

ILLUSTRATION OF ‘STATUTORY TRANSFER’ OPTION

Description

The principal elements of this option are as follows:

- (a) although the Priests (Ordination of Women) Measure 1993 and the Episcopal Ministry Act of Synod 1993 would be repealed¹, resolutions passed under that Measure would continue to have effect;
- (b) a parish which was unable to receive women’s priestly and episcopal ministry (a ‘petitioning parish’) could pass new resolutions which not only allowed them to decline women’s priestly ministry but also to ask for ‘complementary episcopal arrangements’;
- (c) where a petition was made, jurisdiction in relation to certain episcopal functions specified under the legislation (‘transferred functions’) would, so far as the petitioning parish was concerned, be transferred direct to a complementary bishop by the effect of the legislation itself, without the need for any action on the part of the diocesan bishop;
- (d) because that jurisdiction would not be received by the complementary bishop by delegation from the diocesan, it would be an ‘ordinary’ jurisdiction;
- (e) provision would be made for the modification of existing legislation to give the complementary bishop any necessary rights or duties; and
- (f) provision would be made to identify those who could act as complementary bishops – namely the diocesan bishop of any other diocese who had made a declaration that he would not ordain or consecrate women, the holders of any suffragan see identified for the purpose by the archbishop of the province concerned, any suffragan bishop (whether in the diocese or elsewhere) and any stipendiary assistant bishop in the diocese - - provided in each case that they were male; and
- (g) the diocesan bishop would decide who should act as complementary bishop in relation to a particular petitioning parish, after consultation with the parish, but subject to the parish being able to require the appointment of a bishop holding a suffragan see identified by the archbishop in the way described in (f) above.

Under this option, the transferred functions would be:

- (a) the celebration of the sacraments and Divine worship;
- (b) pastoral and spiritual care;
- (c) disciplinary arrangements for the clergy of the petitioning parish (in terms of the identity of those responsible for administering discipline);
- (d) ministerial review of the clergy of the petitioning parish;
- (e) appointments to the petitioning parish; and

¹ But with the effect of s.1(1), allowing for the ordination of women to the priesthood, being preserved and the saving of the effect of Resolutions A and B previously passed by parishes in reliance on it.

- (f) sponsorship of candidates for ordination training from the petitioning parish.

However, an alternative would be that the last three areas should be retained as functions of the diocesan, but on the basis that responsibility for them would in practice be shared between him or her and the complementary bishop – the detailed arrangements for that being made in a code of practice of the kind described below.

With the exception of the transferred functions, jurisdiction in relation to a petitioning parish would remain with the diocesan bishop. Thus appointments and pastoral reorganisation, for example, would continue to be dealt with as at present, subject to any expectations as to consultation arising under the code of practice and to any express modification of the present position by the Measure².

Commentary

Under this option although the Priests (Ordination of Women) Measure 1993 would be repealed in its entirety³, there would be new provision analogous to that contained in s.3, which allows parishes to pass Resolutions A and/or B.

A number of issues arise on precisely how the current arrangements as regards existing Resolutions A and B should be carried forward. However, we believe that the detail of those arrangements would best be addressed at the next stage of the drafting process in the event that the Synod agrees to adopt this option, in the light of the view expressed in the ‘Guildford and Gloucester Report’⁴ that

- *“the new arrangements should seek to promote permeability rather than encouraging the creation of boundary walls;*
- *the processes should be clear, transparent and, so far as possible, proof against manipulation;*
- *the possibilities open to parishes should ... be coherent ... but, subject to that, parishes should not be confronted with ‘all or nothing’ choices”.*

A mechanism would of course be required to allow parishes to opt into complementary episcopal arrangements, and to opt out of them subsequently. Again, we believe that the formulation of the precise circumstances in which it should be possible to opt for complementary episcopal arrangements, and issues such as the identity of the body responsible for deciding whether to do so, should be reserved to the next stage in the process.

However, for the purposes of the illustrative draft Measure we have proceeded on the assumptions that:

- (a) the decision would be one for the PCC of the parish;
- (b) a parish could only petition for complementary episcopal arrangements if its diocesan bishop:

² It might, for example, give complementary bishops the status of ‘interested parties’ for the purposes of pastoral reorganisation, as canvassed in paragraph 6.14 of the Guildford and Gloucester Report.

³ Subject to the saving provision described in footnote 1 above.

⁴ See paragraphs 6.17 to 6.20 of ‘Women in the Episcopate’ (GS Misc 826)

- i. was a woman; or
 - ii. being a man, had not made (or had made but revoked) a formal declaration that he would take part neither in the ordination of women to the office of priest nor in the consecration of women to the office of bishop;
- (c) if a parish wished in those circumstances to petition for complementary episcopal arrangements it would have to pass one of two possible resolutions, as follows:
 - i. the first would involve the parish declaring that it would not accept a woman priest, or a priest ordained by a woman bishop, as a celebrant at Holy Communion or as incumbent, priest in charge or team vicar (ie an enlarged version of both existing Resolutions A and B), as well as requesting complementary episcopal arrangements;
 - ii. the second would involve the parish declaring that it would not accept a woman priest as incumbent, priest in charge or team vicar (ie an amended version of existing Resolution B), as well as requesting complementary episcopal arrangements; and
- (d) parishes which had already passed existing Resolutions A and/or B would not automatically be deemed to have passed either of the new resolutions, so that they would need to do so if they wished to seek complementary episcopal arrangements. However, the existing resolutions would continue in force unless and until rescinded or replaced by new resolutions.

To support the arrangements proposed above, provision would need to be made for the possibility of a diocesan bishop (being male) to make, and revoke, a declaration that he would take part neither in the ordination of women to the office of priest nor in the consecration of women to the office of bishop, together with arrangements for the registration of such a declaration.

As to the nature of the arrangements involved in a statutory transfer, they would involve the automatic transfer, to a complementary bishop, of specified episcopal functions (in the areas of the celebration of the sacraments etc, pastoral care and discipline) specified in Regulations made by the House of Bishops. Those Regulations would be subject to approval by the General Synod.

Provision would need to be made to enable the Regulations in particular to modify any existing legislation, where necessary, in order to be able to allow complementary bishops to exercise the transferred functions.

In addition to the Regulations, there would also be a code of practice. Such a code is not just a free-standing possibility, only capable of being used as the sole form of provision for those conscientiously opposed: it is equally capable of being used to supplement arrangements made by statutory transfer, particularly in order to address 'relational' issues. Thus we believe that statutory transfer should be accompanied by a code of practice dealing as a minimum with:

- (a) the need for diocesan bishops and others to consult complementary bishops in specified contexts;

- (b) the need for complementary bishops to co-operate with diocesan bishops and others in specified contexts; and
- (c) the arrangements for the appointment, consecration and authorisation of complementary bishops.

Provision would be made for the identity of those to act as complementary bishops. We believe it important that they should include a category of bishop who did not derive their legal authority from a woman bishop or archbishop or a bishop who ordained or consecrated women and that petitioning parishes should be entitled to require such a bishop to act as the complementary bishop if they wished. To that end the Measure would provide that:

- the archbishop of each province must nominate one or more suffragan sees in his or her province as sees the holders of which would perform the functions of complementary bishops and who would not ordain or consecrate women; and
- the bishops holding those sees would be authorised by the Measure itself to fulfil the functions of complementary bishops under the Measure.

The effect would be that such bishops would occupy suffragan sees but would have different responsibilities from suffragan bishops generally. Such an arrangement would ensure that their authority would not be received by way of delegation from the diocesan bishop but directly from the Measure itself. It would, therefore, be an ‘ordinary’ jurisdiction.

However, we also believe that there should be flexibility over who could exercise the transferred functions, so as to afford other possibilities to petitioning parishes which did not require such a bishop to act as their complementary bishop (eg because their conscientious objection to women’s episcopal ministry was based on ‘headship’ grounds). It would therefore be possible for diocesan bishops to appoint others to act as a complementary bishop if, following consultation, it was clear that a parish was content with that. Those other possibilities would be a male suffragan bishop (whether in the same diocese or elsewhere), a male stipendiary assistant bishop in the same diocese or a male diocesan bishop of another diocese who had made a declaration that he would not ordain or consecrate women.

Flexibility more generally over the nature of the functions to be exercised in relation to particular parishes would also be possible through the making of arrangements under which pastoral and sacramental provision was made for parishes outside the terms of the Measure if they were happy with more modest arrangements than the full panoply of complementary episcopal arrangements. (For example, a parish might be willing, without formally petitioning, to accept that the diocesan bishop should simply delegate certain functions to a male suffragan bishop under the Dioceses, Pastoral and Mission Measure 2007, whilst reserving other episcopal functions to him or herself.) The code of practice referred to above could encourage, and give advice on, possibilities of that kind, and the power to make the code in the illustrative draft Measure is therefore drawn in such a way as to allow that.

Finally, the changes we envisage as regards obedience by clergy to their diocesan bishop (as to which see paragraphs 145 to 150 of the main body of the report) would not be made by the Measure giving effect to the statutory transfer option but by the Amending Canon which authorised the consecration of women to the episcopate.

Enforceability

The position as regards enforceability under the statutory transfer route would, as regards indirect enforcement through the disciplinary process, be that any failure by the diocesan bishop (or anyone else) to comply with the arrangements in place as a result of the transfer of functions would represent an “*act in contravention of the laws ecclesiastical*” for the purposes of s.8 Clergy Discipline Measure 2003 and could therefore be the subject of a complaint under that Measure.

The question of enforcement in a more general sense would not arise since it would not be necessary to take proceedings before the necessary jurisdiction was conferred on a complementary bishop: that result would have been achieved automatically by the legislation itself so that issues of compliance by the diocesan bishop should not arise.

‘Entrenching’ the legislation

Again, as explained in Annex D above, further consideration will be needed on whether to include any provision in the Measure entrenching the arrangements made under it or whether to rely on the fact that amending legislation would be bound to trigger the Article 7 requirements.

