

GENERAL SYNOD

DRAFT BISHOPS AND PRIESTS (CONSECRATION AND ORDINATION OF WOMEN) MEASURE

DRAFT AMENDING CANON No. 30

Reference under Article 8 of the Constitution of the General Synod

Explanatory memorandum to the draft legislation

Draft Bishops and Priests (Consecration and Ordination of Women) Measure

Clause 1 (Provision for consecration of women as bishops and ordination of women as priests)

Sub-clause (1) preserves the power for the General Synod to make provision by Canon for the ordination of women to the priesthood.

Sub-clause (2) confers a new power on the Synod to make provision by Canon to enable women to be consecrated as bishops.

Sub-clauses (3) and (4) repeal the Priests (Ordination of Women) Measure 1993 ('the 1993 Measure') in its entirety, subject to the transitional provisions contained in Schedule 1.

Clause 2 (Duty of diocesan bishop to make arrangements)

Clause 2 imposes a duty on the bishop of each diocese to make and publish a scheme containing arrangements for the exercise of certain aspects of episcopal ministry in parishes that have requested such arrangements to be made for them. The aspects of episcopal ministry covered by the arrangements are those that relate to the celebration of the sacraments and other divine service and to the provision of pastoral care. Episcopal ministry exercised under the scheme is exercised by way of delegation from the diocesan bishop. The bishop exercising ministry under the arrangements contained in the scheme for parishes that have requested them must be male. He must also be a member of the House of Bishops of the diocese in question or of another diocese. That means that he must be a 'working' bishop: he could not be an inactive, retired bishop.

Clause 2 also confers a discretion on the diocesan bishop to include additional arrangements for the exercise of episcopal ministry in the diocesan scheme (i.e. arrangements over and above those that he or she is under a duty to include in the scheme).

Clause 2 creates a presumption (for the purposes of the Measure) that, unless a male diocesan bishop includes a statement to the contrary in the diocesan scheme, he will ordain women to the priesthood. If the bishop does include a statement in the scheme that he will not ordain women to the priesthood then the scheme is required to make provision for the ordination of women as priests and for the support and pastoral care of female clergy in the diocese.

Schemes made under clause 2 have to be reviewed by the bishop every five years. The bishop has power to amend the diocesan scheme at any time, including by revoking the scheme and replacing it with a new scheme.

When a new diocesan bishop takes office the scheme made by his or her predecessor continues in force but the new bishop is required to review the diocesan scheme as soon as practicable and in any event within 12 months of his or her confirmation of election.

The bishop is required to take account of the national Code of Practice (to be made under clause 5) when making, amending or reviewing the diocesan scheme. He or she is also required to consult the diocesan synod.

Clause 3 (Parish requests)

Clause 3 makes provision for two types of parish request.

Letter of Request relating to episcopal ministry and pastoral care

The first type of request relates to episcopal ministry and pastoral care.

The parochial church council ('PCC') of a parish may issue a "Letter of Request" requesting that episcopal ministry and pastoral care be provided by a male bishop in accordance with the arrangements contained in the diocesan scheme. Such a request must state that it is made on grounds of theological conviction. The theological convictions in question are not confined to the theological convictions of the members of the PCC. Part I of Schedule 2 to the Measure sets out the form that such a Letter of Request must take.

A PCC may not issue such a Letter of Request unless (a) the PCC secretary has given the members at least four weeks' notice of the time and place of the meeting at which the motion proposing the issue of a Letter of Request is to be considered; (b) the incumbent or priest in charge votes in favour of issuing the Letter of Request; and (c) either (i) the meeting is attended by at least two thirds of the members who are entitled to attend or (ii) a majority of the members who are entitled to attend vote in favour of the motion.

When the diocesan bishop receives a Letter of Request relating to episcopal ministry and pastoral care he or she must first be satisfied that the requirements as to its issue have been complied with. If the bishop is satisfied that that is the case then he or she is required to send the PCC secretary a written notice setting out arrangements to give effect to the Letter of Request.

The bishop is required, when determining what arrangements to set out in the notice, to take into account the provisions of the diocesan scheme and also any relevant provisions contained in the national Code of Practice (to be issued under clause 5). The arrangements set out in the notice sent to the PCC secretary must be arrangements that the bishop considers are in accordance with the diocesan scheme. Where such a notice is in force, any person who carries out any functions in relation to the parish or benefice concerned must not act in contravention of the notice.

A Letter of Request relating to episcopal ministry and pastoral care remains in force for five years unless the PCC withdraws it sooner. But that does not prevent a PCC from issuing a further Letter of Request.

Letter of Request during a Vacancy

The second type of Letter of Request for which clause 3 makes provision is referred to as a "Letter of Request during a Vacancy" and takes the form of a request that only a male priest be appointed as incumbent of, or priest in charge for, the benefice. Such a request must state that it is made on grounds of theological conviction. The theological convictions in question are not confined to the

theological convictions of the members of the PCC. Part II of Schedule 2 to the Measure sets out the form that a Letter of Request during a Vacancy must take.

Clause 3 makes provision for the alternative situations of a benefice which is vacant and to which an incumbent will be presented and a benefice the right of presentation to which is suspended (or restricted).

Where a benefice is simply vacant pending the appointment of a new incumbent any motion proposing the issue of a Letter of Request during a Vacancy must be considered at a meeting of the PCC held under section 11 of the Patronage (Benefices) Measure 1986 (a 'section 11 meeting'). A Letter may not be issued unless either at least two-thirds of the members of the PCC who are entitled to attend the section 11 meeting are present when the motion is considered or a majority of the members who are entitled to attend vote in favour of the motion.

A PCC may also issue a Letter of Request during a Vacancy where the right of presentation to a benefice is suspended (or restricted) under the Pastoral Measure 1983 and either a priest in charge is being appointed for the first time (in the case of a new suspension) or where the priest in charge has left office and a successor is to be appointed as priest in charge. In those circumstances there will not be a section 11 meeting, so clause 3 provides that a motion proposing the issue of a Letter of Request during a Vacancy may only be considered if (a) the PCC secretary has given the members at least four weeks' notice of the time and place of the meeting at which the motion proposing the issue of the Letter is to be considered; and (b) either (i) the meeting is attended by at least two-thirds of the members of the PCC who are entitled to attend or (ii) a majority of the members who are entitled to attend vote in favour of the motion. (Any outgoing priest in charge and his or her spouse or civil partner are not permitted to attend such a meeting.)

If a PCC has issued a Letter of Request during a Vacancy, all those who exercise functions in relation to the appointment of an incumbent or priest in charge – and that would include the patron, the bishop and the parish representatives – are required to take account of the Letter of Request. (By virtue of clause 6 of the Measure they would also be under a duty to have regard to any relevant provision contained in the national Code of Practice.)

Clause 3 includes provision requiring copies of Letters of Request to be sent to a number of diocesan office-holders and other relevant persons and bodies (as set out in sub-clause (17)).

Clause 4 (Benefices in the patronage of the Crown etc.)

Clause 4 provides that the Measure applies to Crown benefices in the same way as it applies to other benefices. (Crown benefices are those in the patronage of Her Majesty in right of the Crown or in right of the Duchy of Lancaster and benefices in the patronage of the Prince of Wales as Duke of Cornwall; the provision includes Crown benefices the right of presentation to which is exercised by the Lord Chancellor).

Clause 5 (Code of Practice)

Clause 5(1) provides for the drawing up and promulgation by the House of Bishops of a national Code of Practice. The guidance contained in the Code will relate to –

- the making of diocesan schemes under clause 2;
- the exercise of episcopal ministry in accordance with the arrangements contained in diocesan schemes;

- the exercise of functions by those involved in the appointment of incumbents and priests in charge where a Letter of Request during a Vacancy has been issued;
- provision for the ordination of women as priests and the support and pastoral care of female clergy in dioceses where the bishop has included a statement in the diocesan scheme that he will not ordain women as priests; and
- any other guidance that the House of Bishops considers appropriate to give effect to the Measure.

Sub-clause (2) contains general provisions in relation to the Code and sub-clause (3) allows the House of Bishops to amend or replace the Code by a further Code.

Sub-clauses (4) to (8) deal with the procedure for making a Code (including an amending Code).

Sub-clause (4) applies to a Code constituting ‘Article 7 business’ for the purposes of the Standing Orders of the General Synod that give effect to the requirements of Article 7 of the Synod’s Constitution. In this case, once it has been considered by the Synod, the draft Code is to be referred – with any amendments made by the Synod – to the House of Bishops for their further consideration before being finally approved by the General Synod. Such a Code may only be approved by the Synod in such terms as the House of Bishops proposes, and there is the possibility of references being required by the Convocations and the House of Laity.

Sub-clauses (5) to (8) apply to a Code which does not constitute Article 7 business. In this case, once it has been made by the House of Bishops the Code is to be laid in draft before the General Synod and, if the Synod approves it without amendment, it must be issued by the House. If the draft Code is approved by the General Synod with amendment, it must be referred back to the House of Bishops, which may then either make and issue the Code as so amended or withdraw the Code for further consideration.

Sub-clause (8) allows a draft Code to be dealt with under the ‘deemed procedure’ if the Business Committee so determines (e.g. in the event that only small, uncontentious changes are being made). As is the case with other forms of draft instrument, however, even if the Business Committee has so determined, the draft Code will be debated if any member gives notice of a desire to debate it or of an amendment to it.

Clause 6 (Duty to have regard to Code of Practice)

Clause 6 imposes a duty on any person who exercises any ‘functions’, episcopal or otherwise, a duty to have regard to any Code issued under the Measure. Clause 8(1) defines ‘functions’ for this purpose as meaning any functions exercisable under any Measure or any enactment or any Canon or other instrument or otherwise (including powers and duties).

Clause 7 (Equality Act exceptions)

Clause 7 includes exceptions from the provisions of the Equality Act 2010 to ensure that the arrangements and other matters for which the Measure provides do not conflict with the provisions of discrimination law.

Clause 8 (Interpretation)

Sub-clause (1) contains definitions for the purposes of the Measure and sub-clauses (2) to (4) make the necessary adaptations to apply the Measure to a guild church in the City of London.

Clause 9 and Schedule 3 (Consequential amendments)

Clause 9 and Schedule 3 make amendments to the Synodical Government Measure 1969, the Patronage (Benefices) Measure 1986 and the Dioceses, Pastoral and Mission Measure 2007 that are consequential upon the provisions contained in the body of the Measure.

Clause 10 and Schedule 4 (Repeals)

Clause 10 and Schedule 4 repeal certain provisions of the Pastoral Measure 1983, the Patronage (Benefices) Measure 1986 and the Dioceses, Pastoral and Mission Measure 2007 on the basis that those provisions will become redundant as a result of the provision contained in the Measure.

Clause 11 (Amendment etc of Measure or Canon)

Clause 11 requires a two thirds majority in each House of the General Synod for the Final Approval of a Measure or Canon which amends or repeals any provision of the Measure or any Canon promulgated under clause 1.

Clause 12 (Citation, commencement and extent)

Clause 12 makes provision for the citation of the Measure, its commencement and its territorial extent.

Schedule 1 (Transitional Provisions)

Schedule 1 sets out transitional provisions relating to the repeal of the 1993 Measure by section 1(4).

Paragraph 1 provides that resolutions under section 3(1) of the 1993 Measure (i.e. Resolutions A and B) which are in force immediately before the Measure comes into force will continue to have effect, unless rescinded, for three years from that date. The other provisions of the 1993 Measure relating to such resolutions, including the power to rescind them, will also continue to apply in relation to any resolution the effect of which is preserved in this way.

Paragraph 2 deals with the specific context of a resolution under section 3(1) of the 1993 Measure relating to a benefice which comprises more than one parish. In that case a resolution which, by virtue of paragraph 1, would otherwise continue in force for three years will not do so if (at any time before the Measure comes into force or within the three-year period referred to above) the parochial church council of any other parish in the benefice passes a resolution stating that it wishes the resolution to cease to have effect: in that event the resolution under section 3(1) of the 1993 Measure will either not continue to have effect once the Measure comes into force or, if the other resolution is passed after the Measure has come into force, will immediately cease to have effect.

Paragraph 3 provides that where Resolution B under the 1993 Measure continues in force by virtue of the transitional provision made by paragraph 1 (and where it has not been rescinded or ceased to have effect under paragraph 2) it will cease to have effect when the procedure for filling a vacant benefice is formally begun or where a new priest in charge is to be appointed. In those circumstances the parochial church council of the parish in question can consider whether it wishes to issue a Letter of Request during a Vacancy under clause 3(3) of the Measure.

Paragraph 4 makes further transitional provision. The amendments and repeals contained in Schedules 3 and 4 will not have effect in relation to a parish where resolutions A or B continue in force by virtue of the transitional provisions contained in paragraph 1.

Schedule 2 (Letter of Request)

Parts 1 and 2 set out the forms, respectively, of a Letter of Request that is concerned with episcopal ministry and pastoral care, and a Letter of Request during a Vacancy.

Draft Amending Canon No 30

Paragraphs 1 and 2

Paragraph 1 repeals paragraph 5 of Canon C 2 (which states that nothing in Canon C 2 is to make it lawful for a woman to be consecrated to the office of bishop) and paragraph 2 goes on to confer the canonical authority (authorised by clause 1(2) of the Measure) allowing women to be consecrated as bishops if they otherwise satisfy the requirements of Canon C 2. (This provision reflects that made by Canon C 4B in relation to the ordination of women as priests.)

Paragraphs 3 and 4

These make changes to the Canons consequential upon the repeal of the 1993 Measure by the Measure, by removing prohibitions reflecting the terms of the 1993 Measure.

Paragraphs 5 to 7

These make miscellaneous amendments to Canon C 15, unrelated to the consecration of women to the episcopate.

Now that there are no longer any provosts in the Church of England, the references to that office in Canon C 15.2 are redundant. Paragraph 6 accordingly removes them.

Canon C 15.3 currently provides that a suffragan bishop “*who is to be invested by the archbishop of the province in which he is to serve shall on the occasion of his investiture publicly and openly make the Declaration of Assent in the presence of the congregation there assembled*”. However, there is no formal process of ‘investiture’ of suffragan bishops, so that the effect of this requirement is unclear. Paragraph 7(a) accordingly substitutes a new requirement that a suffragan bishop should make the declaration of assent “*on the occasion of the commencement of his public ministry in the diocese*”. (In practice, this obligation is likely to be met at a diocesan service of welcome.) Paragraph 7(b) makes a consequential amendment, so that when a suffragan bishop makes the Declaration of Assent in this way, the preface is required to be spoken by the bishop of the diocese rather than the archbishop.

Paragraph 8

Paragraph 8 provides that the changes made to Canons C 8.2(a) and C 10 by paragraphs 3 and 4, which are consequential on the repeal of the 1993 Measure, will not take effect in relation to a parish so long as any resolution under s.3(1) of the 1993 Measure (i.e. Resolution A or B) remains in force in respect of that parish by virtue of the transitional provisions contained in Schedule 1 to the Measure.

Paragraph 9

This makes provision for the coming into force of the Amending Canon. Sub-paragraph (a) provides that the paragraphs making amendments to Canon C 15 unrelated to the consecration of women to the episcopate and postponing the effect of the consequential amendments where a resolution under s.3(1) of the 1993 Measure remains in force will come into force immediately upon the promulgation of the Amending Canon. Sub-paragraph (b) provides that the remaining provisions of the Amending Canon will come into force on the day on which section 1 of the Measure (which, amongst other things, repeals the 1993 Measure) comes into force.

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