioners would regulate those Cathedral activities that are not regulated by charity law or the Charity Commission and which the Church Commissioners currently have (or the CWG Report recommends that they should have) regulatory oversight. A summary of the regulatory powers it is proposed are conferred on the Church Commissioners by the draft Measure is set out in the Annex of these Explanatory Notes.

6. The Church Commissioners have approved the proposal for Cathedrals to be co-regulated by the Church Commissioners and the Charity Commission. In principle, the Charity Commission's Board accepts that it would be appropriate to remove what is, in effect, an anomaly that excludes Cathedrals from the definition of charity in the Charities Act 2011. However, it has highlighted a number of areas where it has important concerns that it expects to be addressed to its satisfaction before the proposals can be implemented. The Third Estates Commissioner and members of staff are working closely with the Charity Commission in order to address fully the concerns raised.
7. The Charity Commission has indicated that it would be willing to enter into a formal Memorandum of Understanding with the Church Commissioners, as co-regulator of Cathedrals (an "**MOU**"). This MOU is expected to set out when and how the Charity Commission and the Church Commissioners will work together to regulate Cathedrals generally, as well as if a concern is raised about a Cathedral in the future, for example a Cathedral reports a Serious Incident which the Charity Commission considers requires further investigation. Neither the Measure nor the MOU can limit or restrict the Charity Commission's ability to exercise its regulatory powers in relation to Cathedrals in any way. It is therefore expected that the MOU would also provide for how the Church Commissioners would work in tandem with the Charity Commission should it exercise certain of its statutory powers during a Statutory Inquiry (for example, the removal of a Dean as a charity trustee or the appointment of an Interim Manager).
8. The Charity Commission has had a limited opportunity to comment on the draft Measure, which reflects initial comments made by the Charity Commission in a number of areas. However, the draft Measure continues to be under discussion with the Charity Commission over the coming months and any further amendments that may be considered necessary by the Charity Commission as a result of these on-going discussions will be proposed to the Revision Committee.
9. It is noted that amendments to the draft Measure may also need to be proposed to the Revision Committee following consultation with such other government departments as may be considered necessary and appropriate.

B. Notes on Clauses

Clause 1: Duty to have regard to Cathedral's ecclesiastical purpose

10. This clause reflects s.1 of the 1999 Measure and sets out the duty to exercise functions under the draft Measure with due regard to the fact that the Cathedral is the seat of the bishop and a centre of worship and mission.

Clause 2: The Chapter

11. 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. Therefore, in order to improve the governance of Cathedrals, the CWG Report recommended that all trustee functions should sit with the expanded Chapter, rather than being split between the Chapter and the Council, with the College of Canons also being part of the Cathedral's body corporate. In order to implement this recommendation, s.2(1) provides that the Chapter alone is the body corporate of the Cathedral and s.2(2) of the draft Measure provides that Cathedral Councils in their current form will cease to exist. The functions currently carried out by Councils will, under the draft Measure, be carried out by the reconstituted Chapter, as the charity trustees of the Cathedral. However, Chapters will still have the option of setting up an advisory council of stakeholders (see s.15 and paragraph 45 of these Notes). Such a council would not have any statutory functions but would have those functions delegated to or conferred on it by the Chapter.
12. Details as to the composition etc of the Chapter are set out in Schedule 1 (s.2(3)).

Clause 3: The College of Canons

13. S.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 draft 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. S.3(6) provides that this section is modified by Schedule 2 in relation to the three cathedrals in the diocese of Leeds.

Clause 4: Constitution

14. S.4(1) requires all Cathedral constitutions to include the objects of the Cathedral, which are set out in s.4(1) – (3). A separate heritage object has been included at s.4(1)(b) to make it easier for Cathedrals to apply for grants from those grant makers which expect to see a standalone heritage object. The general object in 1(c) provides comfort to the Chapter that it can continue to undertake those activities which may be in furtherance of (a) or (b) but in a way which is ancillary to those objects rather than directly in furtherance of them. S.4(3) requires the objects to be furthered for the public benefit.
15. S.4(4) lists what the constitutions must include, which is an updated version of the list set out in s.9 of the 1999 Measure. The list includes a requirement for a Cathedral to

have a finance committee and a nominations and development committee, as well as providing for the appointment of statutory roles, such as an architect and an auditor etc.

16. S.4(5) provides for flexibility in the appointment of persons to undertake the administrative functions (referred to as the chief officer roles) in s.4(4)(d)), so that those Cathedrals where it is appropriate to do so can appoint one person to undertake two part-time roles. The Chapter also has discretion over the job titles conferred on the persons holding these administrative roles (s.4(6)).
17. Ss. 4(7) and (8) relate to qualification requirements for specific roles set out in s.4(4).
18. S.4(9) requires the constitutions of those Cathedrals which do not have a parish to provide for the formation and maintenance of a cathedral community roll.
19. S.4(10) requires the constitutions of Cathedrals to explicitly exclude the social investment power which would otherwise be conferred on them by s.292B Charities Act 2011.
20. Ss.4(11) and (12) require Cathedral constitutions to make the same provision for the appointment of the dean as was in place prior to the draft Measure coming into force.

Clause 5: Statutes

21. In addition to the list in s.11 of the 1999 Measure as to what must be provided for in a Cathedral's statutes, s.5(1) of the draft Measure also provides for the following to be included in the statutes:
 - (a) the functions of the chief officers (s.5(2)); and
 - (b) the establishment of the group of senior managers (s.5(3)).

Clause 6: Application of the Charities Act 2011

22. S.6(1) amends s.10 Charities Act 2011 so that Cathedrals are no longer excluded from the jurisdiction of the Charity Commission.
23. Ss.6(2) and (3) amend specified sections of the Charities Act 2011 relating to specific powers of the Charity Commission by expanding the definition of "Act" for the purposes of these sections so that it includes a Measure of the Church Assembly or of the General Synod of the Church of England.
24. Ss.6(4) and (5) confirm that the members of the Cathedral Chapter are the charity trustees of the Chapter for the purposes of the Charities Act 2011 and that the Chapter is subject to the jurisdiction of the High Court. S.6(5) removes any doubt as to whether a Chapter meets one of the legal tests of eligibility for registration as a charity, as a charity must be subject to the High Court's jurisdiction.

Clause 7: The bishop

25. S.7(1) and (2) confirms 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.

26. S.3(2) of the 1999 Measure provides that the bishop is entitled to be present and speak at, but not to vote at, Council meetings. S.7(3) confers a similar 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. In order to enable the Chapter to meet should the bishop seek to exercise this right where it may not be appropriate for the bishop to do so, a restriction on this entitlement has been included at s.7(4), to enable the Chapter to exclude the bishop from certain discussions, where appropriate.
27. S.7(5) provides that the bishop appoints those residentiary canons who are not Crown appointments, subject to the approval of the dean. The bishop may also seek the advice of the Chapter on any matter (s.7(6)).
28. Ss.7(7) – (9) confers power on the bishop to commission a review of such aspects of the Cathedral’s finance, governance, management, operations and mission as he or she considers necessary and appropriate, implementing the CWG Report’s recommendations in relation to a quinquennial assurance review. This power must be exercised in accordance with any guidance provided by the Church Commissioners, as this can be amended fairly easily to enable the evolution of these reviews to meet the needs identified in the future.
29. S.7(10) clarifies that, for the purposes of Schedule 6 of 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*”. This will remove any doubt that the diocesan bishop has the right to appeal a decision of the Charity Commission in relation to their Cathedral and to make an application in the Charity Tribunal accordingly.

Clause 8: The Visitor

30. S.8 provides for the bishop to remain the Visitor for the Cathedral, with the same power to conduct a Visitation as under the 1999 Measure.

Clause 9: The Chapter

31. S.9 of the draft Measure reflects the provisions in s.4(8) of the 1999 Measure, which have been updated to remove any references to the Council of the College of Canons, as they no longer form part of the body corporate of the Cathedral.

Clause 10: The dean

32. Ss.10(1) and (2) set out the ecclesiastical position and duties of the dean, reflecting S.7(1) and (2) of the 1999 Measure, with the addition of new clause 10(2)(c), which provides that the dean is to oversee the work undertaken by Cathedral clergy and staff in relation to the Cathedral.
33. Ss.10(3)-(5) sets out when the dean’s consent is required, reflecting the position in s.7(3) of the 1999 Measure.
34. Ss.10(6) and (7) provides that the clergy and staff of the Cathedral are accountable to the Chapter, through the dean, for their Cathedral duties.

Clause 11: Interim dean

35. This clause expands the bishop's existing powers under ss.7(4) and (5) of the 1999 Measure to appoint a residentiary canon to carry out the dean's functions when the office of the dean is vacant. Ss.11(1) and 11(4) reflect the position in the 1999 Measure, but s.11(1) also enables the bishop to appoint another member of the clergy who is appropriately qualified to be so appointed (s.11(5)), where there is no residentiary canon who is qualified to be appointed as the interim dean. The main reason for widening the group of clergy from which the bishop can appoint an interim dean is to enable a member of the clergy who is not connected to the Chapter to be so appointed, should all the Cathedral clergy be suspended by the Charity Commission during a statutory inquiry (for example as a result of any significant safeguarding concerns).
36. S.11(2) requires the bishop to appoint an interim dean within 30 days of the vacancy arising and s.11(3) provides that all references to the "dean" in the draft Measure are to be read as references to the interim dean where one has been appointed.
37. S.11(6) clarifies 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/her functions under the Measure" and so the bishop has the power to appoint an interim dean in such circumstances.

Clause 12: Residentiary Canons

38. Ss.12(1) – (5) are similar to the provisions of s.8 of the 1999 Measure. However, in accordance with the recommendation in the CWG Report, s.12(1) provides greater flexibility to Cathedrals in relation to job sharing as the requirement is now for two "full time equivalent" residentiary canons. (Note: the definition of "cathedral duties" has been moved to s.42((1).)
39. S.12(6) provides for a different position to be able to apply in relation to the three cathedrals in the diocese of Leeds.

Clause 13: Nominations and Development Committee

40. S.4(4)(h) requires the Chapter's Constitution to establish a Nominations and Development Committee (**NDC**):
 - (a) s.13(1) provides that the members of the NDC are appointed by the Chapter;
 - (b) s.13(2) provides that the NDC must be chaired by a non-executive Chapter member;
 - (c) s.13(3) sets out the functions of the NDC; and
 - (d) s.13(5) provides for the Statutes to make further provision in relation to the composition and functions of the NDC.

Clause 14: Finance, Audit and Risk Committee

41. S.4(4)(i) requires the Chapter's constitution to establish a Finance, Audit and Risk Committee (**FARC**), which may be constituted as two separate committees– a finance committee and an audit and risk committee, if the Cathedral wishes to do so.
42. S.14(1) provides that the members of the FARC are appointed by the Chapter;
43. Ss.14(2) and (3) provide that the FARC must be chaired by a non-executive Chapter member who has relevant financial expertise (and where there are two separate committees, it must be chaired by different suitably qualified non-executive Chapter members).
44. S.14(4) requires the FARC to keep the Cathedral's activities under review, as well as its management of such matters included in the FARC's terms of reference set out by the Chapter. When setting the FARC's terms of reference, the Chapter must have regard to any guidance issues by the Church Commissioners (s.14(5)) and, when issuing such guidance, the Church Commissioners must consult the relevant representative bodies (s.14(6)).

Clause 15: Other committees, etc.

45. S.15(1) confers power on the Chapter to provide in its constitution for the establishment of committees and sub-committees of the Chapter, including stakeholder for the purpose of engaging with stakeholders (and Chapters may wish to refer to such committees as an advisory council).
46. S.15(2) provides that the members of committees of the Chapter may include those who are not members of the Chapter, but that such committees must be chaired by a Chapter member.
47. S.15(3) requires the details of the composition, functions and proceedings of any such committees to be set out in a Cathedral's statutes.

Clause 16: Senior management group

48. S.5(3) of the draft Measure requires the statutes of each Chapter to establish a group comprising those holding the most senior management positions in the Cathedrals, who have responsibility for the day to day management of the Cathedral. S.16(1) lists the roles which this group must include, such as the dean, those residentiary canons with responsibility for a particular department, the person(s) holding the "chief officer" roles and such other senior members of staff (both clerical and lay) as the Chapter considers appropriate. S.16(2) requires the statutes to provide for how this group is to operate and be held accountable to the Chapter.

Clause 17: Vesting of cathedral property in Chapter

49. S.17 reflects the provisions of s.13 of the 1999 Measure but vests the legal title to property in the Chapter, as the body corporate of the Cathedral, rather than in the Cathedral.

Clause 18: Property held by Chapter as trustee

50. S.18(1) provides that the legal title to the cathedral church buildings within the ecclesiastical exemption (i.e. the red line), as well as the legal title to any object designated as “outstanding” in the inventory compiled by the Cathedral pursuant to s.24 Care of Cathedrals Measure 2011 (an “**Outstanding Inventory Object**” defined in s.18(6)), is vested in the Chapter, as trustee, to be held on trust for the objects of the Chapter.
51. S.18(2) provides that the cathedral church building and any Outstanding Inventory Object are not chargeable with any debts or liabilities of the Cathedral and are inalienable.
52. S.18(3) provides 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**) for the relevant diocese, to be held on trust for the Cathedral’s objects and for no other purpose.
53. S.18(4) and (5) provide that, if the DBF becomes the trustee pursuant to s.18(3), the trusteeship of the cathedral church building or of any Outstanding Inventory Object may not be transferred to another trustee without the consent of the diocesan bishop. Where the trusteeship of the cathedral church building or of an Outstanding Inventory Object is transferred to a new trustee pursuant to this clause, the new trustee must continue to hold such property on trust for the Cathedral’s objects and for no other purpose.

Clauses 19: Acquisition of land

54. Ss.19(1) and (2) provide that the Chapter may not acquire land without the consent of the Church Commissioners, unless the acquisition is by gift, reflecting the provisions in s.15 of the 1999 Measure. The Church Commissioners existing power under s.15 of the 1999 Measure to make an Excepting Order is set out in s.19(4) of the draft Measure so that consent is not required for certain acquisitions, using the same procedure as in currently in place under s.15 of the 1999 Measure.
55. s.19(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. This power is designed to assist Chapters to manage a situation which can difficult for charity trustees to navigate.
56. Ss.19(5) and (6) are similar to ss.15(4) and (5) of the 1999 Measure, except that s.19(5) refers to a written statement by the Commissioners, rather than requiring it to be sealed, to simplify the formalities currently required when the Commissioners give consent.

Clauses 20: Disposal of land

57. The existing provisions requiring Cathedrals to obtain the Church Commissioners' consent on the disposal of land in s.15 of the 1999 Measure are reflected in s.20(1) – (5). The consent of the Church Commissioners is still required for all property transactions other than those which are either excluded in the draft Measure or are subject to an Excepting Order. The Church Commissioners continue to have the power to make an Excepting Order under s.20(5) to exclude specific types of dispositions / mortgages from requiring consent. However, s.20(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 in s.117 – 126 Charities Act 2011.
58. S.20(7) permits the Church Commissioners to consent to a disposition at an undervalue, reflecting s.15(3) of the 1999 Measure.
59. Ss.20(8) and (9) are similar to ss.15(4) and (5) of the 1999 Measure, except that s.20(8) refers to a written statement by the Commissioners, rather than requiring it to be sealed, to simplify the formalities currently required when the Commissioners give consent.

Clause 21: Questions as to whether property is permanently endowed

60. S.21 confers a new power on the Church Commissioners to decide whether property is permanently endowed where its status is unclear. This new power is designed to address the problem that, due to the age of some of their historic funds and properties, some Cathedrals have insufficient 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. However, 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.
61. The Church Commissioners already exercise a similar power in determining whether land is glebe or not and this power is designed to act in a similar way.
62. Although this new power does not emanate from a recommendation in the CWG Report, it has been included in the draft Measure following discussions with Cathedrals as it is likely to be of considerable benefit to some Cathedrals.

Clause 22: Investment powers, etc.

63. S.22(1) – (5) reflect the powers in s.16 of the 1999 Measure.
64. At present, Cathedrals may use the powers in s.17A and Schedule A1 of the 1999 Measure to adopt a total return approach to investment. However, once the draft Measure comes into force and Cathedrals become subject to the Charities Act 2011, they will, instead, use the provisions in s.104A, s.104B of the Charities Act 2011 and the Total Return Regulations 2013 to pass a resolution in order to adopt a total return approach to investment.

65. Regulation 4 of the Total Return Regulations 2013 permits charities to borrow up to 10% of their permanent endowment and to make such arrangements as they think fit to repay the borrowing. S.22(6) of the draft Measure requires Cathedrals to obtain the Church Commissioners' consent before they can exercise the power in Reg 4 to borrow up to 10% from their endowment.
66. S.22(7) is a transitional provision which provides that, once the draft Measure comes into force, 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.

Clause 23: Proceeds of disposal forming part of the endowment

67. S.23(1) reflects s.17 of the 1999 Measure, with clarification that it refers to the permanent endowment of a Cathedral. S.23(2) confirms that this clause does not relate to those parts of a Cathedral's permanent endowment that are inalienable (see s.18).

Clause 24: Allocation of housing

68. S.24 reflects s.19 of the 1999 Measure.

Clause 25: Inspection of Cathedral Property

69. S.25 reflects s.20 of the 1999 Measure, with s.25(3)(c) including a new requirement for a copy of the report to also be sent to the Church Commissioners.

Clause 26: Payments from the Church Commissioners' general fund

70. S.26(1) requires the Church Commissioners to pay the stipends of the dean and 2 full time equivalent residentiary canons and s.26(9) acknowledges that a different position may apply for the three cathedrals in the diocese of Leeds.
71. Any additional payments by the Chapter to the dean or these residentiary canons needs the approval of the Church Commissioners under s.26(2).
72. The Church Commissioners may also make other payments authorised by s.26, such as a grant to cover the removal costs for a dean of residentiary canons (s.26(3)), housing grants (s.26(5)) and to cover Chancel repair costs (s.26(6)). The Church Commissioners may also make grants under s.26(4) to pay the stipend etc of any other member of the cathedral clergy or a person who is employed by the Chapter or is engaged to provide services in connection with the Cathedral.
73. All grants paid out by the Church Commissioners under s.26 are from their General Fund (s.26(8)).

Clause 27: Borrowing powers

74. Ss.27 (1) and (2) reflect the provisions of s.26 of the 1999 Measure to confer power on the Chapter to borrow money for any purpose connected with the Cathedral. However, this power is subject to the proviso that the purpose for which the borrowed money is

being applied is such that, if the Chapter had used money forming part of the Cathedral's endowment for that purpose, the Chapter would have had to seek the Commissioners' prior consent, then the Chapter would also require the Commissioners' consent to borrow that money.

75. S.27(3) introduces a new safeguard, as recommended by the CWG Report, which places a new requirement on Cathedrals which are seeking to take on unsecured debt. 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 be required to seek consent from the Church Commissioners if any prospective debt 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.

Clause 28: Accounting matters

76. 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 and any applicable Charity Regulations in the same way as all other charities. Cathedrals will not be subject to any additional accounting requirements in the draft Measure.
77. S.28 (1) confers power on the Church Commissioners to set the financial year end date for Cathedrals.
78. S.28(2) requires Chapters to file their accounts with the Church Commissioners and the bishop within 10 months of the end of the Cathedral's financial year (in addition to the charity law filing requirements). This filing period is designed to sit alongside the Charity Commission's filing deadline, so that the Church Commissioners are alerted to any late filers. Chapters will also be required under s.28(3) to provide the Church Commissioners with such other information as they may specify by Order.

Clauses 29 – 32: Amendment of Governing Instruments

79. ss. 29 – 32 of the draft Measure reflect the provisions in ss.28 - 32 of the 1999 Measure, although the power to make changes to the Cathedral's constitution and statutes is now conferred on the Chapter.

Clause 29: Revision of Constitution and Statutes

80. Ss.29(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 s.29(3)). The bishop can also propose such changes for consideration by the Chapter (s.29(6)).
81. Amendments are made by an instrument sealed by the Chapter (s.29(4)) and, should the Chapter so request, the Church Commissioners can prepare the amendments to the constitution and/or statutes and the Instrument for the Chapter (s.29(5)).

Clause 30: Consultation

82. The current consultation procedures for the revision of constitutions and statutes in s.29 and s.30 of the 1999 Measure are reflected in s.30 of the draft Measure, with

suitable updates to provide for the use of technology, such as the Cathedral's website, in the consultation process.

Clause 31: Consents

83. S.31(1) 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 (s.31(2)), from the Charity Commission. S.31(3) provides that any amendments which affect any right or interest of the Crown require Her Majesty's consent.

Clause 32: Formalities

84. S.32(1) requires that the Instrument amending the constitution or statutes must be signed by the dean.
85. S.32(2) and (3) require that any changes to a Cathedral's constitution must be filed with the Charity Commission, as well as with the Church Commissioners.

Clause 33: Duty to have due regard to guidance

86. S.33 amends s.5(2) of the Safeguarding and Clergy Discipline Measure 2016 to include members of Cathedral Chapters in the list of relevant persons which must have "due regard" to the House of Bishops' safeguarding guidance.
87. It is noted that, in its report in May 2019, IICSA criticised the duty to have "due regard" and recommended that it should be amended. How best to address IICSA's criticism is currently under consideration and, should changes be made to the s.5 requirement to have "due regard" in the future, those changes will also apply in relation to the duty being imposed on the members of Chapters under this section.
88. By including the members of Chapters in the list of those who are required to have "due regard", Cathedrals will be brought within the procedures set out in the new guidance for reporting safeguarding serious incidents agreed with the Charity Commission in October 2018. As a result, Cathedrals will be required to send copies of all safeguarding serious incident reports submitted to the Charity Commission to the National Safeguarding Team, so that the national database of safeguarding serious incidents will include such incidents reported by Cathedrals too.

Clauses 34 - 37: Disqualification and Suspension (safeguarding)

89. These new safeguarding provisions are designed to impose additional safeguarding restrictions on who may be a Chapter member. They are similar to the new safeguarding provisions in the new Church Representation Rules, which will apply to all Parochial Church Councils from 1 Jan 2020.

Clause 34: Disqualification

90. Ss.34(1) - (3) set out when a person will be disqualified from being a member of the Chapter and ss.34(4) - (8) provide how a bishop may waive this disqualification in consultation with the diocesan safeguarding adviser.

Clause 35: Suspension

91. Ss. 35(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 s.35(5)) as soon as a concern is raised and for that person to remain suspended until the investigation has concluded (s.34(7)). Ss.34(3) – (13) set out when and how:
- (a) a person may be suspended;
 - (b) that suspension expires; and
 - (c) that suspension may be revoked.

Clause 36: Appeal against suspension

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

Clause 37: Interpretation (ss.34 and 35)

93. This section contains a number of definitions of terms used in ss.34 and 35.

Clause 38: Modification of Church Representation Rules, etc

94. S.38 reflects the provisions of s.12 of the 1999 Measure, updated as required. Ss.38(1) and (2) provide that this section relates to Cathedrals with parishes.
95. Ss.38(3) and (4) list specific Church Representation Rules and sections of the PCC Powers Measure 1956 which are modified by this section in relation to parish church Cathedrals. The references in s.38(3) are to the revised to the Church Representation Rules which will come into force on 1 January 2020.

Clause 39: Scheme for a Cathedral to cease to be a parish church

96. At present, a small number of parish church Cathedrals would like to cease to have a parish. In accordance with the recommendation in the CWG's Report, this clause confers power on the Church Commissioners to make a scheme, which will be made in a similar way to mission and pastoral schemes, to enable those Cathedrals which no longer wish to have a parish to no longer be a parish church Cathedral (s.39(2)).
97. In order for such a scheme to be made, the Chapter will need to ask for it to be made (s.39(1)).
98. In addition, any such scheme must include provision for the appointment of the dean (s.39(3)).

Clause 40: Removal from office

99. Ss.40 amends s.3 of the Clergy Terms of Service Measure 2009 to require a bishop to remove a dean, residentiary canon or 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.

Clause 41: Church Commissioners: exemption from liability in damages

100. As the Church Commissioners will play an increased role in regulating Cathedrals under the draft Measure, this clause 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 its statutory powers and regulatory functions under the new Measure.

Clauses 42: Interpretation

101. S.42(1) – (4) define a number of words and phrases, as well as clarifying some of the terminology used in the draft Measure.

102. S.42(5) provides for certain amendments to the drafting for the three cathedrals in the diocese of Leeds, as it is the only diocese with more than one Cathedral.

Clauses 43 – 45: Transitional provisions

Clause 43: Preparatory steps by Councils

103. S.43 provides that Cathedrals will follow the procedures under ss.29 – 32 of the draft Measure to adopt the new constitution and statutes to comply with the requirements of the draft Measure (see paragraphs 79 – 85 above). However, these procedures must be followed as if the references to the Chapter in ss.29 - 32 were references to the Council, pursuant to ss.49(3) of the draft Measure.

Clause 44: Transfer of trust property

104. S.14 of the 1999 Measure confers power on the Church Commissioners to make a scheme to transfer property held by the Church Commissioners to a Cathedral. This power has rarely been used and the Church Commissioners will not retain their scheme making powers under the draft Measure, as such powers might overlap with those of the Charity Commission in this regard. However, there are a number of very or fairly small trusts which are held, for various historical reasons, by the Church Commissioners on trust in connection with certain Cathedrals. This clause provides for the Church Commissioners to transfer each of these small funds (listed in Schedule 3) to the relevant Cathedral's Chapter, to be applied for that Cathedral's general purposes. This clause also provides that the funds so transferred will be released from any restriction on the expenditure of the fund's capital that may have been in place prior to the transfer (s.44(3)).

105. S.44(2) provides that the transfer date of the trusteeship of the funds listed in Schedule 3 will be the date on which the Chapter adopts its new constitution and statutes. S.44(4) provides that the Church Commissioners are discharged from their trusteeship of the funds following the transfer.

Clause 45: Saving for existing interests

106. S.45 sets out saving provisions for Cathedral clergy on freehold tenure.

Clause 46 and 47: Consequential amendments and Repeals

107. S.46 refers to the consequential amendments set out in Schedule 4.

108. S.47(1) repeals the 1999 Measure and s.47(2) lists the repeals in consequence of the repeal of the 1999 Measure.

Clause 48: Application

109. This clause provides that the draft Measure applies to all Cathedrals in England, other than Christ Church, Oxford, reflecting the position in the 1999 Measure.

Clause 49: Citation, commencement and extent

110. Clause 49 makes provision for the draft Measure's commencement.
111. S.49(2) lists the provisions that come into force on the day the Measure is passed.
112. S.49(3) provides that ss.29 – 32 will be come into force as if references to the Chapter were references to the Council (see s.43).
113. S.49(4) provides that the rest of the draft Measure's provisions come into force in relation to each Cathedral on the day on which it adopts its new constitution and statutes.
114. S.49(5) requires the Archbishops Council to publish the date the draft Measure comes into force in relation to each Cathedral.
115. S.49(6) confers power on the Archbishops to make transitional and saving provisions in connection with the commencement of a provision of the draft Measure. S.49(7) provides that an order is exercisable by statutory instrument.

Schedule 1: The Chapter of a Cathedral

Paragraph 1: Membership

116. Paragraph 1(1) sets out who the members of the Chapter will be.
117. Paragraph 1(2) provides that all references to "executive" Chapter members are to the dean and those residentiary canons whose stipend is paid either by the Chapter or by the Church Commissioners. All other Chapter members are referred to as "non-executive" (Para 1(3)).
118. The Chapter must have a majority of non-executive members (Para 1(4)) and the Chapter should have at least 8 but not normally more than 12 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 (Para 1(5)).
119. Para 1(6) requires all non-executive Chapter members to be Christian, the majority of whom should be Communicant Anglicans or communicant with churches with which the Church of England is in communion, or which subscribes to the doctrine of the Holy Trinity (see Para 2(4)). Para 1(7) requires two thirds of the non-executive Chapter members to be lay.

Paragraph 2: Eligibility etc

120. Paras 2(1) and (2) provide that a person who is disqualified from acting as a charity trustee, or pursuant to s.34 of the draft Measure, is not eligible to be a member of the Chapter.

121. Para 2(3) provides that a chief officer cannot be a member of the Chapter, in order to separate the executive functions of the administrators undertaking the chief officer roles from the trustee functions of the Chapter.
122. Para 2(5) requires at least one non-executive member of the Chapter to have relevant financial expertise.

Paragraph 3: Non-executive members: appointment and functions

123. Para 3(1) provides that all but one of the non-executive Chapter members are appointed by the other Chapter members, subject to the bishop's approval. Para 3(3) provides that the bishop appoints one non-executive member of the Chapter.
124. 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 that Chapter's statutes (Para 3(2)).
125. Non-executive Chapter members cannot exercise any functions in the Cathedral other than their trustee functions (Para 3(4)).

Paragraph 4: Emoluments and expenses

126. Para 4(1) authorises executive Chapter members to receive their stipends and other emoluments paid to them under s.26. Para 4(2) authorises executive Chapter members to be paid a stipend and other emoluments by the Chapter, in relation to their non-trustee functions.
127. Non-executive Chapter members are not permitted to receive emoluments from the Chapter (para 4(3)) or from the Church Commissioners in relation to that Cathedral (para 4(4)).
128. Para 4(5) permits all Chapter members to be reimbursed for reasonable expenses, but disapplies s.185 Charities Act 2011, so that they cannot be paid under a contract with the Chapter to provide services to the Cathedral.

Paragraph 5: Vice chair

129. Para 5(1) reflects the CWG Report's recommendation that the bishop appoints one non-executive member of the Chapter and that this appointee is the vice chair of Chapter. The vice chair may be lay or ordained (Para 5(2)) but must be non-executive.

Paragraph 6: Meetings

130. Para 6(1) provides that the dean chairs the Chapter's meetings and, in the dean's absence, the vice chair does so. However, Para 6(2) clarifies that, where an interim dean has been appointed pursuant to s.11 of the draft Measure, it is the interim dean and not the vice chair who chairs Chapter meetings.
131. Para 6(3) enables the Chapter to meet as often as it considers necessary and Para 6(4) provides that those appointed to undertake the administrative positions of the chief officers will normally attend Chapter meetings.
132. Para 6(5) gives the dean a casting vote where a vote is tied. The vice chair does not have a casting vote should he or she chair a Chapter meeting.

Paragraph 7: Trust corporation

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

Schedule 2: Diocese of Leeds: The College of Canons

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

Schedule 3: Transfer of Property

The table in sets out the list of trusts to be transferred to Cathedrals pursuant to s.45.

Schedule 4: Consequential amendments

This schedule sets out the consequential amendments to be made to other legislation as a result of the provisions in the draft Measure.

The Legal Office

Church House

Westminster

6 June 2019

ANNEX

Areas of Cathedral activity to be regulated by the Church Commissioners under the draft Cathedrals Measure

1. Acquisition of Land

The acquisition of land is not an activity which is regulated by the Charity Commission or the Charities Act 2011. Therefore, the draft Measure proposes that Cathedral Chapters continue to be required to seek consent from the Church Commissioners in relation to certain acquisitions of land, in the same way as under the 1999 Measure.

2. Disposition of Land (including mortgages)

2.1 Dispositions of land, including the approval of mortgages and charging (together “**Dispositions of Land**”), are activities regulated by the Charities Act 2011 / Charity Commission. At present, the Church Commissioners provide consent for certain Dispositions of Land by Cathedral Chapters.

2.2 However, regulation under the Charities Act 2011 alone would, in many cases, result in a reduction in the level of regulation in this key area, which would be inconsistent with the recommendations in the CWG Report. This is because the Charities Act 2011 regime for regulating Dispositions of Land permits most dispositions and mortgages to be undertaken without the Charity Commission’s consent, provided that the trustees have obtained and considered the requisite report/advice in accordance with the Charities Act 2011.

2.3 Therefore, the draft Measure proposes that Dispositions of Land by Cathedral Chapters would be regulated as follows:

2.3.1 Cathedral Chapters will continue to be required to seek consent from the Church Commissioners for Dispositions of Land, as under the 1999 Measure. The Church Commissioners will also retain their power to make an Excepting Order listing those Dispositions of Land for which the Church Commissioners’ consent is not required.

2.3.2 Those Dispositions of Land which do not require the Church Commissioners’ consent will be required to comply with the general Charities Act 2011 requirements (i.e. the trustees must obtain and consider the requisite report/advice in accordance with the Charities Act 2011).

2.3.3 As the requirement to obtain the Church Commissioners’ consent will be a statutory provision in the draft Measure, any Disposition of Land which requires the Church Commissioners’ consent will, pursuant to s.117(3)(a)(i) Charities Act 2011, not be required to comply with the general Charities Act 2011 requirements in addition to obtaining consent from the Church Commissioners. This will also avoid the need for Cathedral Chapters to seek the Charity Commission’s consent in situations where such consent would otherwise be required under the Charities Act 2011 (e.g. a disposition to a connected party or at an undervalue).

3. Borrowing (unsecured)

Although unsecured borrowing is not specifically regulated by the Charity Commission or the Charities Act 2011, certain unsecured borrowing is currently regulated by the Church Commissioners pursuant to the 1999 Measure, which it is proposed will continue under the draft Measure. The CWG Report recommended an increase in the current level of oversight of Cathedral debt and this would need to be provided by the

Church Commissioners. Therefore, an additional requirement will be introduced in the draft Measure to require Cathedral Chapters to seek consent from the Church Commissioners where any prospective debt (whether secured or unsecured) would cause the total borrowings of a Cathedral to exceed an amount set by an Order of the Church Commissioners.

4. Expenditure of Cathedral endowment on the development of Cathedral property

Cathedral Chapters will continue to be required to seek consent from the Church Commissioners in relation to the expenditure of their endowment on the development of Cathedral property, as at present.

5. Borrowing from endowment monies to undertake emergency repairs to the Cathedral Building

Cathedral Chapters will continue to be required to seek consent from the Church Commissioners in relation to the borrowing from its endowment for this purpose, as at present.

6. Total Return

6.1 A number of Cathedral Chapters have adopted a Total Return approach to investing their endowment pursuant to s.17A and Schedule A1 of the 1999 Measure. The Total Return provisions in the 1999 Measure are broadly similar to those in the Charities Act 2011 and the Total Return Regulations 2013 (the “**2013 Regulations**”), with the main difference being that the 1999 Measure does not permit Cathedrals to “borrow” up to 10 percent of their endowment.

6.2 Once Cathedrals are regulated by the Charities Act 2011, the Total Return provisions in the Charities Act 2011 and the 2013 Regulations will be available to Cathedral Chapters in the same way as for all other charities. However, a safeguard is proposed in the draft Measure to require Cathedral Chapters adopting a Total Return approach to obtain consent from the Church Commissioners if they wish to exercise the power in Regulation 4 of the 2013 Regulations to borrow up to 10% of their endowment. This additional safeguard is considered necessary for Cathedrals, as other charities do not need to seek the Charity Commission’s consent before they exercise this power.

7. Power to ascertain whether particular property is permanently endowed

7.1 It is proposed that the draft Measure confers a new power on the Church Commissioners to enable them to adjudicate on whether any specific property is or is not part of a Cathedral’s permanent endowment, where the position is unclear. The reason for this new power is that, due to the age of some historic funds and properties held by Cathedrals, they have no or incomplete records of the trusts on which they were originally gifted. The benefit of conferring such a power on the Church Commissioners is that, if the power of determination is exercised, the classification of that property would be determined definitively.

7.2 It is envisaged that this power would operate in a similar way to the Church Commissioners’ existing power to decide whether a piece of land vested in a Diocesan Board of Finance is glebe land or not,² with decisions also being evidenced by Instrument under Seal. However, this power would not enable the Church

² S.27 Church Property Measure 2018

Commissioners to re-categorise property or funds which were known to be permanently endowed as non-endowment property.

- 7.3 Although this new power is not a recommendation in the CWG Report, it is proposed following engagement with Cathedrals to discuss the implementation of aspects of the CWG Report and it is understood that such a power would be of considerable benefit to a number of Cathedrals.