

**WOMEN IN THE EPISCOPATE****Further Report from the Legislative Drafting Group**

1. As a Drafting Group we have now completed the second stage of the work the Synod instructed us to do.
2. In the light of the Synod's decision in July 2008 (see resolution at Annex A) Father Jonathan Baker did not feel able to stay with us for this part of our work. We wish to pay tribute to him for his distinguished contribution to the Group during the preparation of our first report (GS 1685) published in April 2008.
3. We have met on five occasions since July 2008. We have taken account of further submissions we have received since then. We have also sought the views of the House of Bishops at its meetings in October and December.
4. Throughout our existence as a Group we have been conscious of the fact that we were chosen for the range of views and perspectives that we would bring. This has inevitably meant that the contrast between the positions of those who have conscientious difficulties in relation to the ordination of women and of those who are committed to having a threefold order of ministry open equally to men and women, has regularly come to the fore in our discussions. Despite this, we have had no problems at a personal level in sharing our thoughts in a frank and open manner and honouring a strong difference of opinion amongst us.
5. We made it clear in our first report (paragraph 41) that the simplest part of our task would be to lift the present legal obstacles to the consecration of women to the episcopate. That remains the case. The necessary provision is in clause 1 of the draft Measure that will be brought before the General Synod.
6. More challenging has been how best to formulate draft legislation in accordance with the mandate from the Synod that "*special arrangements be available within the existing structures of the Church of England for those who as a matter of theological conviction will not be able receive the ministry of women as bishops or priests*". We have had to work hard to achieve a fair balance within the legislative provisions and to identify a way forward that will honour the Synod's declared wish for as many people as possible to remain within the Church of England, maintaining the highest possible degree of communion with each other.
7. We know that there are those who believe that anything short of structural provision for those unable in conscience to accept the ordained ministry of women as priests and bishops will be insufficient. We are also well aware that, from another point of view, the introduction of any arrangements, structural or otherwise, which mean that women may not be able to minister as bishops or priests within certain parishes, will be seen as unacceptable because it perpetuates a difference of treatment on grounds of gender.

8. Our task, shaped by the Synod's vote last July in favour of a statutory code of practice, has been to produce proposals consistent with the Synod's endorsement in July 2006 of Resolution III.2 of the Lambeth Conference 1998 "*that those who dissent from, as well as those who assent to, the ordination of women to the priesthood and episcopate are both loyal Anglicans*".
9. We have, as a result, sought an approach that has the potential to hold together in tension two elements which are, each in their different way, difficult for those who disagree on the underlying issue of principle. One is to place some limitation on the scope of the exercise of the ministry of women as priests and bishops in circumstances where that is necessary to respect the genuine theological convictions of others. The other is to place a requirement on those with such convictions nevertheless to accept that the ordination of women as priests and their consecration as bishops in the Church of England is valid in legal terms.
10. As we pointed out at paragraph 143 of our first report, "*the fact that some may doubt whether women may sacramentally be priests and bishops and/or exercise headship is a separate matter from calling into question whether as a matter of law the ordinations are valid*". Inevitably our primary focus as a drafting group has had to be on what can be achieved by law, but the deeper questions of theology and ecclesiology – which will need to be explored further as the legislative process unfolds – go beyond what can be addressed by settling legal points. These issues and the many tensions they evoke need to be held not only in the mind but also in relationship. That, in some small way, is what we have tried to do within our life together as a Group. We hope that a similar spirit will be possible in the wider Church as those who hold very different views seek to transform conflict by working graciously, closely and imaginatively together.

#### **Canon A 4**

11. This approach lies behind the recommendation discussed in paragraphs 128–144 of our first report that an important part of the legislative package should be to recast substantially Canon A 4, which has its origins in the Canons of 1603 and, in its present form, does not in fact mean what it is now generally thought to mean. We remain of the view that a new Canon A 4 is necessary.
12. We have done some further work on the wording and have incorporated at paragraph 4 of the proposed new Canon A 4 (to be substituted by paragraph 3 of draft Amending Canon No 30) an explicit recognition both that members of the Church of England "*may, with a good conscience, hold theological convictions which render them unable to receive the ministry of female bishops or priests*" and that "*in making arrangements to respect those theological convictions, the Church of England nevertheless accounts and affirms those who are made, ordained or consecrated as described in paragraph 2 to be truly bishops, priests or deacons*".
13. We believe that the proposed new Canon A 4 (see Annex A to the Explanatory Memorandum (GS 1708-10X)) repays very careful study and that the internal balance it seeks to strike is at the heart of the accommodation that will need to be made if the Church of England is both to welcome women wholeheartedly and enthusiastically to each order of ministry and leave generous space for those who in conscience cannot receive this development.

14. Viewed against the background of the proposed new Canon A 4, we believe that the draft legislation and illustrative draft Code of Practice we have produced offer a package that is coherent and consistent with the mandate that Synod gave us. It does not completely abolish all distinctions based on gender. It could not do so and at the same time be compatible with the declared wish of Synod for there to be special arrangements to accommodate those whose theological convictions preclude them from receiving the ministry of female bishops and priests.
15. There is, therefore, a need for an approach which attempts to square this difficult circle. It is not, in fact, unique to have a situation in law where there is not complete equality of opportunity for both sexes. In the general law, as we pointed out in paragraphs 58–59 of our first report, there is already provision in section 19 of the Sex Discrimination Act 1975 (as amended) which makes it lawful in certain circumstances for organised religions to impose a requirement for a person to be of a particular sex.
16. Implicit in that provision is a principle of English law that where there are conflicting rights, the exercise of one right may sometimes need to be restricted in order to protect the exercise of another right. But where that is the case the law will require the restriction of the first right to be ‘proportionate’ to that aim. This means that any restriction on the first right should be no greater than is required in order to protect the exercise of the other right.
17. We believe that thinking about the matter in a similar way to this may help the Church as it moves ahead with legislation permitting the consecration of women as bishops. The exercise of women’s priestly and episcopal ministry in certain places can properly be restricted by law, but this should only be to an extent that is ‘proportionate’ in order to respect the theological convictions of others in relation to that ministry.

### **The draft Measure**

18. The draft Measure which will be laid before the Synod for First Consideration represents a developed version of the illustrative draft Measure giving effect to the statutory code of practice option that was included in Annex D of our first report. The draft Measure has two principal objectives:
  - **to give the General Synod power to make provision by Canon allowing women to be consecrated as bishops; and**
  - **to set out the legal framework for the arrangements to be made for parishes which, on grounds of theological conviction, feel unable to receive the ministry of women** (‘petitioning parishes’).
19. The draft Measure:
  - **requires the House of Bishops to issue** (subject to approval by the General Synod) **a Code of Practice** containing arrangements in relation to petitioning parishes (clause 4(1));

- **specifies the types of bishop** (clause 4(6) together with clause 2) **who can undertake functions in relation to petitioning parishes** (‘complementary bishops’ – clause 4(8)), including the holders of certain suffragan sees specifically identified for the purpose by the archbishops (clause 3); and
  - **imposes a duty on all those exercising functions in the Church of England to have regard to the Code of Practice** (clause 5).
20. The requirement to draw up a Code is mandatory, so the House of Bishops will be legally bound to prepare one and to lay it before the General Synod for approval. The Code is thus statutory in that it is authorised and required by the Measure. It will be national in the sense that it will, once approved, apply in the Church of England generally. The draft Measure provides that, once made, the Code cannot be amended or replaced without the approval of the General Synod.
21. We have recognised the desirability of providing some continuity for parishes that have passed resolutions under section 3 of the Priests (Ordination of Women) Measure 1993, which will be repealed by the Measure. There are consequently transitional provisions in the draft Measure, which have the effect of continuing in force for five years from the commencement date of the new Measure those resolutions under the 1993 Measure which were in force on that date, subject to the right of the parish concerned (or, in the case of a multi-parish benefice, the right of any parish in that benefice) to bring them to an end at any time before then.
22. We have also taken careful note of the position of individual clergy, deaconesses, readers and lay workers, whether or not in petitioning parishes, who on grounds of theological conviction are unable to accept the ministry of a female bishop. The draft Measure makes it mandatory for the Code of Practice to make provision for them.
23. Equally, we have included a requirement in the draft Measure that the Code should make provision for the promotion and support of the ministry of clergy who are women in any diocese where the diocesan bishop has made a declaration that he will not ordain a woman to the office of priest nor participate in the consecration of a woman to the office of bishop.

### **The illustrative draft Code of Practice**

24. The process for making the Code of Practice differs from that for the draft Measure and Amending Canon because the Code cannot be made unless and until the Measure has been given Final Approval by the Synod and received the Royal Assent: only at that point can the House of Bishops formally introduce a draft Code into the Synod for approval. However, given the importance in practice of the Code as part of the package of arrangements, we have prepared an illustrative draft showing the form it might take.
25. In preparing the illustrative draft we have sought to strike a careful balance between prescription and flexibility. We have included some introductory material, which attempts to spell out the purpose and status of the Code. The illustrative draft also contains in an annex a possible form of instrument of delegation, showing the full

range of episcopal functions which could be delegated to a complementary bishop in suitable cases.

### **Delegation**

26. One issue to which we have given further attention since July concerns the nature of jurisdiction and how it is conferred. Under the arrangements embodied in the draft legislation we have prepared, the authority exercised by a complementary bishop would be conferred by delegation from the diocesan. Delegation would take effect under legal powers that will have been conferred expressly for the purpose by the General Synod on behalf of the Church of England as a whole. The specific agreement of the House of Bishops, both under Article 7 and by a two-thirds majority at Final Approval, will have been an essential part of that process.

### **Jurisdiction by operation of law**

27. However, it would in principle be possible to go further, still within the context of the Code of Practice, by providing for the bishop exercising oversight for those unable as a matter of theological conviction to receive the ministry of women as priests or bishops to do so under some measure of jurisdiction granted by operation of law rather than by delegation from the diocesan bishop.
28. In the light of the Synod's decision in July we are clear that any such approach could not be the same as the 'transferred episcopal arrangements' ('TEA') proposed in the Report of the 'Guildford Group'<sup>1</sup> or the 'statutory transfer' proposed as option 2.4 in our first report<sup>2</sup>, given that any Code of Practice option necessarily involves the diocesan bishop having a measure of discretion and therefore having to give his or her consent before arrangements come into effect.
29. Nevertheless, it would, in theory, be possible to include a provision in the Measure such that, if the diocesan bishop gave his or her consent, jurisdiction in specified areas would thereafter be exercised by the complementary bishop in his own right rather than by way of delegation.
30. We have given careful consideration to whether conferring jurisdiction in this way by operation of law should be reflected in the draft legislation presented for First Consideration. After much consideration, we have decided that it should not, for the following reasons:
- we have been anxious to stay unambiguously within the terms of the mandate given to us by the Synod. While such an approach would be part of the arrangements made under a Code of Practice it would, nevertheless, necessitate a provision in the legislation for jurisdiction to pass from one bishop to another by consent. That could be seen as going beyond what the Synod thought it was approving in July;
  - for many people it is ecclesiological important that the arrangements made for petitioning parishes are by way of delegation from the diocesan bishop,

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<sup>1</sup> See paragraphs 40 to 48 and Appendix 1 of GS 1605.

<sup>2</sup> See paragraph 115 and Annex E of GS 1685.

whether male or female. In earlier discussions anxieties have been expressed over whether any division or transfer of jurisdiction would change the nature of the episcopacy. We concluded that it was not for us to take a view on this matter in the absence of a clear mandate from the Synod;

- we thought that if there was any merit in the idea of allowing for some measure of jurisdiction to be granted, with consent, by operation of law it was more likely to be established through a further process of discernment and discussion during the passage of the draft legislation through the Synod.

## **Conclusion**

31. It is now for the Church of England to take decisions through the formal processes laid down in the Synod's Constitution and Standing Orders. We have for ease of reference set out at Annex B a summary of the main steps that lie ahead. Members of Synod may find it helpful to retain this as a reference document.
32. The draft Measure, draft Amending Canon and illustrative draft Code of Practice we have produced establish a framework within which the Church of England can proceed to the consecration of women to the episcopate. In paragraph 75 of our first report we commented that for the last 15 years since women were admitted to the priesthood "*the Church of England has managed to model the holding together within one Church of people who differ profoundly on a major theological issue*".
33. From our different perspectives within the Group – which, of course, include continuing differences over the decision reached in July and the mandate it set for the final phase of our work – we are united in regarding the holding together of as many people as possible within the family of the Church of England as the goal towards which everyone should strive. We earnestly pray this will be possible when women as well as men are consecrated to the episcopate.

+ Nigel Manchester  
+ Trevor Basingstoke  
The Venerable Donald Allister  
The Right Worshipful Dr Sheila Cameron QC  
The Very Reverend Vivienne Faull  
Dr Paula Gooder  
Mrs Margaret Swinson  
Sister Anne Williams

12th December 2008

**The resolution passed by the General Synod at the July 2008 group of sessions**

“That this Synod:

- (a) affirm that the wish of its majority is for women to be admitted to the episcopate;
- (b) affirm its view that special arrangements be available, within the existing structures of the Church of England, for those who as a matter of theological conviction will not be able to receive the ministry of women as bishops or priests;
- (c) affirm that these should be contained in a statutory national code of practice to which all concerned would be required to have regard; and
- (d) instruct the legislative drafting group, in consultation with the House of Bishops, to complete its work accordingly, including preparing the first draft of a code of practice, so that the Business Committee can include first consideration of the draft legislation in the agenda for the February 2009 group of sessions.”



### Next Steps

1. The responsibility for piloting the draft legislation through the Synod now passes to the Steering Committee that the Appointments Committee has appointed to be responsible for it under Standing Order 49. For the sake of continuity, the Appointments Committee has invited a number of members of the Drafting Group to serve on that Committee.
2. In February the draft Measure and the draft Amending Canon will receive First Consideration by the Synod on motions that they “*be considered for revision in Committee*”. No amendments can be moved at the First Consideration stage.
3. If the motions are passed, the draft Measure and draft Amending Canon will proceed to the Revision Committee stage. The Revision Committee consists of the Steering Committee plus other members appointed by the Appointments Committee. Whereas the Steering Committee must, by convention, consist of Synod members who support the draft legislation, the appointed members of the Revision Committee – who will outnumber the Steering Committee – will represent a wide range of views. The appointed members of the Revision Committee will be appointed by the Appointments Committee shortly after the February group of sessions.
4. The Revision Committee will then consider the draft Measure and draft Amending Canon clause by clause, together with any proposals for amendments submitted to it (which could include proposals for options which have been the subject of unsuccessful amendments to Synod motions at earlier stages in the process). It will also consider the illustrative draft Code of Practice. The Committee is likely to meet monthly. Given the likely number of amendments, the Revision Committee process is expected to continue throughout 2009 with a view, if possible, to returning the draft legislation to Synod for the beginning of the Revision Stage in February 2010.
5. As we said in our April 2008 report, that may just leave time for the Revision Stage to be completed in July 2010 and for the draft legislation to be referred to Diocesan Synods under Article 8 in the lifetime of this General Synod. But, at this stage, estimates of timing are necessarily tentative.
6. Only the draft Measure and draft Amending Canon are subject to a formal reference to the dioceses under Article 8, though dioceses will have for information the latest version of the illustrative draft Code so that they can take account of the entirety of the proposed package in coming to their decision.
7. The process for making the Code of Practice necessarily differs from that for the Measure and Amending Canon because the Code cannot be made unless and until the Measure containing the necessary enabling power has been given Final Approval by the Synod and received the Royal Assent. It is then that the House of Bishops will be able to make the Code and seek the Synod’s approval to it. The precise nature of the procedure to be used at that point will be a matter for the

Business Committee to decide at the time; but, whatever procedure is used, members will be able to propose amendments to the draft Code laid before the Synod by the House.

8. At that stage Article 7 references can also be claimed by the House of Laity and by the Convocations in relation to the draft Code (they will have had an earlier opportunity to claim such references in relation to the draft Measure and draft Amending Canon before they are put before the Synod for Final Approval).
9. It is also at this final stage of the Synodical process that the Synod will be invited formally to rescind the Episcopal Ministry Act of Synod 1993. The aim would be that the main provisions of the Measure, the Amending Canon and the Code of Practice would all come into force on the same day and that the Act of Synod would also cease to have effect on that day, subject to provisions preserving, for a specified period, extended episcopal oversight provided under the Act of Synod for parishes which had already petitioned under it.