

MEMORANDUM

To: Council of General Synod

From: David Jones, Q.C.
Chancellor of General Synod

Date: 23 April 2018

Subject: **STEPS AT GENERAL SYNOD 2019 IN DEALING WITH SECOND READING OF THE RESOLUTION TO AMEND THE MARRIAGE CANON**

1. This is the Memorandum which the Council asked me to prepare describing the various steps which may arise in the legislative session when General Synod 2019 is dealing with the Second Reading of Resolution A051R2 to amend Canon XXI (the Marriage Canon).

The Genesis of Resolution A051R2

2. Resolution A051 was drafted to respond to the requirements contained in Resolution C003 passed by the 2013 General Synod.

Resolution A051R2

3. General Synod 2016 amended Resolution A051 and gave First Reading to Resolution A051R2, which reads as follows:

Be it resolved that this General Synod:

1. Declare that Canon XXI (On Marriage in the Church) applies to all persons who are duly qualified by civil law to enter into marriage.
2. Make the following consequential amendments to Canon XXI:
 - (a) in paragraph 2 of the Preface, delete the words “of the union of man and woman in”;
 - (b) in paragraph 4 of the Preface, substitute the words “the parties to the marriage” for the “husband and wife”;
 - (c) in section 16 a) of the Regulations, substitute “the parties to the marriage” for “a man and a woman”;

(d) in section 17 b) of the Regulations, substitute “the parties to the marriage” for “husband and wife”.

3. Add the following to section 11 of the Regulations

e) A minister may only solemnize a marriage between persons of the same sex if authorized by the diocesan bishop.

4. Declare that this resolution shall come into effect on the first day of January after being passed by General Synod at Second Reading.

Amending a canon dealing with doctrine, worship or discipline

4. Section 11 c) i) of the *Declaration of Principles* contains the requirements for amending a Canon dealing with doctrine, worship, or discipline:

11 c) i) Canons

All Canons dealing with doctrine, worship, or discipline, and all alterations to such Canons, shall require to be passed by a two-thirds majority in each Order voting at two successive sessions of the General Synod, the Canons and alterations proposed having been referred for consideration to diocesan and provincial synods, following the first approval of the General Synod.

5. Section 11 c) i) contains two requirements for amending this type of canon:

- The resolution must be referred for consideration to diocesan and provincial synods.¹ This has been done. The diocesan and provincial synods may provide their comments to General Synod 2019 in memorials or some other format.
- The final version of the resolution must be passed by a two-thirds majority in each Order.

Moving Second Reading at General Synod 2019

6. The next step is for there to be a motion at General Synod 2019 to give Second Reading to the amendment set out above to Canon XXI.²

1. Consideration, not consent.

2. The Resolution at General Synod 2019 will have different number.

7. Once the main motion is moved and seconded, General Synod will “own” the motion—General Synod can then amend or deal with the main motion in any way it sees fit.

Scope of possible amendments at Second Reading

8. Section 11 c) ii) of the *Declaration of Principles* provides for the possibility that the main motion can be amended at Second Reading. However, such an amendment can only be made if the amendment would have been in order when the proposed change was considered at the first session of General Synod.

11 e) *Amendments on Second Reading at Synod*

- i) Where a proposed change to the Declaration of Principles (other than to sections 6, 7 or 8 thereof) or to a Canon dealing with doctrine, worship, or discipline has been:
 - a) passed at one session of the General Synod,
 - b) referred for consideration to all diocesan and provincial synods, and
 - c) brought before a second session of the General Synod for consideration,

it shall be in order for the General Synod to adopt any amendment to the proposed change which would have been in order when the proposed change was considered at the first session of the General Synod and the proposed change shall take effect if passed by the required majority at the second session with or without such amendment.

Amendments to the main motion

9. Amendments must be moved and seconded. Prior written notice of the text of the proposed amendment must be provided to the presiding officer: Rule 16 e) of the *Rules of Order and Procedure*.
10. Because only the main motion if passed would actually amend Canon XXI, only the main motion must be passed by a two-thirds majority of each Order voting separately as required by section 11 c) i) of the *Declaration of Principles*.

11. Accordingly, voting on an amendment to the main motion would be done by the three Orders voting together: section 4 of the *Declaration of Principles*³ and Rule 18 b) of the *Rules of Order and Procedure*; and the threshold for an amendment to the main motion to pass is a majority (50% plus one): Rule 18 b) of the *Rules of Order and Procedure*.
12. Abstentions are not counted in calculating whether the majority is met: Rule 18 b) of the *Rules of Order and Procedure*.

Requisitioning a vote by Orders on an amendment to the main motion

13. Prior to the vote on an amendment to the main motion being taken, any six members of General Synod may require the vote to be taken by Orders, voting separately in the sequence of laity, clergy, bishops: Rule 19 of the *Rules of Order and Procedure*.
14. If a vote by Orders is requisitioned on an amendment to the main motion, the threshold for the amendment passing is still a majority (50% plus one) in each of the Orders: Rule 19 of the *Rules of Order and Procedure*.
15. Abstentions are not counted in calculating whether the majority is met: Rule 18 b) of the *Rules of Order and Procedure*.

Requisitioning a vote by Dioceses on an amendment to the main motion

16. If there were a vote by Orders (and only if there were a vote by Orders) which passed an amendment to the main motion, it would be possible to requisition a vote by Dioceses on that amendment: Rule 20 of the *Rules of Order and Procedure*.

A vote by Dioceses is not available if either (a) the vote on the amendment was not by Orders, or (b) the preceding vote by Orders was defeated.

The Indigenous Spiritual Ministry of Mishamikoweesh and the Territory of the People have the status of dioceses.

3. The *Declaration of Principles* was amended by General Synod 2013 to provide for all members of General Synod to vote together at the same time as one body, except where the Declaration of Principles, the Constitution or the Rules of Order and Procedure require voting by Orders. This is a change from previous practice, where the Order of Bishops voted separately from the combined Orders of Clergy and Laity.

17. A request for a vote by Dioceses must be made by any six members, two from each of three different dioceses: Rule 20 a) of the *Rules of Order and Procedure*.
18. The request must be made immediately following the affirmative vote by Orders, prior to General Synod having moved on to the next item of business: Rule 20 a) of the *Rules of Order and Procedure*.
19. Ex officio and non-diocesan members of General Synod vote with the diocese in which they are normally resident if laity, or canonically resident if clergy: Rule 20 a.1) of the *Rules of Order and Procedure*.
20. The vote of each diocese is determined by the majority of the members of all Orders of that diocese voting together. If the votes in the diocese are equal, that diocese is not counted: Rule 20 b) of the *Rules of Order and Procedure*. Abstentions are not counted in determining the majority: Rule 18 b) of the *Rules of Order and Procedure*.
21. If the majority of the dioceses vote in the negative, the question is defeated. If there is a tie, the question is passed (on the basis of the previous affirmative vote by Orders): Rules 20 c) and d) of the *Rules of Order and Procedure*.

Voting on the main motion

22. As noted above, because the Marriage Canon deals with doctrine,⁴ the main motion must be passed by a two-thirds majority in each of the three Orders (Bishops, Clergy and Laity), at two successive sessions of General Synod: section 11 c) i) of the *Declaration of Principles*.
23. Accordingly, when the final version of the main motion comes to a vote at General Synod 2019, that vote will be taken by Orders.

4. Only *canons* dealing with doctrine, worship or discipline must be passed by a two-thirds majority in each of the three Orders at two successive sessions of General Synod. Matters dealing with doctrine, worship or discipline which are not contained in a *canon* are not subject to section 11 c) i) of the Declaration of Principles. Accordingly, motions dealing with matters of doctrine which are not in a *canon* may be passed by a majority of one General Synod voting together (or a majority voting by Orders if such a vote is requisitioned under Rule 19).

24. To be passed, the final version of the main motion must receive a majority of two-thirds of the votes cast in each of the Orders.
25. Rule 18 a) of the *Rules of Order and Procedure* requires every member of General Synod to vote; abstentions are not permitted.⁵
26. If General Synod wished to permit abstentions, it would be necessary to pass a motion suspending Rule 18 a). Suspending a Rule requires a two-thirds majority of the members present and voting: Rule 20 b). If abstentions are permitted, they are not counted in determining the required majority.
27. Similarly, if someone were absent when the vote is taken, they will not be counted in determining the required majority.

Requisitioning a vote by Dioceses on the main motion (with or without amendment)

28. If the vote on the final version of the main motion is passed by two-thirds in each of the three Orders, it would be possible for there to be a vote by Dioceses: see paragraphs 16 to 21 above.

If the final version of the main motion is passed by General Synod 2019

29. If the final version of the main motion is passed by General Synod 2019, it will come into effect at the end of General Synod 2019 (unless the final version of the main motion as passed contains a different effective date—for example, paragraph 4 of the current version of A051R2 provides that it would only come into effect on the first day of January after General Synod 2019).

Some other matters

30. No member (except the mover) may speak more than once on a particular motion, except with the permission of General Synod, or if permitted by the chair to explain or answer a question: Rules 10 d) and 11 a) of the *Rules of Order and Procedure*.

5. The only exception is for abstentions by reasons of conflict of interest, where the person entitled to abstain must notify the chair of his or her intention to abstain. Such abstentions and the names of the persons abstaining for this reason are to be recorded in the minutes.

31. When debate has been concluded, the presiding officer recognizes the mover (not the seconder) for the purpose of replying and closing debate: Rule 11 a) and b) of the *Rules of Order and Procedure*. The presiding officer may exercise discretion whether to recognize the mover for this purpose or defer that to continue the debate. The mover may choose not to take the opportunity to say anything further in closing the debate.

However, debate on the particular motion will not be closed simply because the mover speaks a second time if permitted by the chair to answer a question or explain, or permitted by General Synod to speak a second time in the debate: Rules 10 d) and 11 a) of the *Rules of Order and Procedure*.

32. Alternatively, any member *who has not yet spoken* may move that debate be closed. The motion to close debate must be seconded. The presiding officer has discretion not to accept such a motion if
- a) there is written notice of a proposed amendment to the motion for which debate would be closed, or
 - b) the presiding officer is of the opinion that closing the debate would abuse the rules or deny members an adequate opportunity for discussion.

If accepted, a motion to close debate is itself not debatable, and requires a two-thirds majority of the three Orders voting together in order to pass.

33. There can only be two amendments pending at any given time (so: the main motion, an amendment to the main motion, and an amendment to the amendment): Rule 17 o) of the *Rules of Order and Procedure*.
34. Any three members may require that the names of those who vote for or against a motion shall be recorded in the minutes: Rule 18 e) of the *Rules of Order and Procedure*.

If the final version of the main motion is not passed by General Synod 2019

35. If the final version of the main motion is not passed by General Synod 2019, the same or a similar motion to amend Canon XXI could be made at any

subsequent General Synod.⁶ However, such a motion would then need to be passed by two consecutive sessions of General Synod.

36. Defeating a motion is not the equivalent of passing a motion to the opposite effect (such as a motion specifically prohibiting the solemnization of same-sex marriages). Not passing the motion simply means that the motion was not passed.

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6. *Rule 21 of the Rules of Order and Procedure* only prevents a question that has been determined from being reconsidered at the *same* session of General Synod (unless two thirds of the members voting together agree).