



# Legislative Reform Measure 2018

2018 No. 5

## *Legislative burdens*

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

- (1) The Archbishops' Council may by order make provision which it considers would remove or reduce a burden, or the overall burdens, resulting directly or indirectly for any person from ecclesiastical legislation.
- (2) “Burden” means—
  - (a) a financial cost,
  - (b) an administrative inconvenience, or
  - (c) an obstacle to efficiency.
- (3) “Ecclesiastical legislation” means any of the following or a provision of any of them—
  - (a) a Measure of the General Synod (whether passed before or after the commencement of this section);
  - (b) a Measure of the Church Assembly;
  - (c) a public general Act or local Act in so far as it forms part of the ecclesiastical law of the Church of England (whether passed before or after the commencement of this section);
  - (d) an Order in Council, order, rules, regulations, directions, scheme or other subordinate instrument made under a provision of—
    - (i) a Measure or Act referred to in paragraph (a), (b) or (c), or
    - (ii) a subordinate instrument itself made under a provision of a Measure or Act referred to in paragraph (a), (b) or (c).
- (4) For the purposes of this section, the burdens which are capable of resulting from ecclesiastical legislation include any burden which results from—
  - (a) an inconsistency or anomaly in the legislation, or
  - (b) the form of the legislation (for example, where the legislation is hard to understand).

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- (5) The provision that may be made by an order under this section includes (subject to section 3)—
- (a) provision abolishing, conferring or transferring, or providing for the delegation of, functions of any description (including a function of legislating),
  - (b) provision creating a body or office, and
  - (c) provision amending, repealing or revoking an enactment.
- (6) The consequential provision which may be made in an order under this section in reliance on section 9(1) includes provision to abolish a body or office.

## 2 Preconditions

- (1) The Archbishops' Council may include provision in an order under section 1 only if the Council considers—
- (a) that the policy objective intended to be secured by that provision of the order could not be satisfactorily secured by non-legislative means,
  - (b) that the effect of that provision is proportionate to the policy objective to be secured by it,
  - (c) that the provision, taken as a whole, strikes a fair balance between the public interest, the interest of the Church of England as a whole and the interests of any person adversely affected by the provision,
  - (d) that the provision does not remove any necessary protection,
  - (e) that the provision does not prevent a person from receiving or continuing to receive a financial benefit to which the person is entitled or could reasonably expect to become entitled,
  - (f) that the provision does not prevent a person from exercising or continuing to exercise a right or freedom which that person could reasonably expect to exercise or to continue to exercise, and
  - (g) that the provision is not of constitutional significance.
- (2) Subsection (1) does not apply to provision which merely restates an enactment.

## 3 Exceptions

- (1) An order under section 1 may not make provision amending or repealing a provision of—
- (a) the Submission of the Clergy Act 1533;
  - (b) the Appointment of Bishops Act 1533;
  - (c) the Suffragan Bishops Acts 1534 to 1898;
  - (d) the Act of Uniformity 1662;
  - (e) the Church of England Assembly (Powers) Act 1919;
  - (f) the Synodical Government Measure 1969 (but see subsection (4));
  - (g) the Church of England (Worship and Doctrine) Measure 1974;
  - (h) this Measure.
- (2) An order under section 1 may not make provision of a kind to which Article 7 or 8 of the Constitution of the General Synod applies.

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- (3) An order under section 1 may not make provision to extend, reduce or alter the purposes for which the Church Commissioners may make payments from their general fund.
- (4) The reference in subsection (1)(f) to a provision of the Synodical Government Measure 1969 does not include a reference to a provision which relates merely to the constitution or functions of diocesan or deanery synods.
- (5) The exceptions under subsections (1) to (3) do not apply to consequential provision made in reliance on section 9(1).

#### **4 Consultation**

- (1) If the Archbishops' Council proposes to make an order under section 1, it must consult—
  - (a) the members of the General Synod,
  - (b) persons who have or exercise functions to which the proposals relate,
  - (c) persons who do not come within paragraph (b) but whose interests would nonetheless be substantially affected by the proposals, and
  - (d) such other persons as the Council considers appropriate.
- (2) The Council may, where it considers it appropriate to do so, consult with organisations which appear to it to represent persons of the description given in subsection (1)(b) or (c); and if it does so, the Council is to be regarded as having complied with the duty to consult the persons concerned.
- (3) If, as a result of consultation under subsection (1), it appears to the Council that it would be appropriate to change the whole or part of its proposals, it must undertake such further consultation on the changes as it considers appropriate.
- (4) Before beginning a process of consultation under subsection (1) or (3), the Archbishops' Council must lay before each House of Parliament the documents which it proposes to send to each person or organisation it is going to consult.
- (5) If, pending the commencement of this section, consultation was undertaken which, had it been undertaken after that commencement and after subsection (4) had been complied with, would to any extent have satisfied the requirements of this section—
  - (a) those requirements are to that extent to be taken to have been satisfied, and
  - (b) the Council must, as soon as reasonably practicable after that commencement, lay before each House of Parliament the documents which it has sent to the persons and organisations it has consulted.

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

- (1) If, after the conclusion of the consultation under section 4, the Archbishops' Council considers it appropriate to proceed with the making of an order under section 1, it must lay before the General Synod a draft of the order together with an explanatory document.
- (2) The explanatory document must—
  - (a) introduce and give the reasons for the provision contained in the draft order,
  - (b) explain why the Council considers that the conditions in section 2 are (so far as relevant) satisfied,

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- (c) include (so far as appropriate) an assessment of the extent to which the provision contained in the draft order would remove or reduce burdens as defined by section 1, and
  - (d) give details of—
    - (i) the consultation undertaken under section 4,
    - (ii) the representations received in response, and
    - (iii) the changes (if any) made as a result of those representations.
- (3) Where a person making representations in response to consultation under section 4 asks the Council not to disclose the representations, the Council must not disclose the representations under subsection (2)(d)(ii) if or to the extent that doing so would be an actionable breach of confidence.
- (4) If information in representations made by a person in response to consultation under section 4 relates to another person, the Council is not required to disclose the information under subsection (2)(d)(ii) if or to the extent that—
- (a) it appears to the Council that disclosing the information could adversely affect the interests of that other person, and
  - (b) the Council has been unable to obtain the consent of that other person to the disclosure.
- (5) Subsections (3) and (4) do not affect a disclosure that is requested by, and made to, the committee established under the Standing Orders of the General Synod in accordance with section 6 for the purposes of its consideration of the draft order.
- (6) The Archbishops' Council may at any time withdraw a draft of an order under section 1 which has been laid before the General Synod; and the Standing Orders of the Synod may make further provision in relation to the withdrawal of a draft of an order under that section.

## **6 Scrutiny**

- (1) The General Synod must make provision in its Standing Orders for the establishment and procedure of a committee the function of which is to consider and report to the Synod on draft orders laid before it under section 5.
- (2) The provision under subsection (1) must—
- (a) provide for the membership and chairing of the committee;
  - (b) provide for every draft order laid before the General Synod under section 5 to be referred to the committee;
  - (c) enable representations to be made to the committee on a draft order referred to it;
  - (d) enable the committee to amend a draft order referred to it.
- (3) The provision under subsection (1) must require the committee, in the case of each draft order referred to it, to assess—
- (a) the extent to which the order would remove or reduce burdens as defined by section 1,
  - (b) the extent to which the conditions under section 2 (so far as relevant) are satisfied,
  - (c) whether the draft order includes provision of a kind prohibited by section 3,

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- (d) the extent to which the consultation required by section 4 has been undertaken, and
- (e) whether it is appropriate for the provision contained in the draft order to be made by way of an order under section 1 rather than by Measure.

## **7 Decision by General Synod**

- (1) Where the committee established under section 6 has considered a draft order referred to it and reported to the General Synod on the draft order, the Synod—
  - (a) may approve the draft order with such amendments as the committee has made to it,
  - (b) may reject the draft order, or
  - (c) may refer the draft order back to the committee.
- (2) Where a draft order is referred back to the committee under subsection (1)(c), the Standing Orders of the General Synod are to apply to the draft order as if it were a draft order being referred to the committee for the first time.
- (3) The Standing Orders may include provision for giving further effect to subsections (1) and (2).
- (4) Where a draft order is approved by the General Synod under subsection (1)(a), the Archbishops' Council may make an order under section 1 in the form of the approved draft; and the Council does so by applying its seal.

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