

**SECTION 2, VACANCIES IN SUFFRAGAN SEES AND OTHER
ECCLESIASTICAL OFFICES MEASURE 2010 (APPOINTMENTS BY THE
CROWN DURING CERTAIN VACANCIES)**

CROWN BENEFICES (PARISH REPRESENTATIVES) MEASURE 2010

Section 2 of the Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure 2010 (“the Vacancies Measure”) and the whole of the Crown Benefices (Parish Representatives) Measure 2010 (“the Parish Representatives Measure”) come into force on **1st January 2011**. The former makes changes to the way in which the Crown’s *sede vacante* patronage is exercised. That latter provides for PCCs of Crown benefices to appoint parish representatives whose approval must be sought before the Crown may present a priest for institution.

Section 2, Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure – statutory delegation of the Crown’s sede vacante patronage

1. Diocesan bishops, in right of their sees, exercise various types of patronage. This includes rights of patronage in respect of certain parochial benefices. It also includes the right to appoint to certain residentiary canonries and the appointment of archdeacons.
2. When a diocesan see is vacant The Queen is guardian and custodian of the temporalities of the see. The temporalities of a see include the rights of patronage that belong to the see. (They formerly also included episcopal estates but these are now vested in the Church Commissioners and no longer form part of the temporalities; but rights of patronage still do.)
3. Therefore, when a diocesan see is vacant, the rights of patronage belonging to that see are exercisable by Her Majesty as guardian of the temporalities. That means that in the event of an ecclesiastical office in respect of which the bishop has the right of patronage being vacant during a vacancy in see, the Crown presents to that vacant office.¹ This is known as the Crown’s ***sede vacante patronage***.
4. There is a well-established practice under which the Crown, in the exercise of its *sede vacante* patronage, presents the person identified for appointment by the suffragan (or other) bishop who is looking after the diocese during the vacancy in see. The Crown’s involvement is, therefore, already largely formal. The name of the person intended to be presented to the office in question is communicated by the diocese to the Ecclesiastical Secretary in the Crown Ecclesiastical Office (now part of the Cabinet Office) and he arranges for the necessary paperwork (Letters Patent) to be drawn up by the Crown Office. This process usually takes about two months.
5. In consultation with the Crown it was decided to put the existing practice on a statutory footing – albeit a somewhat simplified one that would remove the need

¹ If the bishop has a right of patronage by turns (with other patrons who also have turns) the Crown’s right to present only arises if it would have been the bishop’s turn to present.

for the involvement of the Crown Ecclesiastical Office or for Letters Patent to be obtained in order to give effect to a *sede vacante* presentation².

6. Section 2 of the Vacancies Measure achieves that by providing for the **statutory delegation** of the Crown's *sede vacante* patronage to a suffragan or other bishop (the "**relevant bishop**") of the relevant diocese.
7. The **delegation is automatic** unless the Crown gives written notice to the contrary in relation to a particular vacancy in see. The Crown's right to give such notice is a "reserve power" and seems unlikely to be exercised in practice.
8. The section makes detailed provision for identifying the "**relevant bishop**".
9. Where a diocese has a standing scheme of delegation of episcopal functions in relation to the exercise of patronage (for example, on an area basis to suffragan bishops), the suffragan or assistant bishop who would, but for the vacancy in see, have exercised the patronage in question will be the "**relevant bishop**". This will be a suffragan or assistant bishop to whom the function of collation or institution to the office in question has been delegated under section 13 of the Dioceses, Pastoral and Mission Measure 2007 (or – where transitional provisions contained in Schedule 6 to the 2007 Measure apply – under section 10 or 11 of the Dioceses Measure 1978).
10. Where there is no such person – because there is no section 13 (or equivalent) delegation of patronage functions in operation in relation to the diocese (or the relevant part of the diocese) or in relation to the office in question – the "**relevant bishop**" will be the bishop to whom episcopal functions (including the function of giving institution to benefices and other offices) have been delegated in connection with the vacancy in see under section 14 of the Dioceses, Pastoral and Mission Measure 2007³. In these circumstances, once the confirmation of election of a new diocesan has taken place following a vacancy in see, the new diocesan becomes the "**relevant bishop**".
11. There are a number of important matters to bear in mind in relation to the delegated exercise of the Crown's *sede vacante* patronage under section 2 of the Vacancies Measure.
12. **This is still Crown patronage: the "relevant bishop" exercises it "on behalf of Her Majesty"**. This has a number of consequences.
13. First, the "relevant bishop" does not collate to the office in question. He must first present the candidate on behalf of Her Majesty. (A suggested form for such a

² The Crown Ecclesiastical Office will continue to administer the patronage of Crown benefices – i.e. those benefices where the right of patronage belongs to the Crown and is exercised by the Queen on the advice of the Prime Minister (approximately 200 benefices) or is exercised by the Lord Chancellor (approximately 450 benefices). Letters Patent will continue to be made in respect of presentations to these benefices. The Duchies of Lancaster and Cornwall will continue to administer the patronage that belongs to them. The only change being made – and that a formal one – is in respect of the Crown's *sede vacante* patronage.

³ In the case of a diocese which has no suffragan or stipendiary assistant bishop, this will be a diocesan, suffragan or assistant bishop from another diocese.

presentation is attached at Annex A.) He must then institute – or arrange for the institution of – the priest so presented.

14. Secondly, because the patronage exercised by way of statutory delegation under section 2 is the Crown’s patronage, many of the provisions of the Patronage (Benefices) Measure 1986 are not applicable to its exercise (e.g. the right of a PCC to request a meeting with the patron and the bishop under section 12). That is because section 35 of the 1986 Measure generally excludes the application of the provisions of the Measure to benefices in the patronage of the Crown, subject only to certain exceptions. (Those exceptions have been widened somewhat by the Parish Representatives Measure. See below for details.)
15. Thirdly, where the diocesan bishop and other persons jointly own the patronage in question such that the right of presentation is normally exercisable by them jointly, when that patronage comes to be exercised *sede vacante* it is exercisable by the Crown alone.⁴ That means that in such a case the “relevant bishop” – as the Crown’s delegate – will *alone* exercise the right of presentation (and will not do so jointly with the other co-patrons). He may – should he wish to do so – consult the co-patrons, but they have no formal, legal role to play in this situation.
16. **The Crown’s patronage is exercised by the “relevant bishop” by virtue of section 2 of the Vacancies Measure, not by virtue of delegation under the Dioceses, Pastoral and Mission Measure 2007 etc.**
17. It is true that section 2 of the Vacancies Measure refers to delegation under the 2007 Measure (and under the predecessor provisions of the 1978 Measure continued under transitional provisions) **but that is only for the purpose of identifying the “relevant bishop”**. The delegation of the Crown’s *sede vacante* patronage is effected directly by section 2(2) of the Vacancies Measure. Instruments of delegation (made under sections 13 or 14 of the 2007 Measure) should not, therefore, purport to delegate the Crown’s *sede vacante* patronage. In any event, section 15 of the 2007 Measure expressly prohibits that.
18. **The “relevant bishop” will therefore act in two different capacities** in relation to an appointment to an office which is the subject of *sede vacante* patronage. **First** he will act as the Crown’s delegate (“on behalf of Her Majesty”) in presenting a candidate for admission to the office under section 2(2) of the Vacancies Measure (see the suggested form for this purpose in Annex A).
19. **Secondly** he will act under the instrument of delegation made under section 13 or 14 of the Dioceses, Pastoral and Mission Measure in instituting the candidate so presented; or, where the new diocesan is the “relevant bishop”, he will give institution in right of his see. (The diocesan registry should produce an instrument of institution following the usual form subject to any adaptations necessary to reflect the fact that the presentation has been made under section 2(2) of the Vacancies Measure.)

⁴ See *Legal Opinions concerning the Church of England*, eighth edition, Church House Publishing, 2007, pp. 13-15.

20. **A benefice or other office of which the bishop is patron and which was vacant during the time when the Crown held the temporalities⁵, if unfilled, remains subject to the Crown's *sede vacante* patronage even after the Crown has restored the temporalities of the see to the new bishop.⁶**
21. That means that even after the new bishop has had his election confirmed, done homage and had the temporalities restored to him there may still be unfilled benefices and other offices which are subject to the *sede vacante* patronage and need to be dealt with under section 2. The diocesan registry should carefully note which vacant offices are subject to *sede vacante* patronage on the basis that they remain so until they are filled. (In some cases they might not be filled for a number of years if the right of presentation is suspended. When a suspension that was imposed while the temporalities were with the Crown comes to an end any such unfilled office remains subject to the *sede vacante* patronage until it is filled. But if a suspension was in force prior to the see becoming vacant – and remains in force throughout the time that the temporalities are with the Crown – the office in question is not subject to *sede vacante* patronage.⁷)
22. In these cases, the “relevant bishop” will exercise the *sede vacante* patronage on behalf of Her Majesty and not in right of – or on behalf of – the see. (A suggested form for such a presentation is set out in Annex B.)

Transitional arrangements relating to the implementation of section 2

23. **Section 2 of the Vacancies Measure will come into force on 1st January 2011.** Ecclesiastical offices that are vacant during a vacancy in see should be filled by the “relevant bishop” exercising the right of presentation on behalf of the Crown with effect from that date.
24. The Crown Ecclesiastical Office will continue to accept and process *sede vacante* nominations from dioceses that are received by **1st November 2010** and Letters Patent will be arranged in accordance with current practice.
25. **Dioceses should not send any *sede vacante* nominations to the Crown Ecclesiastical Office to arrive after 1st November 2010.** They should instead be retained in the diocese to be dealt with by the “relevant bishop” under section 2 on or after 1st January 2011. Any *sede vacante* nominations received by the Crown Ecclesiastical Office after 1st November 2010 will be returned to the diocese to be dealt with in that way.

⁵ I.e. at any time between the see becoming vacant and the restitution of the temporalities to the new bishop.

⁶ See the authorities cited to that effect in 14 Halsbury's Laws 488.

⁷ This is a complex area of law and there is no decided authority on the interrelationship between the suspension of rights of presentation under the Pastoral Measure and the Sovereign's position as Guardian of the temporalities. What is stated above reflects the position of the Crown Ecclesiastical Office and of the Legal Office.

Crown Benefices (Parish Representatives) Measure

26. As mentioned above, many of the provisions of the Patronage (Benefices) Measure 1986 do not apply in relation to “Crown benefices”. For this purpose, “Crown benefices” include all those benefices in respect of which the patronage (or any share in the patronage) is exercisable by Her Majesty in right of her Crown or in right of the Duchy of Lancaster and to the Prince of Wales in right of the Duchy of Cornwall. A benefice which falls to be filled by the Crown *sede vacante* is a Crown benefice and that remains so even though the right of presentation is exercised on behalf of Her Majesty by the “relevant bishop” under section 2 of the Vacancies Measure (see above).
27. As the law currently stands, there is no right for the PCC of a Crown benefice to appoint parish representatives whose approval must be sought before the patron may make an offer to a priest to present him or her to a vacant benefice. The Parish Representatives Measure will change the law in that regard with effect from 1st January 2011 – the date on which the Measure will come into force.
28. Subject to transitional provisions mentioned below, **with effect from 1st January 2011 a PCC of a Crown benefice will be entitled to hold a meeting for the purpose of appointing parish representatives** in accordance with the provisions of section 11 of the Patronage (Benefices) Measure 1986. **The approval of the parish representatives will need to be sought** before the Crown (or, in the case of patronage exercised under section 2(2) of the Vacancies Measure, the “relevant bishop”) may present a candidate for institution to the benefice.
29. It should be noted that the other provisions of section 11 – i.e. those that do not relate to the appointment of parish representatives – continue not to be legal requirements in the case of Crown benefices. (It is, of course, open to the Crown – or a bishop acting as the Crown’s delegate – voluntarily to adopt similar arrangements where that seems both desirable in the circumstances and practically possible.) It also remains the case that the approval of the bishop is not required in the case of presentation by the Crown.
30. The Parish Representatives Measure contains transitional provisions which should be noted. **The right of a PCC of a Crown Benefice to appoint parish representatives only applies in the case of a vacancy where the statutory process for filling that vacancy has begun on or after 1st January 2011.** (See section 1(2) which provides that the new provisions do not apply in relation to a benefice in respect of which the notice under section 7(4) of the 1986 Measure was sent to the PCC secretary before the date on which the Parish Representatives Measure comes into force.)

September 2010

The Legal Office
Church House, Westminster

**Exercise of right of presentation on behalf of Her Majesty
during vacancy in see**

(section 2(2), Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure 2010)

WHEREAS the See of [] is vacant by reason of the [resignation][death] of the Right Reverend [] on [date]

AND WHEREAS [*name of vacant benefice or other ecclesiastical office*], the right of presentation* to which belongs to Lord Bishop of the diocese in right of his see, is vacant during the vacancy in see aforesaid so that Her Majesty has the right of presentation by virtue of Her guardianship of the temporalities

NOW, on behalf of Her Majesty, I, the Right Reverend [] [Suffragan Bishop of []][Assistant Bishop in the diocese of []] [Lord Bishop of []], being the relevant bishop for the purposes of section 2 of the Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure 2010, and pursuant to subsection (2) of that section, hereby present† the Reverend [] for admission to [*name of vacant benefice or other ecclesiastical office*]

AS WITNESS my hand this [] day of [] 20—

[Signature]

* If the Bishop is a joint patron the words “a share in” should be inserted before “the right of presentation”.

† The “relevant bishop” is presenting the priest in question to himself but in a different capacity: see paragraphs 18 and 19 of the main paper.

**Exercise of right of presentation on behalf of Her Majesty
after confirmation of election of new diocesan bishop**

(section 2(2), Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure 2010)

WHEREAS the See of [] became vacant by reason of the [resignation][death] of the Right Reverend [] on [date] and the election of the Right Reverend [] to the see was confirmed on [date]

AND WHEREAS [*name of vacant benefice or other ecclesiastical office*], the right of presentation* to which belongs to Lord Bishop of the diocese in right of his see, was vacant during the time when Her Majesty held the temporalities of the see, and remains unfilled†, so that Her Majesty has the right of presentation

NOW, on behalf of Her Majesty, I, the Right Reverend [] [Suffragan Bishop of []][Assistant Bishop in the diocese of []] [Lord Bishop of []], being the relevant bishop for the purposes of section 2 of the Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure 2010, and pursuant to subsection (2) of that section, hereby present‡ the Reverend [] for admission to [*name of vacant benefice or other ecclesiastical office*]

AS WITNESS my hand this [] day of [] 20—

[Signature]

* If the Bishop is a joint patron the words “a share in” should be inserted before “the right of presentation”.

† If the temporalities have not yet been restored following confirmation of election, the words “is vacant, the temporalities of the see being held by Her Majesty” can be substituted for the words from “was vacant” to “remains unfilled”.

‡ The “relevant bishop” is presenting the priest in question to himself but in a different capacity: see paragraphs 18 and 19 of the main paper.