MEMORANDUM FOR GENERAL SYNOD THE WORKING PARTY ON LAY OFFICE-HOLDERS

(This response to a request from General Synod was produced by Society officers and approved by the General Committee at its meeting on 4 October 1994)

Churchwardens

1. The Churchwardens (Appointment and Resignation) Measure 1964 preserves the common law concept that churchwardens are the officers of all the parishioners, not simply of those who go regularly to the parish church and so may be presumed to be on the electoral roll. Hence the requirement that churchwardens are to be chosen at a joint meeting of residents in the parish whose names are on the civil electoral register and of those on the church electoral roll. The Society recommends that this concept be preserved, though recognising that in many parishes it will be preserved in form only.

2.1.1 It would appear that churchwardens are very rarely appointed strictly in compliance with the Measure of 1964. That Measure requires motions to be passed by a meeting of parishioners to which the minister may signify his consent. Where there are more than two persons standing for churchwarden, to arrive at a motion naming two names would be a feat of some procedural complexity since it would require a series of amending motions to end up with the two names. At that point the minister may refuse his consent, choose a vicar's warden and an election is then held for people's warden.

2.1.2 In practice, however, it appears that in the majority of parishes the matter is decided by a straight election from the outset, but in those parishes where the minister wishes to appoint one of the wardens, he does so before any motions or elections take place and there is then an election for the other warden.

2.1.3 It is suggested that the legislation should legitimise what happens in practice and should provide that the minister should have the opportunity at the outset to appoint one of the wardens; and the other warden, or both of them if the minister does not wish to make an appointment, should be chosen by election.

3. A person should be eligible to be chosen as churchwarden if he is resident in the parish or on the church electoral roll, is a communicant (unless the Bishop otherwise permits), is aged between 21 and 74, is not a churchwarden or deputy-churchwarden in another parish and would not be disqualified from being the trustee of a charity by Section 72 Charities Act 1993.

4.1 The persons chosen at the annual meeting of parishioners should be admitted to office on the lines of Section 7 of the Measure of 1964, viz: he or she should appear before the ordinary or his substitute duly appointed, and be admitted to the office of churchwarden after subscribing the declaration that he or she will faithfully and diligently perform the duties of the office. If a person does not present himself for admission he should, unless good cause is shown, be declared ineligible by the ordinary or his subsitute duly appointed and there must be another meeting to choose another person.

4.2 Tenure of the office should be for one year. Whether there should be a limitation on the number of consecutive years served is a question frequently raised. It can arise in two situations. First, where there is a long standing churchwarden who some feel has stayed on too long but nobody wishes to oppose for fear of upsetting, and secondly where there is a churchwarden who some in the parish feel should stand down, but who is popular and would secure re-election even if the election were contested. It seems objectionable, where there is a democratic means of getting rid of a churchwarden, to legislate to limit terms of office simply because parishioners are too timid to use their democratic rights. Equally, it is objectionable to legislate so as to remove a locally popular churchwarden simply because he or she upsets the parish hierarchy by being independent minded. There are also parishes where, if it were not for a few stalwarts willing to stand for office year in year out, there would not be any churchwardens or office-holders.

4.3 A possible solution might be to allow annual meetings, before electing a churchwarden, to resolve to limit individuals to five consecutive years in office, but without prejudice to those already churchwardens at the time the resolution comes into force.

5. There is no procedure for removing a churchwarden from office unless it is considered that this could be done by the bishop under Section 11(1)(a) of the 1964 Measure. There have been cases where a serving churchwarden is facing serious criminal charges and it has been necessary to advise the bishop that the only prospect of removing him is if he is convicted and sent to a prison outside the parish so that he ceases to hold office under Section 9 of the 1964 Measure, Churchwardens are also often *ex officio* trustees of parish trusts or church schools, but they may continue to be churchwardens even if they are disqualified from acting as charity trustees under Section 72 of the Charities Act 1993. The following suggestions would resolve these difficulties:

(i) there should be automatic disqualification/ineligibility in circumstances where a churchwarden or potential churchwarden is disqualified from acting as a charity trustee or has been removed from office under (ii) below;

(ii) there should be a procedure for removing churchwardens from office in other circumstances where it is desirable or appropriate to do so. An expensive and lengthy procedure is not recommended. It could perhaps be dealt with in a manner similar to revocation of licences by the bishop with a right of appeal to the archbishop.

6. The appointment of deputy churchwardens may be a useful innovation for larger and busier parishes. If it is to be made possible for such parishes, it is suggested that the extent to which functions can be delegated should be laid down by the annual meeting of parishioners and that the deputy churchwardens should be subject to the same procedures for admission and the suggested procedures for disqualification or removal from office set out above. The status of deputy-churchwardens where they are at present permitted, is not made sufficiently clear by Rule 16 of the Church Representation Rules.

7. The Church has an interest in simplifying parish administration and so there should be no elaboration of provisions where the office of a churchwarden becomes vacant. In such a case the PCC should appoint a person qualified – see paragraph 3 above – to fill the office for the remainder of the year.

8. Should the parish be unable to find two persons willing to accept appointment the PCC must make such provisions as it deems fit for the discharge of the duties of the vacant office(s), subject to the directions and approval of the archdeacon.

Custom

9. Customs as to the choice of persons for the office of churchwarden, and as to the choice of more than two churchwardens or relating to the appointment of sidesmen, may be anachronistic, but respect must be paid to strong local traditions. An annual parochial church meeting, after suitable notice to all concerned, should have the power to abandon such a custom or to apply to the chancellor of the diocese for variation or settlement of the terms of any relevant custom. Such an application should be determined by the chancellor, sitting with the chairmen of the House of Clergy and the House of Laity of the Diocesan Synod, in accordance with such directions as to procedure and evidence as the chancellor may consider appropriate to the case.

Conforming with the laws ecclesiastical

10. A perennial problem in the Church of England, a church by law established, is that while the canon law and the laws ecclesiastical bind the laity there are no means of enforcing that law. Fresh legislation gives an opportunity to provide some remedy in the case of lay office-holders, including churchwardens. It should be a term of appointment to all offices held by lay men and women and, where appropriate, a term of contracts of employment, that the office holder and should undertake to obey and conform with the canons of the Church of England and the laws ecclesiastical. As the law stands, no proceedings for breach of this undertaking could be commenced in the consistory court, see Section 82(2)(c) Ecclesiastical Jurisdiction Measure 1963, but a breach might be a ground for disciplinary action or dismissal.

Other office holders

11. In the absence of evidence of problems in practice, legislating for the sake of it should be avoided. However, the current edition of the *Legal Opinions* makes two points which could usefully feature in legislation. First, that paid office-holders should not be eligible to be elected as members of the parochial church council and second, that the offices of Secretary and Treasurer of the PCC should not be combined.