

Chancel Repair Liability – the case for reform

1. Background

Helen Grant MP the Under-Secretary of State at the Ministry of Justice made clear in the debate in Westminster Hall on 17 October 2012, initiated by Peter Luff MP, that the Government has not been persuaded of the case for abolition of chancel repair liability (“CRL”). She has accepted the view that CRL is a long-standing property right, which benefits the Church of England, and that abolition, at least without compensation, would be unjust. That may arguably be so, but it cannot be denied that the existing law is unjust, and that reform is needed, if only to ensure that the law is as Ministers have assumed it to be, and is as fair as they have stated it publicly to be.

2. Compounding

Helen Grant referred to the difficulties that exist in compounding (redeeming) the liability under article 52 of the Ecclesiastical Dilapidations Measure 1923. She should be open to suggestions for legislation to alleviate those difficulties. When moving the Tithe Bill 1936, the Minister of Agriculture, Mr Elliot, assured the House of Commons that compounding would be possible, but did not mention the unfairness and lack of balance built into article 52, the lack of a right to compound, and the lack of an independent judicial process for determining the amount to be paid.

3. Apportionment of liability

The Minister of Agriculture Mr Elliot did not mention that CRL would not be apportioned down to individual property level. Every owner of part of the land out of which a tithe was payable, or part of the land enclosed in lieu of tithe, is jointly and severally liable for the chancel repair costs usually attributable to a much larger acreage of land than that which he himself holds. There is no provision for apportionment (other than by agreement) of the liability attached to land allotted in lieu of tithe under an enclosure award, or impropriated glebe. Apportionment, limitation and compounding should be rights, which can be established fairly and settled by an independent tribunal in case of disagreement. There should be power for the county court or a tribunal (such as the First Tier Tribunal (Land Chamber) to decide what proportion of the liability each individual property owner is liable for.

4. Limitation of Liability

Under the Tithe Act 1936 the Diocesan authorities received Government stock as compensation for the extinguishment of tithe rentcharges payable out of all the tithed land in each parish, and liability passed to PCCs, except as regards land which was owned by the tithe owner. It is now mainly the comparatively small pieces of land that were owned by tithe owners that are subject to continuing CRL (as well as impropriated glebe and land allotted in lieu of tithes under an enclosure award).

The intention of Parliament was that the liability should be limited to the amount of the tithe or rentcharge which was payable out of the land of the tithe owner – expressed in its use of the words “*to the extent of the said tithe or rentcharge*” in section 1 of the Tithe Act 1839, which was incorporated by reference in section 31 of the Tithe Act 1936. In other words, a lay rector should not be required to pay annually more than the amount of the tithe or rentcharge payable out of his land, before it was extinguished by merger.

There has been no case law establishing this to be the correct interpretation, simply because there has been no reported case at all since the Tithe Act 1936 in which any claim has been made by a PCC for the liability preserved in respect of land in which tithe rentcharges were merged under the Act.

Mark Hill QC the ecclesiastical lawyer, has given advice to Rochester Diocese which can be viewed on the Diocesan Registrar’s website. He disagrees with this interpretation on the basis that it is unclear how a court would give effect to this provision. Mr Hill should know that the mere fact that words in legislation may be a little vague and difficult to interpret, does not justify one in ignoring them altogether. The court might rule, for example, that the relevant proportion of the cost of repairs attributable to a tithe field part of which is owned by the defendant is £100, but the amount of the tithe rentcharge payable out of that land was £1 per year, so the defendant should pay the PCC £1 per year for 100 years, as he cannot be ordered to pay in any one year more than the amount of the tithe rentcharge which was payable each year out of his land. If the legislation is so unclear that it cannot be understood, it is necessary for the legislation to be clarified.

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5. Land Registration

The Under-Secretary of State emphasised the reform that has already occurred in the Land Registration Act 2002 (Transitional Provisions) (No. 2) Order 2003, whereby CRL will cease to be an overriding interest with effect from 13 October 2013. This, she asserts, means that it will not be binding on the purchasers of property purchased on or after that date, unless there is then already a notice registered on the property’s title, or a caution against first registration, if the title is unregistered, drawing attention to the right of the parochial church council to make claims against the owner of the land for the cost of repairing and insuring the church chancel, or for the proportion of the cost for which the owner is liable. This view is seriously questionable, and in my view clearly wrong.

6. Will CRL no longer be binding on purchasers against whose title it is not registered?

The view that Parliament has already dealt with the problem of CRL, by ensuring that it will not be binding without prior registration, is not supported by any statutory provision or case law. It is one thing to say that registration should be encouraged, as a way of drawing the liability to the attention

of purchasers, and quite another to say that, as a matter of law, it will not bind purchasers unless it is registered. In its guidance notes the Land Registry has given some credence to the view that registration will make a difference, as it says that it is aware of the arguments that CRL is not an interest in land, but it assumes that it is. Even if it is an interest in land, it is not purely that, it is a right to sue the owner of land, which exists independently of the priority of any interest in land, just as a mortgage lender can either claim possession, or sue the borrower for the mortgage money.

If the mortgage is not registered, or is discharged on a sale by a prior mortgagee, the lender still has the right to sue the borrower under the mortgage covenant. It is no defence for the borrower to say that the mortgage is not binding on the land, because it is binding on him personally. CRL similarly does not depend for its existence on registration as an interest in land, even if that is what it is.

Like Council Tax, it is imposed on the owners of land, but does not give anyone an interest in the land whose owner is subject to the liability. It should not be registered against his title. The PCC does not have the right to walk on, take possession of, sell or otherwise deal with, or benefit from the land itself in any way. The right of a PCC to have someone repair its church building, is an interest appertaining to that church, not an interest in the property of the person who has the obligation to repair the church building.

This means that registration is irrelevant. Registration will not provide reliable information that there is actually any liability, and non-registration, as the law stands, will not give the property owner a defence against claims under the Chancel Repairs Act 1932. That Act has not been amended to create any such defence.

7. Does statute law provide that CRL is an interest in property?

The only current statutory provisions now referring to chancel repair liability are the Chancel Repairs Act 1932, the Ecclesiastical Dilapidations Measure 1923, the Tithe Act 1936, and the Land Registration Act 2002 ("LRA"). None of these statutes makes chancel repair liability an interest in land after 12 October 2013. The LRA 2002 states that a right in respect of the repair of a church chancel will be an overriding interest until 12 October 2013. The LRA gives the rights of any person in actual occupation of the land, the status of an overriding interest, but it does not state that a person in actual occupation of land necessarily has an interest in the land, or any rights over the land at all. The effect of the LRA as regards CRL is similar. Property legislation, such as the Law of Property Acts, is necessary to define interests in land, and allow them to be created. The Law of Property Act 1925 defines legal estates (freehold or leasehold) and legal interests (such as mortgages, and rights of way). All other interests in land are equitable interests and take effect under a trust of land. The Law of Property Act 1925 is still in force, and it does not make CRL an interest in land. The Land Registration Act 1925 section 70(1)(g) made CRL an overriding interest, but that Act was repealed by the 2002 Act. None of the other statutes, or the decided cases, establish that CRL is an interest in land. After 12 October 2013 there will be no statutory provision in any property legislation or land registration law to say that CRL is an interest in land. Under the LRA only interests in land can properly be mentioned on the registers of title.

In a letter to me dated 18 March 2008, William Fittall, the Secretary General of the Archbishops' Council stated that *"you refer to the argument that the legislative provisions whereby chancel repair liability ceases to be an overriding interest after 12 October 2013 will not achieve their intended effect. While we have always been aware of this argument, our lawyers take the view that it is not at all likely that the courts would take this line; and we would certainly not encourage any Parochial Church Council to pursue liability on the basis of this argument post-2013"*.

However, in his reply to a question in General Synod by James Cheeseman a lay representative from Rochester Diocese, Mr Fittall stated: *"As a result of Government legislation chancel repair liability will only be binding on a person who purchases property after 12 October 2013 if that liability has been registered against the title of the property"*. He did not mention that he was aware of the argument that this may not be the case.

In view of these statements, the Bishops of the Church of England could not, consistently with these statements, oppose the legislation that is needed in order properly to give effect to the intentions expressed by the Government.

8. Why won't non-registration be a defence to a claim under the Chancel Repairs Act 1932?

There is nothing in the Chancel Repairs Act 1932 giving a lay rector a defence to a claim brought against him by the PCC in the county court on the grounds that notice of the liability had not been registered on his title. The Government is not proposing to legislate to make this the case. If CRL is not an interest in land, the argument that interests in land which are not registered are not binding on purchasers is irrelevant. As I have already mentioned, there are interests in land which need to be registered in order to bind the land, but in CRL law there is no mechanism whereby the land itself becomes bound.

In their statements to the House of Commons and the House of Lords respectively on 14 October 2003, David Lammy MP and Lord Filkin did not say that after 13 October 2013 chancel repair liability would no longer be binding on the purchasers of property against whose titles it was not registered.

They merely stated that: *"The order provides that, for a period of 10 years from the coming into force of the Act on 13 October 2003, chancel repair liability will remain an interest that binds successive owners of land even though it is not protected by an entry in a register kept by the Land Registry"*.

It is the duty of judges and courts to apply the law as made by Parliament, not to give effect to the intentions of Ministers of the Crown or Parliament. Therefore the judges are will not be free to refuse to give a PCC judgment against a lay rector against whose title CRL was not registered at the time of his purchase, unless either the General Synod or Parliament itself legislates to provide such a defence.

9. Can PCCs opt out of enforcing CRL?

The point has already been well made and recognised that enforcing CRL may be counterproductive, and several PCCs have decided not to attempt to do so. In his letter to me dated 20 September 2012, The Reverend Canon John Rees who is a partner in the ecclesiastical solicitors Winckworth Sherwood, the Provincial Registrar of Canterbury, and Vice Chairman of the Legal Advisory Commission to the Archbishop's Council, stated that *"I entirely agree that there are situations where it would be deeply counterproductive for parishes to enforce the liability against some of their parishioners"*.

The Church of England's Legal Advisory Commission advised that charity law constrained PCCs not to opt out unless there were clear reasons for doing so. The Charity Commission has now published its advice on this and recognises that PCCs are free to make their own decisions in good faith, on the basis of their view of the effect on mission of the church of resentment caused by such legal actions. Legislation would be helpful to enshrine this view in statute, to protect PCCs and their members from complaints of breach of trust, and enable them to make binding agreements to relieve property owners permanently, with or without payments for compounding of liability.

10. Who should reform chancel repair liability?

Because ecclesiastical law was taking up too much of the time of Parliament, Parliament gave power to the General Assembly of the Church of England to legislate to change ecclesiastical law – the law relating to the Church of England. The Church of England Assembly (Powers) Act 1919 ("the Enabling Act") gave this power to what is now the General Synod. The Ecclesiastical Committee of Parliament (15 members of the House of Commons nominated by the Speaker, and 15 members of the House of Lords nominated by the Lord Chancellor) considers the draft legislation from the Synod, and makes a report to the Legislative Committee of the General Synod. It is the duty of the Ecclesiastical Committee under section 2, to "draft a report thereon to Parliament stating the nature and legal effect of the measure and its views as to the expediency thereof, especially with relation to the constitutional rights of all His Majesty's subjects".

If the report is not favourable, presumably the Legislative Committee addresses any concerns of the Ecclesiastical Committee, and once both committees are happy with the draft legislation, it is then laid before both Houses of Parliament. They normally quickly approve it and it is then passed to the Sovereign for the Royal Assent, giving it the force of an Act of Parliament. The Synod has power in this way to change Acts of Parliament, including the Enabling Act itself. As Section 3(6) states "A measure may relate to any matter concerning the Church of England, and may extend to the amendment or repeal in whole or in part of any Act of Parliament, including this Act".

In some ways the Enabling Act needs updating, for example, legislators today do not just consider the "constitutional rights of Her Majesty's subjects". Citizens are no longer "subjects" and all human beings within the jurisdiction or affected by the Government's actions anywhere in the world are entitled to have their human rights respected, not just British citizens.

Several Acts of Parliament need changing. The law as it now stands, as the Courts have interpreted it, does not have the effect stated by Ministers; there is no effective system of compounding, since there is no effective system of apportionment; in order to compound, and relieve himself of liability,

the lay rector may have to pay hundreds of thousands of pounds, an amount decided by the Church Commissioners, based not just on his property, but the properties of hundreds of other householders in what was the tithe field or fields allotted in lieu of tithes of which his property forms a small part. The Synod has on several occasions amended or repealed primary legislation including Acts of Parliament. For example in the Church of England (Miscellaneous Provisions) Measure 2000 it repealed section 38 and Schedule 8 of the Tithe Act 1936 and the Ecclesiastical Dilapidations (Chancel Repairs) Act 1940. So there is no doubt that the General Synod has full powers to reform CRL, but if it will not do so, Parliament will need to act.

11. Why should the General Synod legislate?

The House of Lords judicial committee decided in *Aston Cantlow PCC v Wallbank* (2003) that the PCC was not a public authority, that it is part of an amorphous body, the Church of England that has no distinct legal personality, and is not bound by the Human Rights Act 1998, there is no doubt that the General Synod, and its Legislative Committee, when legislating, or choosing not to legislate are exercising the powers of a public authority. Although under section 10(6) of the Human Rights Act 1998, the Government has no power to make remedial orders to remedy any incompatibility with the fundamental freedoms and human rights guaranteed by the European Convention on Human Rights and Fundamental Freedoms, the courts do have power to declare such legislation incompatible. The Ecclesiastical Dilapidations Measure 1923 is clearly incompatible, as it does not respect the property rights of the individual protected by Article 1 of the 1st Protocol. Article 52 discriminated in favour of spiritual rectors (clergy) by relieving them of liability for chancel repairs, and not providing any fair system of apportionment or compounding, for the lay rectors who were left with the liability. It is also discriminatory in that only one denomination of one religion is given special rights that are not enjoyed by any other. This discrimination on religious grounds is contrary to Article 14 of the European Convention. The 1923 Measure was passed before the Human Rights Act, but by maintaining it on the statute book, and refusing to consider reform, the Synod is responsible for a continuing breach of human rights. The Synod should consider legislation, because without it, much dissension and ill-will are generated against the Church in the communities that the Church exists to serve, which is grossly counterproductive to the mission of the Church.

12. Why should Parliament legislate?

If the Synod will not legislate, Parliament will need to do so, for the reasons already given. The law is unfair. It needs to be changed. Parliament needs to consider whether the Enabling Act is appropriate in its present form, whether, for example, it is appropriate for the Synod to have power to legislate to repeal or amend a law on equal marriage, insofar as it might affect its rites and ceremonies, or in relation to church appointments, which might require the Church not to discriminate on the basis of gender or sexual orientation, and whether it should be amended to require the Synod and all other church bodies to respect human rights, and to enable Ministers of the Crown to remedy any incompatibility.

Parliament will need to consider whether it is right that lay rectors are pursued for liabilities that they are unable to meet without personal hardship, when the church should be enabled to benefit from grants available from the Government and Heritage Bodies for church repairs, which should not be affected by existence of unreasonable but theoretically possible claims against lay rectors.

Other than that, Parliament should legislate for the same reasons that the General Synod should do so. Either legislative body is equally able to legislate, but Parliament meets every day during sessions of Parliament and is very busy, the Synod meets only twice a year, and could easily meet more often in order to deal with this matter, or refer it to the Legislative Committee for report, which could then be approve it and pass it to the Ecclesiastical Committee, so that the law could be changed without taking up too much of the valuable time of Ministers and the two Houses of Parliament.

13. What form should the legislation take?

My suggestion for the outline of the draft Bill or Measure is as set out on the following pages.

- A BILL or MEASURE-

Chancel Repairs

A Bill (or Measure) to reform the law relating to the liability of lay rectors for chancel repairs by virtue of their ownership of rectorial land; to allow parochial church councils to declare whether or not any obligations of lay rectors to them subsist; to provide for the court to so declare; to provide for the keeping by diocesan registrars of a register of chancel repair liabilities; to provide for the registration of declarations of apportionment at Her Majesty's Land Registry; to allow parochial church councils to transfer all rights and obligations in respect of chancel repairs to the diocesan authorities who may so declare; to clarify the law relating to the limitation of liabilities for chancel repairs; to provide for the publication of all subsisting rights against lay rectors; to provide for the disclosure of information about such registrations to all interested parties; to provide for the fair apportionment of all subsisting liabilities between lay rectors and for the compounding thereof on payment of fair compensation to the ecclesiastical authorities.

1. Definitions

(1) In this Act the expressions following have the meanings set out as follows:

- (i) "rectorial land" means land which is owned by a person who is liable at common law and under the principal Act to pay or contribute towards the cost of repairing the chancel of a church by virtue of his ownership of that land.
- (ii) "lay rector" means a person who owns rectorial land
- (iii) "the principal Act" means the Chancel Repairs Act 1932
- (iv) "subsisting interest" means the interest of a parochial church council in rectorial land in respect of the liability of the lay rectors to it, which has been established in accordance with section 2
- (v) "parish" means the historical parish of a Church of England church in which rectorial land is situate, in which a parochial church council has an interest under this Act
- (vi) "made public" means published in freely accessible digital form.

2. Duties of parochial church councils and diocesan registrars

- (1) A parochial church council which resolves to undertake the obligations set out in this section shall notify the registrar of the diocese of such resolution by 12 October 2013.
- (2) The registrar of every diocese shall maintain a register of those parochial church councils which have notified him in accordance with subsection (1) which shall be made public.
- (3) A parochial church council which notifies the diocesan registrar of such a resolution shall provide sufficient particulars of the chancel repair liability which it claims to have a subsisting interest to enable all parcels of rectorial land to be identified on an ordnance survey map scale 1/1250 together with a declaration of apportionment in accordance with section 3 and such particulars shall be made public.
- (4) The particulars to be provided by the parochial church council shall include a legible typescript copy of any applicable record of ascertainments under the Tithe Acts, declaration of merger, enclosure awards or other documents whereby the lay rectors are believed to be

liable together with any historical maps and a modern ordnance survey map scale 1/1250 identifying the land shown in the historical map.

- (5) A parochial church council which does not resolve to undertake the obligations set out in this section or which fails to notify the diocesan registrar thereof and to provide him with the required particulars shall be deemed to have no subsisting interest in any rectorial land in the parish.
- (6) The registrar of every diocese which receives the notifications and particulars prescribed under this Act shall lodge a copy of the same with the Chief Land Registrar
- (7) An order under this Act may prescribe the time limited for compliance with the duties imposed by this section, which until otherwise so prescribed shall be 12 October 2013.

3. Declaration of Apportionment

- (1) A parochial church council which has resolved to undertake the obligations set out in section 1 shall provide the diocesan registrar with a declaration of apportionment to which shall be appended an ordnance survey map to scale 1/1250 identifying all rectorial land in the parish with reference to the Land Registry title numbers of each parcel of rectorial land, stating as precisely as possible the total area of the rectorial land in square metres and the area of each parcel of rectorial land in square metres and the percentage of the chancel repair liability attributable to each parcel of land so identified.
- (2) Any person whose land is identified as rectorial land on the declaration of apportionment shall be notified thereof by the diocesan registrar and if aggrieved by the declaration of apportionment may apply to the county court for it to be rectified.

4. Duties of the Chief Land Registrar

- (1) The Chief Land Registrar shall cause a notice of every declaration of apportionment which affects land in a registered title to be entered on the register of that title and shall thereupon notify the registered proprietor of the entry of such notice.
- (2) The registered proprietor shall notify the Chief Land Registrar of any objections to the entry of such notice and any dispute arising from such objections shall be resolved by reference to the Adjudicator to HM Land Registry.
- (3) The Chief Land Registrar shall in respect of any rectorial land so identified on a declaration of apportionment, the title to which is unregistered land, register a caution against first registration protecting the interest in such land claimed by the parochial church council.
- (4) The Chief Land Registrar shall not make any entry in the registers of title in respect of any declarations of apportionment or any other notice in respect of chancel repair liability after 12 October 2013 or any other time limit prescribed under this Act.

5. Claims under the principal Act

- (1) No claim against a lay rector under the principal Act shall be brought or maintained unless the claimant parochial church council and the diocesan registrar have complied with the duties imposed under section 2 of this Act within the prescribed time limit.

- (2) In any such claim the defendant lay rector shall not be liable for more than the apportioned amount of the cost of repairing and insuring the chancel calculated in accordance with section 3 (which the court may rectify if it deems it appropriate to do so).
- (3) The total annual amount of all claims against all lay rectors in respect of any former tithe field identified in a record of ascertainments as one to which a declaration of merger relates shall not exceed the “amount or value of the said tithe or rentcharge” as mentioned in section 1 of the Tithe Act 1839 and shall be limited in like manner in respect of any claim under section 31 of the Tithe Act 1936 in accordance with subsection (3) of that section.
- (4) The total amount of all claims against lay rectors in respect of any land which was allotted to a lay rector in lieu of tithe under an enclosure award shall not exceed in annual amount or value of the tithes of the parish in lieu of which it was allotted, being one tenth of the net annual value of the crop of wheat, barley, oats or other titheable produce which were grown on the tithe fields of the parish and no lay rector shall be liable for more than the fair proportion of that amount applicable to his land as identified on the declaration of apportionment made under this Act.
- (5) The Chief Land Registrar shall publish from time to time the advice of an expert agricultural economist as to the annual values applicable under subsection (4) on which the court shall be entitled to rely.
- (6) If the total amount claimed from such lay rectors exceeds the annual amount prescribed under subsections (3) or (4) above the court may order the appropriate amount to be paid by annual instalments not exceeding that amount.
- (7) Section 21 of the Tithe Act 1936 identifies the tithe rentcharges to which section 31 of the said Act applies and the repeal thereof under the Statute Law (Repeals) Act 2004 is hereby reversed and shall be deemed to have been of no effect.
- (8) No claim against a lay rector shall be brought or maintained if no notice has been registered at Her Majesty’s Land Registry of any declaration of apportionment under this Act or a notice of a right in respect of the repair of the chancel of a church in accordance with Schedule 1 or Schedule 3 of the Land Registration Act 2002 or if the interest of the parochial church council was postponed to his estate on a disposition to him for value of the rectorial land in accordance with section 29 of the said Act.
- (9) It shall be a defence to any claim under the principal Act for the defendant to show that by reason of exceptional hardship the ecclesiastical court prior to the enactment of the principal Act ought not to have deemed him liable to be admonished to contribute to the repair the chancel.
- (10) A defendant may in the proceedings brought under this Act counterclaim for an order for compounding of liability under the next following section.
- (11) Any person affected by this Act shall be entitled to apply to the county court for an order under this Act or under the principal Act or under the Land Registration Act 2002, for compounding, apportionment, rectification of a declaration of apportionment, for cancellation of any notice or any other order that the court may think it just to make.
- (12) The Court may make an order that either party shall pay such of the costs incurred by the other party as it thinks just.

6. Compounding of Liability

- (1) Article 52 of the Ecclesiastical Dilapidations Measure is hereby repealed.
- (2) A lay rector shall be entitled to call upon the parochial church council or diocesan authority at any time to compound his liability by calculating the capital sum required in order finally to discharge his obligations and to secure the release of the rectorial land and the cancellation of any notice registered against his title. The capital sum required shall not exceed twenty times (or an appropriate multiplier prescribed by order under this Act) the annual amount for which he is liable under the declaration of apportionment and upon payment of that sum his liability shall for ever be discharged and his land shall cease to be rectorial land and any entry against his title shall be for ever expunged and cancelled from the register. The court may determine the capital sum required and order compounding accordingly and make any other order it thinks just.

7. Transfers of rights and obligations to the diocesan authorities

A parochial church council which is unwilling or unable to undertake the duties prescribed by this Act may by resolution transfer its rights and obligations to the diocesan board of finance which may undertake the same in its stead and the diocesan board of finance shall thereupon become responsible for the administering the repair and insurance of the chancel of that church and shall have the same rights and duties as the parochial church council had under this Act.

8. Relief of Parochial Church Councils and lay rectors

No parochial church council is under any duty under charity law to undertake or continue to perform any of the duties set out in section 2 if it resolves not to do so and notifies the diocesan registrar of its resolution and thereupon any chancel repair liability which formerly applied in the parish shall be deemed to have for ever ceased to have effect.

9. Costs

A parochial church council that withdraws a declaration of apportionment of which notice has been served on any person or otherwise causes that person to incur unnecessary costs may be ordered to pay all such costs as were reasonably incurred by that person in relation to it. Any person who persists in making ungrounded objections to the registration of any notice or otherwise acts unreasonably in relation to the procedures under this Act may be ordered to pay the costs reasonably incurred by the other party in consequence.

10. Orders under this Act

The Lord Chancellor and Secretary of State for Justice shall have power to make orders under this Act by statutory instrument to be laid before both Houses of Parliament for affirmative resolution.

11. Commencement and Extent

This Act shall come into force when it is passed and it shall extend to England and shall extend to Wales with such modifications as the Secretary of State for Wales may by order prescribe.