

GENERAL SYNOD

LEGAL ADVISORY COMMISSION

Delegation of Archdeacons' functions

1. The Commission has published an opinion on the delegation of episcopal functions. (See the opinion *Delegation of Episcopal Functions*, February 2018.¹) Some similar questions arise about the delegation of the functions of archdeacons, in particular how, and the extent to which, archdeacons' functions may be delegated and what scope there is for archdeacons to obtain the assistance of a deputy in carrying out their functions on an ongoing basis.

Appointment of commissary by archdeacon

2. The jurisdiction an archdeacon has within the archdeaconry is an ordinary jurisdiction: Canon C 22.2. That means that the archdeacon's jurisdiction is inherent in his or her office; it is not by way of delegation from the bishop. Paragraph 3 of Canon C 22 goes on to provide–

Such jurisdiction is exercised either by the archdeacon in person or by an official or commissary to whom authority in that behalf shall have been formally committed by the archdeacon concerned.

The expression 'jurisdiction' in Canon C 22 is not to be understood in the narrow sense of judicial powers. In addition to powers of a judicial nature, it also embraces the other functions that are inherent in the office of an archdeacon and are described in paragraphs 4 and 5 of Canon C 22. (The expression 'jurisdiction' is used in a similar way in Canon C 18 (of diocesan bishops).)

3. The reference in paragraph 3 of Canon C 22 to an archdeacon's official seems to be redundant. An archdeacon's official was the judge who presided in the archdeacon's court. Archdeacons' courts were abolished by section 82 of the Ecclesiastical Jurisdiction Measure 1963.² This was subject to a saving in section 83 for the visitatorial powers of archdeacons, which continue in force and are described in paragraph 5 of Canon C 22 and in Canon G 5 and G 6. Section 83 also contained savings as to the appointment, office and duties of the official principal of an archdeacon but section 7 of the Ecclesiastical Judges and Legal Officers Measure 1976 prevented any new appointment to the office of official principal of an archdeacon being made after the commencement of that Measure on 25 April 1976. That section provided that where the office of archdeacon's official principal became vacant after that date, the duties of the office were to be performed by the chancellor of the diocese.³
4. An archdeacon may, however, continue formally to commit authority to exercise functions to a commissary as envisaged by Canon C 22.3.
5. The functions in respect of which an archdeacon may commit authority to a commissary include the functions described in paragraph 4 of Canon C 22 of assisting the bishop, in particular to "see that all such as hold any ecclesiastical office within the [archdeaconry] perform their duties with diligence, and ... bring to the bishop's attention what calls for correction or merits praise".
6. Similarly, an archdeacon may commit authority to a commissary for the purpose of holding visitations, surveying churches and churchyards and giving "direction for the amendment of

¹ Available at <https://www.churchofengland.org/about/leadership-and-governance/legal-services/legal-opinions-and-other-guidance>.

² Subsequently repealed by the Statute Law (Repeals) Act 2004.

³ These provisions of the 1976 Measure, now repealed, are restated in section 34 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018.

defects in the walls, fabric and ornaments, and furniture of the same” as required by Canon C 22.5 (see also Canons F17 and F 18).

7. An archdeacon who has received directions from the bishop for the induction of a priest into the possession of the temporalities of a benefice may authorise the rural dean or another minister beneficed or licensed in the archdeaconry to make the induction on his or her behalf: Canon C 11.3.
8. The exercise of any other functions of an archdeacon that are, under canon law, inherent in that office – and form part of the archdeacon’s ordinary jurisdiction – may in principle be committed to a commissary. This would, for example, include the carrying out of a visitation in “more solemn manner” under Canon G 5, or the presentation to the bishop of persons to be ordained (Canon C 3.3).
9. Canon C 22 does not prescribe any qualifications a person must have to be eligible to exercise an archdeacon’s functions as commissary. However, the archdeacon should only appoint as commissary a fit and proper person who has the necessary knowledge and experience to carry out the particular functions that are to be committed to him or her; and in doing so the archdeacon must have regard to any relevant provisions of the House of Bishops’ safeguarding guidance on safer recruitment.⁴ In the case of induction, Canon C 11.3 does prescribe qualifications (see above) which must be met. Subject to that and to what follows in relation to statutory functions, it is in principle possible for an archdeacon to appoint a commissary on a general basis to act in effect as a deputy of the archdeacon. However, it may not be advisable for the functions committed to such a general commissary to include the carrying out of visitations in “more solemn manner” under Canon G 5: where such a visitation becomes necessary, particular consideration should be given to the qualifications needed for carrying out the visitation.
10. Canon C 22 refers to authority being “formally committed” to a commissary. A commissary should be appointed by means of a formal instrument (known as a commission) that clearly sets out the functions of the archdeacon that are being committed to the commissary, for what period and on what terms. A copy of the instrument should be filed in the diocesan registry.

Statutory functions

11. The functions of an archdeacon considered so far in this opinion have been functions that under the canon law form part of the archdeacon’s inherent ordinary jurisdiction. However, statute law (in the form of Measures and subordinate legislation made under Measures) has in recent decades also conferred a range of additional functions on archdeacons. These statutory functions include functions under the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 and the Faculty Jurisdiction Rules, and the Church Representation Rules. It is a well-established rule of the general law that where a statute confers functions on a person, that person must carry out those functions and cannot delegate them to another unless the statute in question, or some other applicable statutory provision, authorises such delegation. Unlike the case of statutory episcopal functions, which may be delegated by instrument under section 13 of the Dioceses, Pastoral and Mission Measure 2007, there is no general statutory provision that permits archdeacons to delegate their statutory functions.
12. There are a small number of specific provisions that enable archdeacons to appoint others to carry out particular statutory functions. These include:

⁴ Section 5, Safeguarding and Clergy Discipline Measure 2016. And see the guidance published at <https://www.churchofengland.org/more/safeguarding/policy-practice-guidance>.

- section 9 of the Parochial Registers and Records Measure 1978, which requires the archdeacon to “cause the register books and records ... to be inspected and reported on periodically by such person or persons as he may appoint”;
- section 54 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018, which provides for the archdeacon to direct that an enquiry, on a visitation, into the state and condition of a parochial library is to be conducted by a deputy.

These examples give an indication of the narrow range of matters in respect of which archdeacons are able to delegate their statutory functions. An archdeacon cannot, for example, delegate his or her function of approving works contained in List B of Schedule 1 to the Faculty Jurisdiction Rules 2015.

13. The only general power to make provision for the discharge of an archdeacon’s statutory functions by another person is the power the bishop has to appoint a person by instrument under section 9 of the Church of England (Miscellaneous Provisions) Measure 1983 “to perform any or all of the archdeacon’s functions for a period specified in the instrument”. The power is exercisable by the bishop, not by the archdeacon; and it is exercisable only “where an archdeaconry is vacant or an archdeacon is unable by reason of illness or absence to carry out any or all of his functions”. Where the archdeaconry is not vacant, it could be used to cover a period of sick leave or sabbatical. But it is not available to provide the archdeacon with general assistance by sharing his or her workload with a deputy or assistant.
14. There is also a specific power in section 60 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 that enables the bishop, in certain specified circumstances, to appoint a person to act in place of the archdeacon for the purposes of that Measure or of any other enactment relating to the bringing of proceedings in court. An appointment may be general or for a particular case. The circumstances in which the power of appointment may be exercised are where—
 - the archdeaconry is vacant,
 - the archdeacon is incapacitated by absence or illness, or
 - in the opinion of the bishop, the archdeacon is for any other reason unable or unwilling to act or it would be inappropriate for the archdeacon to act.

Conclusion

15. There is scope for archdeacons to obtain assistance with the exercise of their functions on a general basis by means of appointing one or more suitable persons as commissaries to carry out functions that are inherent in the office of archdeacon under the canon law. But a commissary will not be able to carry out any of the functions that are conferred on the archdeacon by Measure, or by subordinate legislation made under a Measure, unless that person is appointed to do so by the bishop by an instrument under section 9 of the Church of England (Miscellaneous Provisions) Measure 1983, and then only in the circumstances specifically provided for in that section.

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