Adrian Vincent, General Synod member Guildford 320
16 Faris Barn Drive
Woodham
Surrey
KT15 3DZ
email: avwebsite@hotmail.co.uk

To: sion.hughes-carew@churchofengland.org

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Response to *"A Simpler Way of Reforming Church Legislation – a consultation document" GS Misc 1103*

I am writing to respond to the consultation of the Simplification Task Group on a proposed Enabling Measure.[1] My response includes quoting from the Ecclesiastical Law Society's response[2] which I ask be given serious consideration given their professional expertise.

I respond to each of the consultation questions:

Q."(1) The presenting problem that has been identified and the proposal that it should be addressed by means of a new Enabling Measure that would enable the Synod to amend some legislation by order rather than by Measure (has the problem been correctly identified in paragraphs 5-11, is the solution proposed in paragraphs 12 to 15 the right one, are there other possible solutions that need exploring?);"

I agree with the statement in paragraph 6 that the Church of England should not attempt to "legislate for everything" and that we need to be "adaptable and fleet of foot".

I disagree with the solution proposed in the consultation, for the reasons given by the Ecclesiastical Law Society:

> "The problem of 'too complex' law is to be addressed by creating a highly technical and legalistic new procedure and the establishment of a Scrutiny Committee adding yet further to the bureaucracy of the National Institutions (already over-burdened and under-resourced) when the direction of travel should be towards simplification." (Para 3.1.ii.)

My own reaction on reading the consultation was the same as that of other Synod members quoted by the Ecclesiastical Law Society:

> "There was a perception that the proposal is intended to move legislative authority

[1] https://www.churchofengland.org/media/2212596/gs%20misc%201103%20-%20consultation%20paper%20on%20possible%20new%20power%20to%20amend%20legislation%20by%20order.pdf
[2] http://www.ecclawsoc.org.uk/documents/ELS-Working-Party-Response-Revised-13-July-2015.pdf

> away from Synod and into the Archbishops' Council. There was a fear of a largely unelected and unaccountable body changing the law of the Church of England and diminishing the rights of its members (ordained and lay)." (Para 4.5).

I share that concern. Paragraph 36(a) of the consultation document states that "Orders would be made by the Archbishops' Council, subject to the approval of the General Synod." Paragraph 36(i) states that "It would not be possible for members of the Synod to propose amendments to the draft order." The Archbishops' Council producing matters ready-formed to the General Synod with no possibility for amendment, is not really synodical government at all, it amounts to government by a small executive, with synod asked to rubber stamp.

Regarding other possible solutions that need exploring. In future, more active consideration should be given as to whether legislation is needed at all for some matters. For example, the July Synod approved the Faculty Jurisdiction Rules, which included the text of the faculty application forms. I think that this means that if in future the Church wishes to update one of the application forms it will need to go through the full procedures and be submitted to parliament. If I am correct in my understanding, this is an example of 'over kill'. The legal powers of the Faculty procedure should indeed go to Parliament, given that the faculty procedures are a concession from the Government in place of listed buildings consent legislation. However, the wording of application forms should not require a parliamentary approval. Therefore, more consideration should be given as to details to be outside of the legal process by way of Codes of Practice or similar.

More consideration should also be given to drafting legislation in a way which includes flexibility within it. The July Synod had a prime example where legislation should have been drafted in a flexible way but was not. The *Draft Ecclesiastical Property (Exceptions from Requirement for Consent to Dealings) Order 2015 (GS 1996)* referred to properties valued at "less than £250,000" (paragraph 2(2)(b)). The draft legislation did not include an inflationary escalator for this figure, with the result that the figure will very rapidly become out of date. This was pointed out in the Synod debate and Synod member Clive Scowen submitted an amendment to introduce flexibility by giving discretion for an Archdeacon to permit a higher figure. This amendment was opposed by Canon John Spence, on behalf of the Archbishops' Council. Canon Spence said that the Archbishops' Council would review the figure in due course and bring back fresh legislation to increase the figure in future if necessary.

In short, and at the risk of caricature in order to make the point, the above example shows:

- The Archbishops' Council drafts legislation which is not flexible;
- The Archbishops' Council opposes a Synod member's amendment that would have introduced flexibility, and instead insists that the matter must go back to Parliament for revision in future;
- The Archbishops' Council issues a consultation document stating that there is too much legislation having to go to Parliament. They propose the solution of giving themselves more powers to change legislation, in a way which side-steps the current Synodical drafting and scrutiny procedures.

I do not consider that to be the correct solution. Instead, I support the alternative proposed by the Ecclesiastical Law Society in paragraph 5.1 of their submission:

> "ii. to take immediate steps to repeal redundant and obsolete legislation and to conduct a thoroughgoing consolidation of the legislation that remained;

iii. to link this wholesale repeal with a provision for consequential amendments and future revisions and repeals on a fast track basis;
iv. to put in place adequate safeguards for when the fast track provision is invoked."

Q. "(2) What such an Enabling Measure might specify in relation to the purposes for which the new power might be exercisable (should there be additions to or subtractions from the possibilities in paragraphs 16 to 20?);"

I do not agree that an Enabling Measure is the way forward, for the reasons set out above.

Q "(3) The forms of provision that might be made by it (are the possibilities set out in paragraphs 21 to 23 along the right lines?);"

I do not agree that an Enabling Measure is the way forward, for the reasons set out above.

Q"(4) Possible preconditions to the exercise of such a power (should there be additions to or subtractions from those suggested in paragraphs 25 to 26?);"

I do not agree that an Enabling Measure is the way forward, for the reasons set out above.

Q "(5) The pieces of legislation that should be excluded from scope of the new enabling power (should there be additions to or subtractions from those suggested in paragraphs 27-34?);"

I do not agree that an Enabling Measure is the way forward, for the reasons set out above.

Q "(6) The procedural framework within which the new power would be exercised (are the proposed arrangements for scrutiny in paragraphs 35 to 38 right?)."

I do not agree that an Enabling Measure is the way forward, for the reasons set out above.

Yours sincerely,

Adrian Vincent, Guildford 320.