

GENERAL SYNOD

**DRAFT VACANCIES IN SUFFRAGAN SEES
AND OTHER ECCLESIASTICAL OFFICES MEASURE**

DRAFT CROWN BENEFICES (PARISH REPRESENTATIVES) MEASURE

REPORT OF THE STEERING COMMITTEE OF MEMBERS IN CHARGE

Chair: The Venerable George Howe,
Archdeacon of Westmorland and Furness (Carlisle) (Chair)

Members: Mrs Janet Atkinson (Durham)
The Rt Worshipful Timothy Briden, Vicar-General of Canterbury (*ex officio*)
Mrs Jenny Dunlop (Chester)
The Reverend Brian Lewis (Chelmsford)
Mrs Shirley-Ann Williams (Exeter)

1. The draft Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure and the draft Crown Benefices (Parish Representatives) Measure ('the draft Measures') received First Consideration from the General Synod at the July 2008 group of sessions and were committed to a Revision Committee. At the February 2009 group of sessions the Synod took note of the report of that Committee (GS 1692-3Y) and completed the Revision Stage for each of the draft Measures, which then stood committed to the Steering Committee under Standing Order 59(a) in respect of their Final Drafting.
2. The Steering Committee has conducted its remaining business by correspondence under Standing Order 59(f). It now returns the draft Measures (GS 1692B and 1693B) to the Synod for Final Drafting and Final Approval.
3. Under Standing Order 59, on the Final Drafting Stage the Steering Committee may propose 'Drafting Amendments' or 'Special Amendments' or both. These two categories of amendments are defined in SO 59(g) as follows –
 - (i) a Drafting Amendment means an amendment where only the wording of the Measure is altered and not its substance; and
 - (ii) a Special Amendment means an amendment considered necessary or desirable by the Steering Committee because the Measure is not sufficiently clear or because some other criticism not considered by the Synod or any Revision Committee has been brought to the notice of the Steering Committee.
4. The subject matter of both Measures, but in particular the draft Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure, is recondite and highly technical. A considerable amount of work has been required in order to ensure that the detailed drafting of the provisions is correct. To that end, the Steering Committee has agreed the Drafting Amendments to the draft Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure set out in Annex A to this report, and shown in bold type in GS 1692B, which have been identified on final scrutiny of the draft

Measure as necessary corrections to the text. An explanation for each of these Drafting Amendments is given in Annex B.

5. The Steering Committee has no Special Amendments to propose in respect of the draft Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure.
6. The need for a Drafting Amendment has also been identified in relation to the draft Crown Benefices (Parish Representatives) Measure. As currently drafted the Measure leaves some doubt as to whether its provisions – which enable a PCC to appoint lay representatives to approve a proposed appointment – apply to vacancies in benefices where the procedure for filling them contained in the Patronage (Benefices) Measure 1986 has already been put into operation. In order to make the position clear, the Steering Committee has agreed a Drafting Amendment providing that the new provisions will not apply in relation to vacancies in benefices where the statutory procedure for filling them has already begun when the Crown Benefices (Parish Representatives) Measure comes into force. The Amendment is shown in Annex A.
7. The Steering Committee has no Special Amendments to propose in respect of the draft Crown Benefices (Parish Representatives) Measure.

On behalf of the Committee
George Howe
Chair

9 June 2009

DRAFTING AMENDMENTS

**DRAFT VACANCIES IN SUFFRAGAN SEES
AND OTHER ECCLESIASTICAL OFFICES MEASURE**

Clause 2(4)

(a) In sub-paragraph (a)(i), for the words “presentation to a vacant ecclesiastical office” substitute the words “collation or institution to the vacant ecclesiastical office”;

(b) For sub-paragraph (ii) substitute –

“(ii) if sub-paragraph (i) does not apply, the bishop to whom the right to institute to the ecclesiastical office has been delegated by an instrument in force under section 14 of the 2007 Measure;”;

(c) In sub-paragraph (iii), for the word “appointment” substitute “election”;

(d) Leave out “and” after sub-paragraph (iii), add at the end of paragraph (b) “and” and at the end add –

“(c) the vacancy of a see shall be deemed to continue until the new bishop appointed to fill the vacancy has received the restitution of the temporalities of the see from Her Majesty.”;

(e) At the end of clause 2 add –

“(5) This section shall have effect notwithstanding section 15 of the 2007 Measure or, in the case of a scheme under section 11 of the 1978 Measure, section 14 of that Measure.”.

DRAFT CROWN BENEFICES (PARISH REPRESENTATIVES) MEASURE

Clause 1

Clause 1 shall become subsection (1) of that clause and at the end add the following subsection –

“(2) This section does not apply in relation to a benefice in respect of which the notice of the vacancy required to be sent to the secretary of the parochial church council under section 7(4) of the Patronage (Benefices) Measure 1986 was sent before the date of the coming into force of this Measure.”.

EXPLANATION OF DRAFTING AMENDMENTS

DRAFT VACANCIES IN SUFFRAGAN SEES
AND OTHER ECCLESIASTICAL OFFICES MEASUREAmendment (a)

In sub-paragraph (a)(i), for the words “presentation to a vacant ecclesiastical office” substitute the words “collation or institution to the vacant ecclesiastical office”

Sub-paragraph (a)(i) is part of the definition of ‘relevant bishop’ contained in clause 2(4). Under clause 2 of the Measure it is the ‘relevant bishop’ who will normally exercise the Crown’s *sede vacante* (vacancy-in-see) patronage. Sub-paragraph (a)(i) covers the position where there is a standing delegation of the exercise of the diocesan’s patronage to a suffragan or assistant bishop in the diocese.

A diocesan (and therefore any suffragan or assistant bishop to whom the function has been delegated) does not ‘present’ to patronage that is in his own gift; rather he simply ‘collates’ to it. The reference in sub-paragraph (a)(i) as it currently stands to “the right of *presentation*” is, therefore, not apt. Amendment (a) changes this to a reference to “the right of collation or institution”. (Institution has been included as an alternative to collation in this context in order to take account of the way in which instruments of delegation might be drafted. It is conceivable that an instrument of delegation might be drafted so that it generally delegated the function of collation but made alternative provision in circumstances where the diocesan see was vacant by providing for the delegation of the function of institution instead. This would be on the basis that the right to collate during a vacancy in see is not capable of being delegated under an instrument made by the diocesan. That is because the right to present to patronage normally in the gift of the diocesan is, in those circumstances, belongs to the Crown, the role of the suffragan or assistant bishop acting under delegated powers during the vacancy being only to institute the priest presented by the Crown.)

Instead of a reference to “a vacant ecclesiastical office” there is now a reference to “the vacant ecclesiastical office”. This is to make it clear that the ‘relevant bishop’ is the bishop to whom the right to collate (or institute) to *the particular vacant ecclesiastical office in question* has been delegated. So, for example, where functions are delegated on a geographical basis, it will be the suffragan or assistant bishop in whose area of delegation the particular office is located who will be the ‘relevant bishop’.

Amendment (b)

For sub-paragraph (ii) substitute –

“(ii) if sub-paragraph (i) does not apply, the bishop to whom the right to institute to the ecclesiastical office has been delegated by an instrument in force under section 14 of the 2007 Measure;”

Upon further research into the question, it has become clear that the reference in the current draft of clause 2(4)(a)(ii) to “the spiritualities of the diocese” having been delegated is not correct. The ‘spiritualities of the diocese’ is a technical term used to describe those rights and functions of a diocesan bishop that were (and, perhaps, to a limited extent still are) exercised by the guardian of the

spiritualities (the cathedral chapter or the metropolitan) during a vacancy in see. An alternative formulation is therefore required.

The purpose of sub-paragraph (ii) is to identify the bishop to whom functions have been delegated in connection with a vacancy in see where there is no suffragan or assistant bishop within the category of ‘relevant bishop’ described by sub-paragraph (a)(i). However, because it is possible (under section 14 of the Dioceses, Pastoral and Mission Measure 2007) for functions to be delegated, in connection with a vacancy in see, to more than one bishop, it is necessary to narrow down precisely who is meant for this purpose. That has been achieved by making the ‘relevant bishop’ under sub-paragraph (ii) the bishop who has, during a vacancy in see, had delegated to him the function of *instituting* to the particular vacant ecclesiastical office in question. If there is no bishop within sub-paragraph (i) who has had the function of instituting to a particular office delegated to him under a standing delegation, then there must be a bishop to whom that function has been delegated for the purposes of sub-paragraph (ii). This is because where a diocesan see is vacant and the bishop has not already delegated all of his functions, then the archbishop of the province is required (under section 14(3) of the Dioceses, Pastoral and Mission Measure 2007) to exercise the power to delegate them in lieu of the outgoing diocesan.

The reference to section 13 of the Dioceses, Pastoral and Mission Measure 2007 has been omitted from sub-paragraph (ii) by Amendment (b) on the basis that the case which it covered is now dealt with in sub-paragraph (i). The same obtains in relation to the reference to “an instrument or scheme in force under the 1978 Measure as mentioned in sub-paragraph (i)”: it is unnecessary to include reference to that provision here. The reference to section 8 of the Church of England (Miscellaneous) Provisions Measure 1983 has also been removed. That is because that section has been repealed and there are now no instruments that were made under that section that remain in force.

Amendment (c)

In sub-paragraph (iii), for the word “appointment” substitute “election”

This amendment to clause 2(4) simply corrects the drafting of sub-paragraph (a)(iii). It is a bishop’s *election* rather than his *appointment* that is confirmed: see section 4 of the Appointment of Bishops Act 1533.

Amendment (d)

Leave out “and” after sub-paragraph (iii), add at the end of paragraph (b) “and” and at the end add –

“(c) *the vacancy of a see shall be deemed to continue until the new bishop appointed to fill the vacancy has received the restitution of the temporalities of the see from Her Majesty.*”

A newly appointed or translated diocesan legally becomes the bishop of the diocese when his election is confirmed by the Vicar-General of the province. Thereafter he is able to exercise functions in the diocese and arrangements that have been made for the delegation of the diocesan’s functions in connection with the preceding vacancy in see are revoked. But the Crown does not restore the temporalities of the see to the new bishop until after he has done homage and this may be some time after his election has been confirmed.

Clause 2 as currently drafted does not take account of the case where an ecclesiastical office becomes vacant during the period between a new diocesan’s confirmation of election and the restoration of the temporalities (i.e. during the period where the see is no longer vacant but the temporalities are still

with the Crown). It was clearly the intention of clause 2 to make provision covering the exercise of the whole of the Crown's *sede vacante* patronage. Amendment 3 amends clause 2(4) by adding a new paragraph (c) that gives clear effect to that intention by providing that, for the purposes of this section, a vacancy in see is deemed to continue until the temporalities have been restored. That will mean that the provisions of clause 2 will operate throughout the period when rights of patronage are with the Crown. (Because this particular definition of vacancy in see applies *only for the purposes of clause 2* (see the opening words of clause 2(4), "In this section –") it does not affect the law *generally* in relation to when a vacancy in see comes to an end; it simply ensures that the provisions of clause 2 that enable a bishop in the diocese to exercise the Crown's *sede vacante* patronage will apply in the particular case identified above.)

Amendment (e)

At the end of clause 2 add –

“(5) This section shall have effect notwithstanding section 15 of the Dioceses, Pastoral and Mission Measure 2007 or, in the case of a scheme under section 11 of the 1978 Measure, section 14 of that Measure.”

Section 15 of the Dioceses, Pastoral and Mission Measure 2007 provides –

15 Special provision with respect to rights of collation

Where by virtue of any provision of an instrument made under section 13 or 14 above or a reorganisation scheme the right to collate to any benefice upon a vacancy is exercisable by a suffragan bishop of the diocese to which the instrument or scheme relates, that provision shall be of no effect during a vacancy in the see of the bishop of that diocese.

By providing for the Crown's *sede vacante* patronage to be exercisable by the 'relevant bishop', clause 2(2) of the draft Measure provides for what is in effect a statutory delegation that takes effect *under the draft Measure*. That being so, it does not depend on the effectiveness of the delegation of any particular function by an instrument made under sections 13 or 14 of the 2007 Measure during a vacancy in see. Strictly, therefore, there is nothing inconsistent between the provisions of clause 2 of the draft Measure and section 15 of the Dioceses, Pastoral and Mission Measure 2007. However, given the reference in clause 2(4)(a)(i) of the draft Measure to delegation of the right to collate, and the way in which such delegation is dealt with in section 15 of the 2007 Measure, amendment (e) is put forward in order to make the position perfectly clear: clause 2 of the draft Measure has effect despite what is said by section 15 of the 2007 Measure.

DRAFT VACANCIES IN SUFFRAGAN SEES AND OTHER ECCLESIASTICAL OFFICES MEASURE

Amendment

Clause 1 shall become subsection (1) of that clause and at the end add the following subsection –

“(2) This section does not apply in relation to a benefice in respect of which the notice of the vacancy required to be sent to the secretary of the parochial church council under section 7(4) of the Patronage (Benefices) Measure 1986 was sent before the date of the coming into force of this Measure.”

This amendment make it clear that the new requirement to obtain the approval of lay representatives of a proposed appointment to a Crown benefice does not apply where the formal notice which initiated the procedure for filling that benefice was sent before the Measure came into force. The new requirement will apply to the filling of vacancies where the procedure for filling them commences on or after the day on which the Measure comes into force.