

GENERAL SYNOD

**DRAFT CROWN BENEFICES (PARISH REPRESENTATIVES) MEASURE
DRAFT VACANCIES IN SUFFRAGAN SEES AND OTHER
ECCLESIASTICAL OFFICES MEASURE**

REVISION COMMITTEE REPORT

Chair: The Rt Worshipful Timothy Briden (Vicar-General of Canterbury) (*ex officio*)

**Ex-officio members
(Steering Committee):** The Venerable George Howe, Archdeacon of Westmorland and Furness (Carlisle) (Chair)
Mrs Janet Atkinson (Durham)
Mrs Jenny Dunlop (Chester)
The Reverend Brian Lewis (Chelmsford)
Mrs Shirley-Ann Williams (Exeter)

Appointed members: The Reverend Paul Benfield (Blackburn)
The Reverend Peter Hobson (Leicester)
The Reverend Richard Moy (Lichfield)
The Reverend David Parrott (Chelmsford)
Mr John Scrivener (Chester)

Consultants

Diocesan Registrars: The Reverend Canon John Rees (Oxford)
Diocesan Secretaries: Mr Steven Webb (Chelmsford)

Staff

Policy Adviser: Dr Colin Podmore
Legal Adviser: The Reverend Alexander McGregor
Standing Counsel: Sir Anthony Hammond QC
Secretary: Mr Howard Cattermole

1. The draft Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure and the draft Crown Benefices (Parish Representatives) Measure received First Consideration at the July 2008 group of sessions of the General Synod. The period for submission of proposals for amendment under Standing Order 53(a) expired on 8th August 2008 for both Measures.
2. Proposals for amendment of both draft Measures were received from one member of the Synod, the Reverend Paul Benfield (Blackburn), before the closing date mentioned in paragraph 1, as required by Standing Order 54(b). The Steering Committee itself also identified a number of issues which led it to propose further amendments to the draft Measures. With the agreement of the Revision Committee ('the Committee'), the Committee was attended in person by Mr Nick Wheeler, Assistant Ecclesiastical Secretary in the Cabinet Office, and the Reverend Professor

Peter Galloway, Chaplain to the Queen's Chapel of the Savoy, who assisted with the Committee's consideration of the proposed amendments to the draft Measures in relation respectively to the patronage of the Crown and the Duchy of Lancaster.

3. The Committee met on one occasion and the proposals which it accepted form the basis for the drafts of the Measures (GS 1692A and GS 1693A) now before the Synod (in which amendments accepted by the Committee are shown in bold). Set out in Appendix I to this report, the Synod will find a summary of the amendments considered by the Committee as well as the Committee's decision on each. Appendix II contains a destination table showing where new provisions have been inserted and how the provisions in the draft Measures at First Consideration (GS 1692 and GS 1693) relate to those in the draft Measures now before the Synod.
4. Except where otherwise indicated, the decisions of the Committee were unanimous.

DRAFT CROWN BENEFICES (PARISH REPRESENTATIVES) MEASURE

Clause 1 – Amendment of Section 35 of the Patronage (Benefices) Measure 1986

Limitation of the right of "veto"

5. A significant difference between the Crown's rights of patronage and those of other patrons is that whilst in relation to non-Crown livings the right of presentation lapses after nine months to the Archbishop, in relation to Crown livings it does not. An open-ended requirement for parish representatives to approve the Crown's nominee had therefore been included in the draft Measure as being consistent with the Crown's open-ended right of presentation, an approach with which the Ministry of Justice had expressed agreement. In his submission relating to the draft Measure, however, the Reverend Paul Benfield (Blackburn) had expressed concern at a perpetual right of "veto" being conferred on parish representatives in relation to Crown livings. Mr Benfield had proposed instead that, as is the case with all other livings, the right of veto (a shorthand for the right to refuse to approve the making of an offer by the patron to present a priest to a benefice) should be lost after nine months.
6. Because of the Crown's open-ended right of presentation, acceptance of Mr Benfield's proposal would mean that it would in principle be open to the Crown to take no action in relation to a particular vacant living for nine months, and then simply to fill the vacancy however it wished, thereby circumventing the policy behind the draft Measure, that Ministers should no longer make the final decision in respect of Crown appointments (a point secured by giving the right of refusal to parish representatives). The Committee's view was therefore that Mr Benfield's amendment should be rejected. In reaching this decision, the Committee was supported by correspondence received from both the Crown and the Duchy of Lancaster stating that as matters stand they do not in practice experience difficulty in reaching agreement with parishes on appointments, and that they do not foresee such difficulties arising in the future, a view confirmed by Mr Wheeler and Professor Galloway at the meeting. The Committee also noted that if the Crown (or the Duchy of Lancaster or Cornwall) took the view that parish representatives were abusing their rights, the Archbishop could always be asked to exercise his statutory power of review under section 13(5) of the 1986 Measure.

Insertion of new subsection (1B) in section 35 of the 1986 Measure

7. As drafted, the provision in the draft Measure for PCCs of Crown benefices to appoint parish representatives with a right of refusal in relation to a proposed appointment of an incumbent is achieved by extending certain provisions of sections 11 and 13 of the Patronage (Benefices)

Measure 1986 to Crown benefices. One of those provisions is the section 13(5) right of the “registered patron” – in this case the Crown – to request the Archbishop to review the parish representatives’ refusal to approve the patron’s nominee. If such a request is made, having reviewed the matter the Archbishop may authorise the registered patron to present its candidate notwithstanding the refusal.

8. This review provision will be applied to the parish representatives’ right of refusal by the new section 35(1A)(d) of the 1986 Measure contained in clause 1 of the draft Measure. Where the Crown or either of the Duchies is the registered patron there is no difficulty with clause 1 as it stands. The provision as drafted does not however apply to the exercise of the parish representatives’ right of refusal when a right of presentation is exercised by the Crown (or, under clause 2 of the draft Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure, by the “relevant bishop”) by virtue of the Crown’s position as ‘Guardian of Temporalities’ during a vacancy in see. This is because in such a case the Crown is not the registered patron.
9. The Steering Committee had taken the view that it would be undesirable to confer upon parish representatives an unreviewable right of refusal in relation to the Crown’s vacancy in see patronage, when in relation to the Crown’s ordinary patronage it was proposed that the refusal would be reviewable. It accordingly recommended to the Committee an amendment to clause 1 of the draft Measure so that, in relation to the Crown’s vacancy in see patronage, the provisions of section 13(5) of the 1986 Measure applied by the new subsection (1A)(d) should apply as if the references to the registered patron in those provisions were references to Her Majesty. This would mean that the Crown could then seek a review in relation to a proposed vacancy in see appointment, and that if he thought fit the Archbishop could authorise the Crown to present its candidate notwithstanding the parish representatives’ refusal to approve the Crown’s nominee. The Committee accepted this recommendation, and agreed that it should be effected by the insertion of a new subsection (1B) in section 35 of the 1986 Measure, to be included as a further amendment to that Measure in clause 1 of the draft Measure.

Extension of section 12 of the 1986 Measure to Crown livings

10. Mr Benfield had made a further proposal in relation to the draft Measure, to the effect that consideration be given to extending the provisions of section 12 of the 1986 Measure to Crown livings, so that the PCC could, if it wished, require the patron (and bishop) to attend a meeting for the purpose of exchanging views on the needs of the parish and the diocese. This proposal had been made on the basis that the lack of a right to a section 12 meeting might put parish representatives of Crown livings in a worse position than those of non-Crown livings.
11. The Crown and the two Duchies had been consulted as to the policy and practical implications of extending the provisions of section 12 of the 1986 Measure to Crown livings. The position of Mr Wheeler (for the Crown) was that whilst he was entirely content with the present situation, whereby he attends meetings with PCCs on a voluntary basis when it is practically possible for him to do so, a legal requirement to attend such meetings would not be welcome. The resources at the Crown’s disposal for dealing with such requests are limited, and it might in practice simply not be in a position to meet the terms of such a requirement. The Duchy of Lancaster’s position was that whilst it had no objection to the proposed amendment, it understood the Crown’s view, and that, again on a voluntary basis, in respect of its much smaller number of livings it also sought to respond to requests from parishes for meetings.
12. Following some discussion of Mr Benfield’s proposal, the Committee’s attention was drawn to a possible procedural objection to any amendment giving effect to it. The terms of Standing Order 53(e) restrict the scope of amendments to a draft Measure, specifying that they should be

“relevant to the general purport of the Measure and within the scope of the respective Clause”. The view of staff was that, given the very narrow scope of the draft Measure as defined in the Long Title (“To make provision for the appointment of lay parish representatives to approve the selection of incumbents of certain Crown benefices”), it would not be in order to amend the draft Measure as proposed. The Committee agreed with this view, voting 7 in favour of the motion that the proposed amendment be ruled out of order, with 2 against and 1 abstention.

13. Mr Benfield had also asked in his submission whether it was intended that the provision of a veto to parish representatives in Crown benefices should extend to patronage exercisable by the Lord Chancellor. The Committee was advised that such patronage is not in fact the property of the Lord Chancellor, but is Crown patronage which, by long-established custom, is exercised by the Lord Chancellor on the Crown’s behalf, and that it would therefore fall automatically under the provisions of the draft Measure. On that basis the Committee was content that no change was required to the draft Measure or to the Long Title.
14. A drafting amendment to the new subsection (1A) to be inserted in section 35 of the 1986 Measure by clause 1 of the draft Measure was proposed by Mr John Scrivener, to clarify the meaning of the phrase “a vacancy in a benefice the patronage or any share of which”. Standing Counsel agreed that the meaning could helpfully be clarified by the insertion of the words “in the patronage” after the word “share”. The Committee agreed that this amendment should be made.
15. The Committee agreed that clause 1, as amended, should be included in the draft Measure.

Clause 2 – Citation, commencement and extent

16. The Committee made no amendments to clause 2 and agreed that clause 2 should be included in the draft Measure.

Long Title

17. The Committee made no amendments to the Long Title and agreed that the Long Title should be included in the draft Measure.

DRAFT VACANCIES IN SUFFRAGAN SEES AND OTHER ECCLESIASTICAL OFFICES MEASURE

Clause 1 – Amendment of Suffragan Bishops Act 1534

18. The Committee made no amendments to clause 1 and agreed that clause 1 should be included in the draft Measure.

Clause 2 – Appointments by the Crown during certain vacancies

Abolition of the Crown’s rights in relation to vacancies in see

19. As drafted, this clause provides for the delegation to a suffragan or other bishop of the Crown’s right to appoint to offices in the patronage of a diocesan bishop during a vacancy in the diocesan see. The delegation would be automatic unless the Crown gave notice to the contrary in relation to a particular vacancy in see. In his submission on the draft Measure, Mr Benfield had proposed that it would give greater transparency for the Crown’s rights in relation to vacancies in see either to be abolished or to be transferred by statute to the “relevant bishop” (i.e. the bishop to whom the other functions of the diocesan bishop have been delegated during the vacancy). (Mr Benfield’s

alternative proposal, that clause 2 be omitted altogether from the draft Measure, was withdrawn at the meeting.)

20. The Crown's rights in respect of patronage belonging to a vacant see arise from its position as 'Guardian of Temporalities' of all vacant sees (which in turn flows from the Sovereign's position as Patron and Protector of the Church). Historically, the temporalities of a see included a wide range of property, including castles and manors, and other miscellaneous rights. More recently, almost all see property has become vested in the Church Commissioners and is therefore unaffected by a vacancy in see: indeed the only temporalities that remain vested in each see are the rights of patronage belonging to that see. It is because the Crown as Guardian of Temporalities takes into its protection and charge the rights of patronage belonging to a see which is vacant that it is entitled to exercise the patronage that would usually be exercised by the diocesan bishop or by a suffragan or assistant bishop on his behalf.
21. The effect of the adoption of Mr Benfield's proposal that the Crown's rights during a vacancy in see should be abolished or transferred would therefore be that the Crown would cease to be Guardian of Temporalities, since there would no longer be any temporalities for it to protect. Irrespective of any merit such a development might in principle be thought to have, the Committee was doubtful that this was a change which should be made in a draft Measure intended to give effect to such narrow policy objectives. The Committee was advised, furthermore, that such a change would have significant wider implications. When a diocesan bishop has been elected, confirmed and consecrated, he sues for the temporalities of the see out of the Sovereign's hands by doing homage. If the Crown's position as Guardian of Temporalities were to cease because there were no surviving temporalities, there would thus be no need for a new bishop to do homage.
22. In answer to questions from the Committee, Dr Podmore explained that this last point had not been considered when paragraph 32 of the 'Pilling report', *Talent and Calling* (GS 1650), had been drafted, and advised against making potentially significant constitutional changes in legislation of limited technical scope. Taking into account in addition the clear intention of the Government's Green Paper *The Governance of Britain* – as well as of the Archbishops' own recommendations to the Synod – that the changes proposed in relation to Crown appointments in the Church of England should not result in a fundamental alteration in the relationship between the Crown and the Church, a policy position recently confirmed in correspondence by the Ministry of Justice, the Committee accordingly concluded that the Measure should not be amended so as to abolish or transfer the Crown's vacancy in see rights. Upon Mr Benfield indicating that he wished to withdraw his proposal, the Chair nonetheless invited the Committee to vote on it: the voting was 9 against such an amendment, with 1 abstention.

Definition of "relevant bishop"

23. The Crown's right to fill an office belonging to a diocesan see and which is vacant during a vacancy in see remains with the Crown for as long as that office remains vacant, even after a new diocesan bishop has been appointed: in other words the right does not revert to the new bishop once he is in post. It had come to light that the definition of "relevant bishop" in subclause (4)(a) as drafted made no provision for that eventuality, because although once a new diocesan has been appointed the provisions of subclause (4)(a)(i) relating to any suffragan or assistant bishop to whom the diocesan's patronage is normally delegated would still be operable, there would no longer be a bishop to whom the spiritualities of the vacant see were delegated within (4)(a)(ii). In a case where the patronage in question was not normally delegated by the diocesan to a suffragan or assistant bishop, the right of presentation would therefore have to be exercised by the Crown itself, as there would be no one falling within the definition of "relevant bishop". The insertion of

new sub-paragraph (iii) in clause 2(4)(a) of the draft Measure was accordingly proposed by the Steering Committee to provide that where the right to present to a vacant office remains with the Crown after the appointment of a new diocesan bishop, that right of presentation should be exercisable on behalf of the Crown by the new diocesan. Further amendments were also proposed to clause 2(4)(a) to take account of the fact that the Crown's right of patronage continues to be exercisable after the see ceases to be vacant in the circumstances described above. The Committee agreed that these amendments should be made.

24. The Committee agreed that clause 2, as amended, should be included in the draft Measure.

Clause 3 – Abolition of Crown's rights in relation to cession

25. The Committee made no amendments to clause 3 and agreed that clause 3 should be included in the draft Measure.

Clause 4 – Citation, commencement and extent

26. The Committee made no amendments to clause 4 and agreed that clause 4 should be included in the draft Measure.

Long Title

27. The Committee made no amendments to the Long Title and agreed that the Long Title should be included in the draft Measure.

**On behalf of the Committee
Timothy Briden
Chair**

16th December 2008

Appendix I**Summary of proposed amendments and the Committee's decisions**

(Amendments are Steering Committee amendments unless otherwise indicated.)

Part 1 – Draft Crown Benefices (Parish Representatives) Measure

Clause or schedule of original draft Measure (GS 1693)	Summary of submission	Committee's decision
Clause 1	<p>Parish representatives' right of "veto" should be time-limited (amendment proposed by the Reverend Paul Benfield).</p> <p>Insert new subsection (1B) in section 35 of the Patronage (Benefices) Measure 1986 to extend to the Crown as Guardian of Temporalities during a vacancy in see the registered patron's right to request the archbishop to review the parish representatives' refusal to approve the patron's nominee.</p> <p>Clarify drafting of the phrase "a vacancy in a benefice the patronage or any share of which" (amendment proposed by Mr John Scrivener).</p> <p>Extend provisions of section 12 of the Patronage (Benefices) Measure 1986 to Crown livings (amendment proposed by the Reverend Paul Benfield).</p>	<p>Rejected.</p> <p>Accepted.</p> <p>Accepted.</p> <p>Out of order.</p>

Part 2 – Draft Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure

Clause or schedule of original draft Measure (GS 1692)	Summary of submission	Committee's decision
Clause 2	<p>The Crown's rights of presentation during a vacancy in see should be abolished or transferred (amendment proposed by the Reverend Paul Benfield).</p> <p>Extend definition of "relevant bishop" to cover the Crown's continuing right of presentation to a vacant office after the appointment of a new diocesan bishop.</p>	<p>Rejected.</p> <p>Accepted.</p>

Appendix II

Destination tables

Part 1 – Draft Crown Benefices (Parish Representatives) Measure

GS 1692 (as at First Consideration)	GS 1692A (as amended by the Revision Committee)
1(1A)	1(1A)
-	1(1B)

Part 2 – Draft Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure

GS 1693 (as at First Consideration)	GS 1693A (as amended by the Revision Committee)
1	1
2(1)–(3)	2(1)–(3)
2(4)(a)(i)–(ii)	2(4)(a)(i)–(ii)
-	2(4)(a)(iii)
2(4)(b)	2(4)(b)
3–4	3–4

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