

GENERAL SYNOD

DRAFT BISHOPS AND PRIESTS (CONSECRATION AND ORDINATION OF WOMEN) MEASURE AND AMENDING CANON NO. 30

ARTICLE 7 REFERENCE TO THE HOUSE OF BISHOPS

The process

1. Following completion of the Final Drafting Stage at the February 2012 group of sessions the draft Measure and draft Amending Canon stood referred to the House of Bishops under Article 7 of the Synod's Constitution. The Standing Committee of the House met on 14 March to consider the handling of the business by the House and scheduled the discussion for the whole of the afternoon of Monday 21 May.
2. The Standing Committee decided that members of the House wishing to propose amendments should be invited to discuss them first with the Legal Office so that their proposals could be put into satisfactory legislative form by Standing Counsel to the Synod. The Committee asked for any amendments, to be tabled, in a form agreed with Standing Counsel, by noon on Wednesday 16 May.
3. On Thursday 17 May I sent a paper to the House. It
 - noted the terms of the resolution passed by the Synod in February relating to the exercise by the House of its powers under Article 7,
 - explained the Article 7 reference in context,
 - set out the process that would be followed at the House in the light both of its Standing Orders and of the Standing Committee's decisions, and
 - provided a brief commentary on the six amendments to the draft Measure of which notice had been received. The text of the amendments was circulated at the same time on a notice paper. No notice was received of any amendments to the draft Amending Canon.
4. At its meeting in March the Standing Committee had decided to extend an invitation to the Steering Committee for the draft legislation to be present at the House for the Article 7 reference and to offer comments on any amendments tabled.
5. The text of the amendments and the substance of what I had circulated to the House were, accordingly, sent to the Steering Committee on the same day as the papers went to members of the House.
6. The Steering Committee met on Friday 18 May to consider what advice to offer the House and to agree which of its members should comment on each of the six amendments.
7. The House met on 21 May. All members were present save for the Bishop of Chester (attending the Church of Scotland General Assembly) and the Bishop of St

Edmundsbury and Ipswich (duty bishop in the House of Lords). In addition, the see of Chichester was vacant when the House met.

8. The House resolved to go into a Committee of the whole House, under SO 14 of its Standing Orders, as is its normal custom at the beginning of its meetings. The Bishop of Leicester then took the Chair and those members of the Steering Committee who were able to be present joined the meeting. The Article 7 business was presented under SO 10 by the Bishop of Manchester on the nomination of the Archbishop of Canterbury.
9. After the Bishop of Manchester's introduction and some clarifications from the Legal Adviser in response to questions, the House debated in turn the six amendments, which had been marshalled for debate on an order paper.
10. After each amendment was moved and spoken to by the relevant member of the House, a member of the Steering Committee offered a view from the Committee. There was then a period of debate, at the end of which the Steering Committee withdrew before the matter was put to the vote.
11. Votes were taken by a show of hands. The numbers and names of those voting for and against particular amendments were not therefore recorded.

The six amendments

12. The first amendment sought to make changes to clauses 2, 3 and 8 and to schedule 2. It involved, among other things, the deletion of '*by way of delegation to a male bishop*' from clause 2 and the insertion of the words '*to a bishop who is a member of a Mission Society*'. One or more **Mission Societies** would be so designated by resolution of the House of Bishops.
13. The amendment sought to place the House under a duty to ensure that there was always at least one designated Mission Society whose episcopal members had declared that, on grounds of theological conviction, they would neither consecrate or participate in the consecration of women as bishops nor ordain or participate in the ordination of women as priests.
14. The amendment also sought to change the position in relation to priestly ministry, by allowing parishes to ask for "*a priest who is a member of a Mission Society*" rather than "*a male priest*".
15. After debate the amendment was lost.
16. The second amendment sought to give effect to the concept of '**co-ordinate jurisdiction**' by making changes to clause 2 and clause 5 in terms identical to those considered and rejected by the Synod, on a division by houses, at the Revision Stage in July 2010. The amendment involved removing the reference to 'delegation' in clause 2 and requiring the Code of Practice to give guidance on how the arrangements for the exercise of co-ordinate jurisdiction would work.
17. After debate the amendment was lost.

18. The third amendment concerned **the selection of male bishops and male priests**. It sought to add to the list of matters set out in clause 5(1) on which the House of Bishops must draw up, and promulgate, guidance in a Code of Practice approved by the General Synod. Clause 5(1) specified four matters in paragraphs (a)-(d) and then in (e) referred to *‘such other matters as the House of Bishops considers appropriate to give effect to this Measure’*.
19. The amendment involved the insertion of an additional paragraph between paragraphs (b) and (c), requiring guidance to be included in the Code as to *‘the selection of male bishops or male priests the exercise of ministry by whom is consistent with the theological convictions as to the consecration or ordination of women on grounds of which parochial church councils have issued Letters of Request under section 3.’*
20. The amendment embodied one of the three principles agreed by the House in December and set out in the Archbishops’ foreword to the report from the Code of Practice Working Group (GS Misc 1007). It addressed a question that had been extensively discussed in the report of the Revision Committee (GS 1708-09Y) and in the Code of Practice Group’s report. This was whether the legislation and/or the Code of Practice should acknowledge the fact that for some parishes who issued a Letter of Request the provision of a male bishop (or priest) would be necessary, but not sufficient, to address their theological convictions.
21. After debate the amendment was carried.
22. The fourth amendment sought to add to the list in Clause 5(1) a requirement for guidance to be given on another of the three principles agreed by the House in December and set out in GS MISC 1007. This concerned the **nomination of certain sees in each province**.
23. It involved inserting an additional paragraph in clause 5(1) requiring guidance as to *‘the nomination by the archbishop of each province of one or more suffragan sees in his or her province the holders of which may be selected by diocesan bishops to exercise episcopal ministry in accordance with the arrangements contained in such schemes, and the appointment of bishops to exercise such episcopal ministry.’*
24. After debate the amendment was lost.
25. The fifth amendment sought to add to the list in Clause 5(1) a requirement for guidance to be given on the third the three principles agreed by the House in December and set out in GS MISC 1007. This concerned **non-discrimination in the selection of candidates for ordination** as priests and deacons.
26. It involved inserting an additional paragraph in clause 5(1) requiring guidance as to *‘the selection of candidates for ordination as priests and deacons without discrimination on the grounds of their theological convictions as to the consecration or ordination of women.’*
27. After debate the amendment was lost.

28. The sixth amendment sought to insert an additional subsection into clause 8, which contains provisions relating to the **interpretation** of the draft Measure. Its purpose was to make it clear that the use of the word ‘delegation’ in clause 2 relates to the legal authority under which powers are exercised and is distinct from the authority to exercise the functions of the office of bishop derived from that person’s ordination. It also made clear that delegation under diocesan schemes should not be taken as divesting the diocesan bishop of any of his or her authority or functions.
29. After debate the amendment was carried.
30. After the amendments had all been disposed of, on the motion of the Bishop of Manchester the House passed the two motions required by SO 10 of its Standing Orders relating to the return of this Article 7 business to the Synod for Final Approval. These were:
 - *‘That subject to the requirements of the Standing Orders of the Synod concerning reference of the business to the Convocations and to the House of Laity, the Draft Bishops and Priests (Consecration and Ordination of Women) Measure be returned to the Synod in the form approved by the House for consideration on the Final Approval Stage’; and*
 - *‘That subject to the requirements of the Standing Orders of the Synod concerning reference of the business to the Convocations and to the House of Laity, Draft Amending Canon No 30 be returned to the Synod in the form approved by the House for consideration on the Final Approval Stage.’*
31. The Annex to this report contains an explanatory note, agreed by the Legal Office, on the effect of the two amendments made by the House to the draft Measure.

William Fittall

Secretary General

10 June 2012

**The effect of the amendments made by the House of Bishops on the Article 7
reference: an explanatory note**

1. The two amendments made by the House during the Article 7 reference were to clause 5, which contains provisions relating to a Code of Practice, and clause 8, which sets out how various terms within the Measure are to be understood. In order to determine their effect it is necessary to see how they fit into the structure of the rest of the Measure, which was left unchanged by the House of Bishops.

Main building blocks of the draft Measure

2. Since the draft Measure emerged from the Revision Committee in 2010 its main building blocks have remained unchanged. They are as follows:
 - Provision is made for women to be consecrated to the office of bishop and, despite the repeal of the Priests (Ordination of Women) Measure 1993, for women to continue to be ordained as priests (**clause 1**).
 - All diocesan bishops are required to make schemes containing arrangements, by way of delegation to a male bishop, for the exercise of certain aspects of episcopal ministry in parishes which have so requested (**clause 2**).
 - The procedure and basis for the making of such parochial requests is prescribed. Letters of Request must be issued on grounds of theological conviction (**clause 3**).
 - Diocesan bishops are required to send a written notice to a parish which has issued a Letter of Request setting out arrangements to give effect to it in accordance with the diocesan scheme, after having taken account of the scheme and any relevant provisions of the Code of Practice under the Measure (**clause 3**).
 - In addition parishes may, during a vacancy in the benefice, issue a Letter of Request during a Vacancy asking that only a male priest should be appointed as incumbent or priest in charge (**clause 3**).
 - Any person exercising functions in relation to the appointment of an incumbent or priest in charge for a benefice must take account of any Letter of Request during a Vacancy and have regard to the Code of Practice (**clause 3**).
 - The House of Bishops is required to issue guidance in a Code of Practice, to be approved by the Synod. Certain matters on which the Code must give guidance are specified. The House may in addition include guidance in the Code on any other matters that it considers appropriate to give effect to the Measure (**clause 5**).
 - Anyone exercising functions, episcopal or otherwise, is required to have regard to the Code of Practice (**clause 6**).
3. This overarching structure attempts to hold in tension two aims that have been articulated on many occasions in the preparation of the draft Measure and throughout its synodical process.

4. For example, at the July 2006 group of sessions the Synod both resolved that opening the episcopate to women was *'consonant with the faith of the Church as the Church of England has received it and a proper development in proclaiming afresh in this generation the grace and truth of Christ'* and also endorsed 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.'*
5. The twin aims were set out most recently in the report of the Working Group on an illustrative draft Code of Practice (GS Misc 1007). In the introductory paragraphs of the illustrative draft Code it attempted to summarise the Church of England's approach as follows:
 - All orders of ministry should be open equally to men and women. The Church of England will continue to regard all those whom it has ordained as priests and consecrated as bishops as priests and bishops in the Church of God.
 - Those who dissent from, and those who assent to the ordination of women to the priesthood and episcopate, are both loyal Anglicans. The former should therefore be able to receive pastoral and sacramental care in a way that is consistent with that conviction.
6. The two amendments made by the House have not altered the overarching structure of the draft Measure or sought to change those two underlying aims. The amendment to clause 5 has added a further matter to the list of matters on which guidance must be included in the Code. The amendment to clause 8 has clarified, for the avoidance of doubt, what 'delegation' means in connection with arrangements made under diocesan schemes.

The new clause 5(1) (c)

7. The legal effect of the amendment is to add to the list of matters on which the Code of Practice must give guidance *"the selection of male bishops or male priests the exercise of ministry by whom is consistent with the theological convictions as to the consecration or ordination of women on grounds of which parochial church councils have issued Letters of Request under section 3.'*
8. That guidance must, therefore, as a minimum, be to the effect that the male bishops and priests should be selected so that the exercise of ministry by those bishops and priests is consistent with the theological convictions as to the consecration or ordination of women on grounds of which the relevant parochial church council issued its Letter of Request. It remains a matter for future decision precisely in what terms the guidance is given and how much detail it attempts to provide.
9. The amendment does not create any new statutory rights, duties or powers beyond requiring the House of Bishops to include in the Code guidance on a matter which they were previously entitled, but not obliged, to address.
10. What it does do is to make explicit acknowledgement in the Measure that the nature of the theological conviction that leaves some unable to receive the episcopal or priestly ministry of women is such that, in some cases at least, the provision of pastoral and sacramental care by any male bishop or priest will not suffice.

11. This reflects a point made by the Archbishop of Canterbury at the Synod in February when he said: "... *the phrase 'male bishop' in the draft Measure insufficiently recognises where that particular point comes in the argument people are trying to make. It doesn't go to the root of it. In other words the theological conviction is not about male bishops as such: it arises from certain other convictions.*" Or, to quote GS Misc 1007 (paragraph 59), "*for some parishes ... the underlying ecclesiological issues [go] beyond those simply of gender.*"
12. The amendment does not introduce the concept of theological conviction into the Measure. It was already present in clause 3 as the necessary ground for the issue of Letters of Request.
13. In addition, the new provision does not refer to any theological conviction. The convictions must be '*as to the consecration or ordination of women*'. It was already implicit in clause 3 that, by allowing a parish to ask for a male bishop or priest, a PCC was allowed (and only allowed) to issue a Letter of Request on grounds of theological conviction related to the ordained ministry of women.
14. Since the convictions in question must relate to '*the consecration or ordination of women*', it follows that convictions about other theological matters - such as Biblical interpretation, theories of the Atonement or ethical issues concerning human sexuality - important though they may be for a parish, can neither provide the lawful basis for a Letter of Request nor have any relevance in law to the selection of a bishop or priest for that parish under the Measure.
15. In addition the amendment does not require, or indeed permit, the giving of guidance which would allow parishes to ask for bishops or priests whose theological convictions on the consecration or ordination of women were the same as their own: rather, the guidance must be directed to the end that the exercise of ministry by the bishop or priest, rather than their theological convictions, should be consistent with the theological convictions as to the consecration or ordination of women underlying the Letter of Request.
16. Thus the amendment will not allow parishes to ask that their bishop (or priest) should hold a particular set of beliefs, or subscribe to any statement of faith, beyond what all bishops and priests have to affirm when making the Declaration of Assent.
17. Finally, the amendment provides no basis for the making of guidance which allows parishes to 'choose their own bishop'. The selection of the bishop who will minister to a parish which issues a Letter of Request remains a matter for the diocesan bishop, taking into account the provisions of the diocesan scheme and the Code of Practice.
18. Does the amendment, nevertheless introduce into the Measure some new recognition of theological convictions that are contrary to those of the Church of England itself, for example in relation to the validity of its orders as affirmed by Canon A 4, the effectiveness of the ministry of word and sacrament of all its ministers (Article XXVI) and the sufficiency of the necessary oaths and declarations for ordained ministry (Article XXXIV)? The answer is 'no'.

19. The Measure in the form in which it left the Synod following the Revision Stage and was approved by the dioceses on the Article 8 reference already made provision for arrangements for parishes which issued Letters of Request on grounds of theological conviction; and, as noted above, by implication those grounds of theological conviction were, by implication, ones related to the ordained ministry of women.
20. Thus it was already an integral part of the draft legislation that arrangements were to be made for those whose convictions (or at least doubts) about the ordained ministry of women would prevent them from receiving such ministry, without implying that any such convictions or doubts were shared by the Church of England as a whole. The amendment has not altered the position in that respect. What it has done is to make explicit how one particular aspect of those arrangements is to operate.
21. For a similar reason, the amendment cannot be said to have altered the position with regard to the period of time during which there will be need to be particular arrangements for those who, for reasons of theological conviction, do not share the view of the Church of England as a whole in relation to gender and ordained ministry: it was also already the case that the draft legislation placed no limit on how long such arrangements made under the Measure should remain in place.

The new clause 8(2)

22. The second amendment adds a new sub clause (2) to clause 8, the interpretation provision in the Measure. It clarifies the meaning and effect of 'delegation' under clause 2(1) which provides for the exercise, "*by way of delegation to a male bishop*", of episcopal ministry under the diocesan scheme.
23. The amendment puts beyond doubt what the Legal Office considered the legal position already to be. The two limbs of the amendment use slightly different language because they make slightly different points.
24. The first limb, paragraph (a), addresses the position from the point of view of the male bishop and, reflects a distinction drawn by the Archbishop of Canterbury in his speech at the February 2012 group of sessions when he said: "*Any ordained person receives — 'derives' — the authority for preaching, teaching and ministering the sacraments in general as part of who they are before God by the Church's act in ordination. Ordained persons also receive in various ways licence to perform those functions in a specific context.*"
25. The provision states that the legal authority which the male bishop has by virtue of delegation does not affect, and is distinct from, the authority to exercise the functions of the office of bishop that is derived from his ordination.
26. That explanation is balanced by the second limb, paragraph (b), which addresses the position from the point of view of the diocesan. Paragraph (b) says that the fact a male bishop is exercising ministry in a diocese by way of delegation is not to be taken as divesting the diocesan bishop of any of his or her authority or functions.
27. The language that paragraph (b) uses reproduces in almost identical terms a provision — first appearing in the Dioceses Measure 1978 and now contained in s.13(15) Dioceses,

Pastoral and Mission Measure 2007 - which describes the effect of instruments made under s.13 delegating episcopal functions to suffragan (including assistant) bishops. The slight difference from that wording, -in that paragraph (b) refers to “*the authority and functions*” of the diocesan, - does not alter the legal position in any material respect.

28. Thus the effect of the amendment is consistent with the usual arrangements in relation to the delegation of episcopal functions and does not represent an arrangement peculiar to this piece of legislation. This is a matter that could be spelled out further, if desired in the Code of Practice.

**Published by the General Synod of the Church of England
and on sale at the Church House Bookshop**

31 Great Smith Street, London SW1P 3BN

Copyright © The Archbishops' Council 2012

£3