

THE ARCHBISHOPS' COUNCIL

DRAFT LEGISLATIVE REFORM (PATRONAGE OF BENEFICES) ORDER

EXPLANATORY DOCUMENT

Laid before the General Synod
pursuant to section 5 of the Legislative Reform Measure 2018

The draft Legislative Reform (Patronage of Benefices) Order has been prepared by the Archbishops' Council following a consultation on proposals that was carried out from November 2018 to January 2019. Having considered the responses to the consultation, the majority of which were in favour of the proposals, the Council considers that it would be appropriate to proceed with the making of an order. The Archbishops' Council has accordingly laid the draft Legislative Reform (Patronage of Benefices) Order before the General Synod, together with this explanatory document, under section 5 of the Legislative Reform Measure 2018.

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Background

1. The Legislative Reform Measure 2018 enables the Archbishops' Council ("the Council"), with the approval of the General Synod and subject to Parliamentary oversight, to make orders removing or reducing burdens that result from ecclesiastical legislation (known as "Legislative Reform Orders"). In this context, "burden" means a financial cost, an administrative inconvenience or an obstacle to efficiency. The power to make orders and other related provision is set out in section 1 of the Legislative Reform Measure.
2. On 1st November 2018 the Council issued a consultation document on proposals for a Legislative Reform Order to remove or reduce burdens of a procedural nature that arise from the Patronage (Benefices) Measure 1986 ("the 1986 Measure"). The consultation period ended on 24 January 2019. The Archbishops' Council – acting through its Legislative Reform Committee – has considered the responses to the consultation.
3. In the light of the responses to the consultation, the Council considers that it is appropriate to proceed with the making of an order under the Legislative Reform Measure. As required by section 5 of that Measure, the Council has laid a draft of the Legislative Reform (Patronage of Benefices) Order ("the draft Order") before the General Synod together with this explanatory document.

The Consultation

4. The Archbishops' Council carried out the consultation on proposals for the draft Order in accordance with section 4 of the Legislative Reform Measure. The consultation document is reproduced at **Annex A**. Paragraph 69 of the consultation document lists those who were consulted.
5. Ninety responses to the consultation were received and all stakeholder groups were represented. A list of those who responded to the consultation can be found at **Annex B**.
6. Of the responses, eight were from members of the General Synod, 24 were from patrons (including the Crown, diocesan boards of patronage and patronage societies), 11 were from diocesan registrars, 19 were from dioceses, diocesan secretaries and other senior diocesan staff, nine were from archdeacons, four were from bishops and seven were from cathedrals. Responses were also received from organisations, individual clergy, churchwardens, members of parochial church councils and parishioners.

7. **Annex C** provides detailed summaries of the responses received in respect of each of the proposals contained in the consultation.

Proposal 1: Commencement of the process for filling a vacancy

8. The first proposal related to the delay in the commencement of the process for filling a vacancy and there were two questions. The questions asked were:
 - Do you agree that significant delay in the commencement of the process for filling a vacancy should normally be avoided?
 - Does the mechanism set out in proposal 1 provide a suitable means of avoiding unnecessary delay?
9. The majority of respondents answered the first question in the affirmative. Two did not agree with the proposition that delay in the commencement of the process for filling a vacancy should normally be avoided.
10. The majority of respondents also answered the second question in the affirmative. Seven respondents did not agree that the mechanism proposed would provide a suitable means of avoiding unnecessary delay. Responses which disagreed with the proposal did so because:
 - They felt that a delay can be helpful in some occasions;
 - It was felt that there shouldn't be a need for the Bishop to give notice of a vacancy;
 - The announcement of the vacancy should be given within a week of the announcement of a retirement/resignation, unless there are clear grounds for delaying this process, which must be stated to the parish.
11. There were a number of other suggestions raised in response. These included:
 - that the draft timetable should be based on the resignation date rather than the date of the vacancy,
 - the relevant provision should specify that the designated officer should notify the patron,
 - the vacancy should be announced at such a time to enable an incumbent to be appointed within one year of the benefice becoming vacant,
 - consideration of what should happen if the Bishop fails to give notice as required, leading to the possibility for the patron or other interested party to give notice if the Bishop has failed to do so within 14 days
 - the Bishop is already under a duty to give notice before the vacancy occurs under section 7(2), why will Bishops be more compliant with this new proposal?
 - the Bishop should have the option to pause proceedings after the start date
 - there should be clarity over the roles of the Bishop, patron and the parochial church council, which should be communicated to the parish
 - the question was raised about whether delays in announcing vacancies were a result of financial challenges.

12. The Legislative Reform Committee did not consider that any of the points raised called proposal one into question.
13. The Committee had pointed out in the consultation paper that in special cases, where there was a particular, good reason for delay, the bishop could exercise the power to impose a suspension or restriction on the right of presentation.
14. It was necessary for someone to trigger the process for filling a vacancy and there was no obvious candidate for that other than the bishop.
15. It was not feasible for a statutory timetable to be based on the announcement of a retirement or resignation as there would be legal uncertainty as to what constituted an “announcement” for this purpose.
16. If a bishop failed to comply with the proposed new requirements as to the commencement of the process for filling a vacancy, that would amount to misconduct for which the bishop would be liable to proceedings under the Clergy Discipline Measure 2003.

Proposal Two: Procedures for parochial church councils

17. The second proposal related to simplifying the procedures for parochial church councils and their secretaries. It proposed amending the timeframe for parochial church councils to carry out their duties, providing a single maximum period of six months, beginning with the ‘start date’ to hold the section 11 meetings and section 12 meetings.
18. In response, the majority agreed with the proposal. However, there were fifteen respondents that felt that six months was too long and could lead to further delay in the process.
19. There were also a number of other suggestions:
 - Is there a need for separate Section 11 and Section 12 meetings?
 - There were some respondents who suggested that the timeframe should be extended to nine months in exceptional circumstances, whereas others suggested that the maximum time should be three months or four months.
20. The Legislative Reform Committee considered that there was a need for separate section 11 and section 12 meetings. It was important that a parochial church council should be able to discuss and come to a mind about matters such as the “conditions, needs and traditions of the parish” without the patron and bishop (or their representatives) being present.
21. Noting the different views as to the time required for the processes under section 11 and section 12 to be carried out, the Legislative Reform Committee remained of the view that a period of six months should be allowed. The Committee wished to emphasise that this was a maximum period and the steps required by sections 11 and 12 should be carried out within a shorter period where that was feasible. The Order has been drafted to reflect this (see article 3(1)).

Proposal Three: Time period before lapse

22. Proposal three built on proposals one and two, and suggested that if these were implemented, the 12 month period before lapse occurs should run from the start date.
23. In response, the majority agreed with the proposals. There were a number of responses that suggested that the time period should be 18 months or 15 months rather than the suggested 12 months.
24. Some respondents questioned the provisions under which rights of patronage lapse if not exercised within the time allowed, and suggested that there should be a process which would enable there to be a 'pause' in the lapse process.
25. The Legislative Reform Committee noted the responses. It had particular regard to concerns – of which members of the Committee were themselves aware – that it was not unusual for a vacancy to have to be advertised several times before an appointable – or even any – candidate emerged.
26. The Committee accordingly accepted that the proposal in relation to lapse should be modified, so that a right of patronage would lapse to the bishop or archbishop after a period of **18 months** if it had not been exercised within that time.

Proposal Four: Joint Patronage: informing other patrons that a turn is being taken

27. The fourth proposal suggested that where patronage was exercised by different patrons by turns, the registrar should inform the patrons with subsequent turns that a turn was being taken. In addition, the registrar should ask the patrons to provide updated contact details.
28. There were two respondents who disagreed with this proposal, as they felt that this would be an additional administrative burden on registrars.
29. There were suggestions that the patronage register should be public, such as being placed on the diocesan website.
30. A number of respondents questioned the use of patronage by turns and suggested that this should be replaced by joint patronage.
31. The Legislative Reform Committee noted the concern about imposing additional duties on the registrar. It considered that if the proposed notification of other patrons simply became part of the procedure for giving notices at the commencement of the procedure for filling a vacancy, that would not result in significant additional work for the designated officer.
32. In fact section 7(4) of the 1986 Measure (designated officer to send notice of vacancy to registered patron and parochial church council secretary), read with section 39(1) (interpretation), already requires the designated officer to send the notice of vacancy to all of the registered patrons for the benefice, not just those whose turn it is to present. The form in general use for this notice distinguishes between “the registered patron(s)” and “the presenting patron”.

However, as this was not immediately clear from section 7, the draft Order spells out the requirement to send the notice to all of the registered patrons (see article 2(7)).

Proposal Five: Joint Patronage: joint patron to be able to appoint another joint patron to act

33. The fifth proposal suggested that where patronage is exercised jointly, a joint patron should be able to nominate one of the other patrons to act on their behalf.
34. In response, this proposal was largely supported, however there were some questions and comments raised as follows:
 - Should the provision be limited so that only the Bishop could act on behalf of other patrons?
 - How would this work in practice when there are patrons with different traditions and churchmanship?
 - There were concerns raised about how the nominated patron would act when voting takes place. Would the nominee have two votes?
 - There should be a clear written procedure for doing this.
 - The importance of this remaining 'voluntary' was highlighted and the risk of patrons being pressurised to relinquish their role was raised.
 - There was a request for a time limit on the nomination of one patron to act on behalf of the others.
 - It was suggested that there should be the opportunity for non-patrons to be nominated to act on behalf of the patron.
35. The Committee did not consider that only the bishop should be able to act on behalf of other patrons, noting that the bishop might not be a patron. The power to appoint another of the joint patrons to act on a patron's behalf was intended to be voluntary and in the discretion of the appointing patron.
36. The response concerned with how voting would work seemed to be based on a misunderstanding of joint patronage. Where patronage is exercisable jointly by two or more patrons, a presentation can be made only if *all* those patrons agree; the issue of voting does not arise.
37. The Committee did not consider that a patron should be able to appoint someone who was not a patron to act, as this would complicate matters by introducing more rather than fewer persons in the process.
38. The Committee agreed that such an appointment, and the revocation of any such appointment, should be in writing.

Proposal Six: using email

39. This proposal suggested that the Measure be amended to enable email to be used for sending documents required by the Measure.
40. There was only one respondent who disagreed with this proposal. They felt that the use of email could lead to error, misdirection and confusion.
41. Otherwise, this proposal was welcomed but some respondents suggested that a number of safeguards should be included. These included the following:
 - the designated officer should be required to record that notices have been acknowledged by the recipients and interested parties to mitigate messages being lost in spam filters or other security software.
 - there needs to be appropriate storage
 - there needs to be a mechanism for ensuring that proper signatures have been used
42. A number of respondents raised the question of GDPR compliance
43. It was proposed that there should still be the possibility for not using email, to prevent the disenfranchisement of those that do not use electronic communications.
44. The Legislative Reform Committee did not consider that any special statutory requirements should be imposed in relation to email communications. No such requirements were imposed as to sending documents by post – which could also be lost. As a matter of law, a typed signature on an email was treated as the signature of the person who typed it.
45. The proposal to permit the use of email did not raise any special issues in relation to data protection that do not apply to the use of the post.
46. The proposal is that electronic communication should be permissible where a person had provided an email address. A person would not be obliged to do so, in which case communication would continue to be by post.

Multi-Parish Benefices

47. The consultation document did not make proposals for amending existing provisions relating to multi-parish benefices, however respondents were invited to comment on any further improvements which could reduce burdens.
48. Respondents suggested the following:
 - Reducing the number of representatives to be appointed by each parochial church council as the appointment of two by each council can lead to unwieldy interview panels.
 - The importance of training for parish representatives was raised.
 - A number of respondents emphasised the importance of clear guidance

49. So far as the first point was concerned, the Legislative Reform Committee noted that it was already open to the parochial church councils of a multi-parish benefice to decide to appoint just one representative for each parochial church council. Alternatively, they may leave it to the churchwardens of the parishes in the benefice to choose not more than five of their number to act as parochial representatives. There is therefore already considerable scope in the legislation as it stands that enables a small number of parochial representatives to be chosen for a multi-parish benefice.
50. One set of proposals which was outside the scope of a Legislative Reform Order proposed wholesale changes to the process in relation to filling vacancies in multi-parish benefices. (See further below.)

Guidance

51. There were five comments in relation to guidance welcoming improved guidance. One response said that guidance should not be used to cover ground that ought to be dealt with in the legislation itself.
52. The Legislative Reform Committee noted that revising the guidance on appointments would be taken forward by the Remuneration and Conditions of Service Committee of the Archbishops' Council in due course.

Other responses

53. One substantial set of detailed responses was received. While it made responses to specific proposals in the consultation paper, it argued that the 1986 Measure should not be amended by Legislative Reform Order on the basis that a much more wide-ranging review of the 1986 Measure was required which could not be carried out using the order making power conferred by the Legislative Reform Measure.
54. A number of other responses also included proposals that were outside the scope of a Legislative Reform Order.
55. Those proposals were, by their nature, outside the remit of the Legislative Reform Committee which has delegated to it the functions of the Archbishops' Council under the Legislative Reform Measure. Whether or not there is merit in the wider ranging proposals was not a matter for the Committee to determine. Those proposals do not affect the view of the Committee that the proposals that were consulted on and which were widely supported should be given effect by a Legislative Reform Order, subject to the modifications noted above.

The draft Order

Article 1

56. Article 1 provides for the citation, commencement and interpretation of the Order. It is proposed to come into force on 1st January 2020 to allow time for the order to be approved by the General Synod and laid before Parliament. The proposed commencement date should also provide time for relevant guidance to be issued.

Article 2

57. Article 2 gives effect to proposal one in the consultation which was concerned with avoiding delay in the commencement of the process for filling a vacancy in a benefice. It amends section 7 of the 1986 Measure, which is concerned with the giving of notices that trigger that process. It also gives effect, in modified form, to proposal four which was concerned with the giving of notice to patrons who have subsequent turns that a turn is being taken.
58. Article 2 would remove or reduce burdens as defined by section 1 of the Legislative Reform Measure by significantly reducing the scope for delay in the commencement of the process for filling a vacancy and thereby removing an obstacle to efficiency. See paragraphs 16 to 18 of the consultation document. It would also assist in maintaining contact with patrons who have subsequent turns and help in keeping their contact details up to date, thereby reducing administrative inconvenience when subsequent vacancies arise.
59. Article 2(3) substitutes two new subsections for section 7(2) of the 1986 Measure. The new subsection (2) applies where a benefice becomes vacant by resignation or cession (i.e. where the incumbent of a benefice is appointed a diocesan bishop and the benefice is vacated as a result). The bishop must give notice of the vacancy – and thereby trigger the process for filling it – not later than the day on which the vacancy occurs. The new subsection (2) therefore prevents the bishop from delaying giving notice of the vacancy – and triggering the process for filling it – beyond the day on which the benefice becomes vacant. The bishop retains a discretion to give the notice on an earlier date under new subsection (2A).
60. New subsection (2A) is also concerned with the case where a benefice becomes vacant by resignation or cession. It enables the bishop to give the notice at any time after the bishop becomes aware that the benefice is shortly to become vacant (because, e.g., the incumbent has given the bishop written notice of resignation). The bishop, therefore, does not need to wait until the benefice is vacant before triggering the process for filling it.
61. Article 2(6) inserts a new subsection (4A) in section 7 of the 1986 Measure. It sets out the information that must be included in the notice that is sent by the designated officer to the patron(s) and the secretary of the parochial church council.

62. That information must include the “start date”. The start date provides the date from which two periods of time begin to run: the period of six months for holding section 11 and section 12 meetings, and the period of 18 months after which the right of patronage lapses to the bishop or archbishop if it has not been exercised by the patron. The start date must either be the date on which the designated officer sends the notice to the patron and secretary of the parochial church council, or – if the bishop so directs – a date not more than three months after the beginning of the vacancy.
63. The notice from the designated officer must also include information about the procedure for filling the vacancy.
64. Article 2(7) makes it clear that when the designated officer gives the notice of the vacancy to the patron and secretary of the parochial church council, it must also be sent to other patrons who have subsequent turns to present to the benefice. When doing so, the designated officer must ask them to provide an email address and other contact details.
65. The other provisions of article 2 make consequential amendments.

Article 3

66. Article 3 gives effect to proposal two in the consultation. That proposal was concerned with simplifying the procedures that have to be followed by parochial church councils and their secretaries by providing a single maximum period of six months, beginning with the start date, for the holding of section 11 and section 12 meetings.
67. Article 3 would remove or reduce burdens as defined by section 1 of the Legislative Reform Measure by simplifying the complex set of deadlines the parochial church council currently has for fulfilling its various functions under sections 11 and 12 of the 1986 Measure, allowing enough time for those functions to be exercised effectively, and thereby removing an obstacle to efficiency and reducing the administrative inconvenience involved. See paragraphs 28 to 31 of the consultation document.
68. Article 3(1) amends section 11 of the 1986 Measure so that section 11 meetings are held “as soon as practicable after the start date” and “in any event before the end of the period of six months beginning with that date”. This is intended to make it clear that parochial church councils should carry out their duties in a timely way, with six months being the maximum period allowed for them to do so.
69. Article 3(2) amends section 12 of the 1986 Measure so that where a meeting under that section is requested it too must be held within the period of six months beginning with the start date.
70. The other provisions of article 3 make consequential amendments.

Article 4

71. Article 4 gives effect to proposal three but in the modified form agreed by the Legislative Reform Committee. The original proposal was that the period before lapse occurs should be 12 months beginning with the start date. The Committee has taken the view that a longer period of 18 months should be allowed for the reasons given above in paragraph 26.
72. Article 4 would remove or reduce burdens as defined by section 1 of the Legislative Reform Measure by ensuring that there is a reasonable amount of time to identify a suitable candidate for presentation to a vacant benefice before lapse occurs. The occurrence of lapse represents an administrative inconvenience and an obstacle to efficiency because it involves changing the procedure for, and those involved in, making an appointment part of the way through the process. Allowing a longer period will reduce the occurrence of lapse and thereby remove that administrative inconvenience.
73. Article 4 amends section 16 of the 1986 Measure so that patronage lapses to the bishop or archbishop if it has not been exercised within 18 months of the start date.
74. It also makes amendments to the headings that relate to section 16 and a consequential amendment to Schedule 2 to the 1986 Measure.

Article 5

75. Article 5 gives effect to proposal five in the consultation: that where patronage is exercised jointly, a joint patron should be able to appoint one of the other joint patrons to act on his or her behalf.
76. Article 5 would remove or reduce burdens as defined by section 1 of the Legislative Reform Measure by enabling a reduction in the number of individuals who have to be involved in making a presentation to a vacant benefice and thereby remove an administrative inconvenience and an obstacle to efficiency.
77. Article 5 inserts a new section 20A in the 1986 Measure which gives a joint patron the power to appoint another joint patron to act on his or her behalf in respect of a vacancy.
78. In order to be eligible to appoint or be appointed, a joint patron must either have made the declaration of membership of the Church of England required by section 8 of the 1986 Measure or be acting through a representative under that section. If a joint patron is acting through a representative, then it is the representative who makes the appointment or is appointed under new section 20A.
79. Where a joint patron is appointed to act on behalf of another joint patron under section 20A, he or she takes the place of the appointing patron in deciding whether to agree to present a priest for appointment to the benefice and exercises the appointing patron's other statutory functions.

80. An appointment under section 20A may be revoked but without affecting any steps that have already been taken prior to revocation.
81. An appointment, and any revocation of an appointment, under section 20A must be made in writing.

Article 6

82. Article 6 gives effect to proposal six in the consultation. That proposal was that the 1986 Measure be amended to enable email to be used.
83. Article 6 would remove or reduce burdens as defined by section 1 of the Legislative Reform Measure by reducing the administrative inconvenience of having to use the post to send documents where a person was content to receive them by email.
84. Article 6 amends section 37 of the 1986 Measure so that notices and other documents may be sent by post or by sending them to an email address which a person has provided and not withdrawn. If a person does not provide an email address, or withdraws an email address and does not provide another one, communications will have to be sent to that person by post.

Article 7

85. Article 7 updates various references in the 1986 Measure to other legislation.

Article 8

86. Article 8 is made in reliance on section 9(2)(b) of the Legislative Reform Measure. It applies the amendments made by articles 2 to 6 to the Isle of Man subject exceptions, adaptations and modifications that are set out in paragraphs (2) to (4) of article 8. This is so that the amendments made by the Order take account of relevant Isle of Man legislation.

Article 9

87. Article 9 makes transitional provision so that the amendments made by articles 2 to 4 of the order do not apply in the case of a vacancy in a benefice which arose before 1st January 2020 or in respect of which the process for filling the vacancy has been commenced under section 7 of the 1986 Measure before that date. This is to ensure that the procedure for filling a vacancy that is already under way is not affected by the amendments made by the Order.

Preconditions

88. The Council is satisfied that the conditions in section 2 of the Legislative Reform Measure are (so far as relevant) satisfied for the following reasons.
89. The policy objective of each of the proposals contained in the consultation (as modified) could not be satisfactorily secured by non-legislative means because they relate to matters which are either currently the subject of statutory

provision in the 1986 Measure which is incompatible with the proposals, or which require the making of new provision in the 1986 Measure to give effect to them.

90. Each of the substantive provisions of the draft Order is directly related to the policy objective to which it gives effect and goes no further than is necessary to give effect to it. Accordingly the Council considers that the effect of each of the provisions is proportionate to the policy objective to be secured by it.
91. As indicated in the consultation paper, there are no proposals that change the substantive rights of patrons, parochial church councils or bishops. The changes are procedural. The procedural changes made by the draft Order are considered to achieve a fair balance between the different interests involved in making appointments to vacant benefices by ensuring that each of the persons involved knows what their respective responsibilities are and are given adequate time to fulfil them. The Council does not consider that any person is adversely affected by any of the provisions. The Council accordingly considers that each provision of the draft Order satisfies the requirement that it strike a fair balance between the public interest, the interest of the Church of England as a whole and the interests of any person who is adversely affected by it.
92. The provisions of the draft Order do not concern the removal of any protection, do not affect financial benefits and do not prevent the exercise of any right or freedom.
93. As the provisions of the draft Order are concerned only with procedural matters, and do not affect the relationship of the Church with the Sovereign or the state, the Council does not consider that they are of constitutional significance.

Simon Butler
Chair of the Legislative Reform Committee
on behalf of the Archbishops' Council

March 2019