

GENERAL SYNOD
LEGAL ADVISORY COMMISSION

Delegation of Episcopal Functions

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OPINION
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1. The purpose of this Opinion is to give guidance in relation to the circumstances in which instruments in writing under section 13 of the Dioceses, Pastoral and Mission Measure 2007 are required for the delegation of episcopal functions.

2. The role of the diocesan bishop as the chief pastor having ordinary jurisdiction within the diocese is enshrined in Canon C18.1 and 2. A diocese may also be served by one or more suffragans holding titular sees within it, and being office holders appointed under the Suffragan Bishops Act 1534. A suffragan’s “jurisdiction or episcopal power or authority” is by Canon C20.2 derived from the diocesan bishop. In addition, episcopal ministry within a diocese may be provided by assistant bishops about whom the Canons are silent. Such bishops are often retired, but may hold some appointment (stipendiary or otherwise) in that or a neighbouring diocese or may be stipendiaries exercising special episcopal ministry. It is, indeed lawful for a diocesan bishop to serve as the assistant bishop of another diocese. An assistant bishop’s legal powers are invariably conferred by the diocesan bishop.

3. Section 13(1) of the Dioceses, Pastoral and Mission Measure 2007 enables the diocesan bishop by an instrument under his or her hand to delegate such episcopal functions as may be specified in it to a suffragan bishop or, by the extension contained in section 13(16), to an assistant bishop. Normally, by subsection (8) the approval of the diocesan synod is required, but in cases of urgency the approval of the bishop's council and standing committee of the diocesan synod is sufficient. Plainly the making of an instrument of delegation under section 13 is intended to be a formal legal act. The power of delegation in section 13 is interconnected with the provisions in section 14 for the discharge of the diocesan bishop's functions during a vacancy in see. If there has been a delegation within section 13 before the vacancy, it remains operative during the vacancy and for six months thereafter. Delegation under section 14 is, however, required where there has been no section 13 delegation, or where the previous delegation is in limited terms insufficient to cover all the functions arising during the vacancy.

4. Section 13 does not itself specify the class of delegable functions in respect of which an instrument is required. Comprehended within the Section must be those functions for which formal delegation is necessary as a matter of law. Although instruments made under section 13 sometimes confer authority in very broad and general terms, the better practice is to specify in some detail the functions which are the subject of delegation, so that there can be no doubt

about the extent of the powers of the suffragan or assistant. In strict law, however, delegation under section 13 is obligatory only in the circumstances explained in paragraph 5 below.

5. Act of Parliament or Measure

Functions vested in a diocesan bishop by statute (i.e. an Act of Parliament or Measure, or subordinate legislation made thereunder) normally require a delegation to a suffragan or assistant bishop under section 13. Important examples of such functions are to be found in the Patronage (Benefices) Measure 1986, the Clergy Discipline Measure 2003 and the Mission and Pastoral Measure 2011 as well as elsewhere. Unless the statute or measure itself deals specifically with the issue of delegation, all functions derived from primary legislation are, with one current exception contained in section 13(1) capable of delegation by instrument under section 13. The exception relates to section 9(2) of the Clergy (Ordination and Miscellaneous Provisions) Measure 1964 and the related Canon C4.5, whereby an application to the archbishop for a faculty to enable a divorced and remarried candidate to be ordained may be made only by a diocesan bishop. (The further exception, concerning functions under section 2 of the Priests (Ordination of Women) Measure 1993, was repealed by the Schedule to the Bishops and Priests (Consecration and Ordination of Women) Measure 2014).

6. Canon

A diocesan bishop's functions specified in the Canons Ecclesiastical are generally capable of being delegated to a suffragan or assistant bishop pursuant to section 13. This may be achieved either by reference in the instrument of delegation to particular canons or by means of comprehensive words of delegation. Canon C 20 provides for suffragan bishops to exercise such episcopal functions "as shall be licensed or limited to [them] to use, have, or execute by the bishop of the [diocese]". Such authority may take the form of an instrument made under section 13. But if no statutory functions are being delegated, a diocesan bishop's functions may be delegated to a suffragan or assistant bishop by way of a commission as envisaged by paragraph 3 of Canon C 18, under which "formal" commissioning ought to be effected or confirmed in writing. (It should be noted that the power to grant a commission under Canon C 18.3 is unaffected by the abolition in section 15(1) of the Dioceses Measure 1978 (itself now repealed) of the statutory commissioning of suffragan bishops pursuant to the Suffragan Bishops Act 1534.)

7. There are Canons which themselves make provision for a deputy or commissary to act on behalf of the diocesan bishop. Canon B27.1 requires the rite of confirmation to be administered by the bishop of the diocese or by another bishop "lawfully deputed in his stead". Deputing another bishop for this purpose could be given effect by an instrument under section 13; alternatively a purely informal delegation to the other bishop is sufficient in law. Although no specific provision for a deputy is made in Canon C 3, the same

considerations apply in the case of the ordination of priests and deacons. By contrast, a diocesan bishop's delegation of the giving of institution to a benefice under Canon C10.7 (although capable of delegation to a bishop under section 13) is wider, because delegation is to "some commissary in holy orders" who need not be a bishop.

8. Other Circumstances

There are numerous occasions upon which a suffragan or assistant bishop may act on behalf of the diocesan bishop, and which do not involve the discharge of specific functions under statute, measure or canon. These might include attendance on behalf of the diocesan bishop at acts of public worship; visits to schools, hospitals or other institutions; the giving of pastoral guidance; the conduct of interviews; and conciliation in the event of disputes. Subject to compliance with relevant safeguarding requirements, such activities may be undertaken on a purely informal basis at the diocesan bishop's request. No transfer of legal power is involved. Accordingly, it is unnecessary for an instrument under section 13 or a commission to cover public or pastoral work of this nature.