

**THE ARCHBISHOPS' COUNCIL
DRAFT LEGISLATIVE REFORM (PATRONAGE OF BENEFICES) ORDER
EXPLANATORY DOCUMENT**

**Annex A
Consultation Document**

THE ARCHBISHOPS' COUNCIL

**CONSULTATION ON A LEGISLATIVE REFORM ORDER
TO AMEND THE PATRONAGE (BENEFICES) MEASURE 1986**

Presented to Parliament pursuant to section 4(4) of
the Legislative Reform Measure 2018

Laid before the House of Commons by the Clerk of the House

ARCHBISHOPS' COUNCIL
LEGISLATIVE REFORM COMMITTEE
CONSULTATION ON A LEGISLATIVE REFORM ORDER
TO AMEND THE PATRONAGE (BENEFICES) MEASURE 1986

The Legislative Reform Committee of the Archbishops' Council is undertaking this consultation, under section 4 of the Legislative Reform Measure 2018, on proposals for a Legislative Reform Order to remove or reduce burdens of a procedural nature that arise from the Patronage (Benefices) Measure 1986.

Responses to this consultation are invited by 24 January 2019. They should be sent by email to jenny.jacobs@churchofengland.org or by post to Jenny Jacobs, Central Secretariat, Church House, Great Smith Street, London SW1P 4JZ.

Legislative Reform Orders

1. The Legislative Reform Measure 2018¹ enables the Archbishops' 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 ('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. Section 2 of the Legislative Reform Measure sets out pre-conditions for the inclusion of provision in a Legislative Reform Order. The Archbishops' Council may include provision in a Legislative Reform Order only if it considers—
 - (a) that the policy objective intended to be secured by that provision of the order could not be satisfactorily secured by non-legislative means,
 - (b) that the effect of that provision is proportionate to the policy objective to be secured by it,
 - (c) that the provision, taken as a whole, strikes a fair balance between the public interest, the interest of the Church of England as a whole and the interests of any person adversely affected by the provision,
 - (d) that the provision does not remove any necessary protection,
 - (e) that the provision does not prevent a person from receiving or continuing to receive a financial benefit to which the person is entitled or could reasonably expect to become entitled,
 - (f) that the provision does not prevent a person from exercising or continuing to exercise a right or freedom which that person could reasonably expect to exercise or to continue to exercise, and
 - (g) that the provision is not of constitutional significance.
3. Section 3 of the Legislative Reform Measure sets out certain exceptions to the power to make Legislative Reform Orders. A Legislative Reform Order cannot amend or repeal

¹ The Measure is available online at <http://www.legislation.gov.uk/ukcm/2018/5>.

specified Acts of Parliament and Church Measures which are concerned with the constitutional position of the Church of England or its worship or doctrine. A Legislative Reform Order cannot make provision to alter the purposes for which the Church Commissioners' general fund is available.

4. Section 4 of the Legislative Reform Measure provides that if the Archbishops' Council proposes to make a Legislative Reform Order it must consult—
 - (a) the members of the General Synod,
 - (b) persons who have or exercise functions to which the proposals relate,
 - (c) persons who do not come within paragraph (b) but whose interests would nonetheless be substantially affected by the proposals, and
 - (d) such other persons as the Council considers appropriate.

The Council may, where it considers it appropriate to do so, consult with organisations which appear to represent persons who come within paragraph (b) or (c).

5. Before beginning the consultation process the Council must lay the consultation documents before both Houses of Parliament.
6. If, following a consultation, the Archbishops' Council decides to proceed with the making of a Legislative Reform Order it must lay a draft of the Order before the General Synod together with an explanatory document. The draft Order is then considered by the General Synod's Scrutiny Committee (which can make amendments to the draft Order). The Scrutiny Committee provides the Synod with a report on the draft Order.
7. When the General Synod has received the report of the Scrutiny Committee, the Synod decides whether to approve the draft Order, reject the draft Order or refer the draft Order back to the Scrutiny Committee. Only if the Synod approves the draft Order can the Archbishops' Council proceed to make the Order. If an Order is made it has to be laid before both Houses of Parliament and can be annulled by either House.

Legislative Reform Committee

8. The Archbishops' Council has established the Legislative Reform Committee as a committee of the Council and has delegated to it the Council's functions under the Legislative Reform Measure. The Legislative Reform Committee comprises five members, two of whom are members of the Archbishops' Council and three of whom are members of the General Synod who are not members of the Council.

Removal of burdens resulting from the Patronage (Benefices) Measure 1986

9. The Legislative Reform Committee is undertaking this consultation on proposals for a Legislative Reform Order to remove or reduce burdens of a procedural nature that arise from the Patronage (Benefices) Measure 1986. There are no proposals to change the substantive rights of patrons, parochial church councils or bishops.
10. A right of patronage is the right a particular individual or body ('the patron') has to present a priest to a vacant benefice. A benefice in this context means "the office of rector or vicar of

a parish or parishes, with cure of souls”.² A benefice may comprise just one parish, or more than one parish (a ‘multi-parish benefice’).

11. The right of patronage in respect of about 50% of the benefices in the Church of England belongs to the bishop of the diocese. Patrons other than bishops have the right of presentation in respect of the remaining 50% and they include the Crown, cathedrals, colleges, incumbents, patronage societies and private individuals.
12. The Patronage (Benefices) Measure 1986 (‘the Measure’) makes provision for the registration and transfer of rights of patronage and for the exercise of rights of patronage in respect of parochial benefices.
13. The Measure contains a great deal of highly prescriptive provision, in particular with regard to the procedure for filling vacancies in parochial benefices.
14. In outline the statutory procedure for filling a vacant benefice is as follows:
 - (a) The bishop gives notice that a benefice is shortly to become vacant, or has become vacant, to the designated officer of the diocese.³
 - (b) The designated officer sends notice of the vacancy to the patron and the secretary of the PCC(s).⁴
 - (c) The patron makes a declaration of membership of the Church of England or appoints a representative to act for him or her who can make the declaration.⁵
 - (d) The patron sends the declaration of membership or the name and address of his or her representative to the designated officer.⁶
 - (e) The PCC has four weeks from the notice of vacancy being sent by the designated officer to hold one or more meetings (often referred to as a ‘section 11 meeting’) to–
 - i. prepare a statement describing the conditions, needs and traditions of the parish
 - ii. appoint two parish representatives
 - iii. decide whether to request the patron to consider advertising the vacancy
 - iv. decide whether to request a joint meeting with the bishop and patron (often referred to as a ‘section 12 meeting’)
 - v. decide whether to request a written statement from the bishop describing the needs of the diocese and the wider interests of the church.⁷
 - (f) If the PCC, bishop or patron has requested a joint meeting of the PCC, bishop and patron, a joint meeting has to be held within six weeks of the request being made. The purpose of the meeting is to enable those present to exchange views on the parish’s statement of needs and any statement from the bishop describing the needs of the diocese and the wider interests of the church.⁸

² Section 39(1), Patronage (Benefices) Measure 1986. Subsequent references in footnotes to section numbers are to sections of the 1986 Measure.

³ Sections 7(1) and (2).

⁴ Section 7(4).

⁵ Section 8.

⁶ Section 9.

⁷ Section 11.

⁸ Section 12.

- (g) Once the joint meeting (if requested) has taken place or the six weeks allowed for it to be held have elapsed, the patron may proceed to select a priest the patron wishes to present to the bishop for institution to the benefice. The patron might keep a list of potential candidates, might search for a candidate him- or herself, or might agree to advertise the vacancy and hold interviews at which the bishop and parish are represented. The last of these is the method that is now most commonly followed. The Measure does not make provision for the process of selection.
- (h) Before the patron can make an offer to any priest to present him to the benefice, the patron has to obtain the approval of the bishop (if the bishop is not the patron) and the parish representatives to the making of the offer. Therefore the bishop and the parish representatives in effect each have a veto.⁹
- (i) If the bishop and parish representatives approve the making of the offer, the patron proceeds to make the offer to the priest and if it is accepted the patron proceeds by giving formal written notice to the bishop presenting the priest for admission to the benefice.¹⁰
- (j) Special provisions apply to multi-parish benefices (for example, requiring joint meetings of PCCs and limiting the number of parish representatives in some cases, see paragraphs 60-67 below) and to benefices of which the Crown is patron.

15. The procedure is prone to delay, is quite complex, involves various notices being sent between parties and requires various different deadlines to be met. It imposes particularly onerous obligations on the secretary of the PCC. Failure to comply with the procedural requirements can result in a patron losing the right to present a priest to fill the vacancy or the parish representatives losing their right of veto.

Undue delay in commencing the process for filling a vacancy

16. One issue which has been raised is delay on the part of bishops in triggering the start of the statutory process for filling a vacancy in a benefice.

17. The Measure envisages – in the case of resignation or retirement – that the bishop might give formal notice of the vacancy triggering the commencement of the statutory process before the benefice actually becomes vacant; but it does not make this mandatory. There may be good reasons why it would be preferable for the process for filling a vacancy not to begin until after the outgoing incumbent has left.

18. Nevertheless, it seems generally undesirable that there should be significant delay in the commencement of the formal process for filling a vacancy after that point. It is suggested that the significant delay in triggering the process for filling a vacancy that can result from the application of the existing provisions of section 7 of the Measure is an obstacle to efficiency that it is considered should be removed.

19. It is therefore proposed that the statutory process for filling a vacancy should be triggered as follows.

⁹ Section 13.

¹⁰ Section 13(6).

Proposal 1

20. **The bishop would be required to give notice of the vacancy to the designated officer not later than the day on which the benefice becomes vacant in the case of resignation or retirement; or as soon as practicable in the case of an incumbent dying in office.** (In the case of resignation or retirement, it would continue to be possible for the bishop to give the notice before the vacancy in the benefice occurs where the bishop considers it appropriate to do so.)
21. **The designated officer would be required to give the notice of the vacancy to the PCC secretary as soon as practicable after receiving the notice from the bishop.**
22. **The notice given by the designated officer to the PCC secretary would–**
 - (a) **state the date on which the benefice had become vacant;**
 - (b) **provide the ‘start date’ for the statutory timetable for filling the vacancy;**
 - (c) **provide information about the statutory process, especially with regard to the duties the PCC has in that process.**
23. **The ‘start date’ for the statutory timetable would be the date on which the notice is sent by the designated officer to the PCC secretary or, if the bishop has so directed, a date not later than 3 months after the date of the vacancy.**
24. While the bishop, archdeacon or rural dean is likely already to have been in touch with the PCC at an early stage and begun to guide them through the process, the continuation of the requirement for a formal notice, accompanied by other information, from the designated officer should ensure that the PCC are reminded of the duties they need to carry out in relation to filling the vacancy and that they are informed of the timetable for doing so.
25. If the bishop considers that there are special reasons in relation to a particular benefice, in the light of which a delay in starting the formal process would be advisable, the bishop should use the existing power under section 85 of the Mission and Pastoral Measure 2011 to suspend presentation after consultation with the patron, PCC and deanery synod chairs and with the consent of the diocesan mission and pastoral committee. The power of suspension can be exercised at any time within three months before a benefice is due to become vacant or at any time during a vacancy. If it is exercised, the statutory procedure for filling the benefice does not apply until the suspension comes to an end. Alternatively, if the diocesan mission and pastoral committee are considering proposals for pastoral reorganisation involving the benefice, the bishop may give notice under section 87 of the Mission and Pastoral Measure 2011 restricting the right of presentation for a period of up to one year. In any case, if proposals for pastoral reorganisation have reached a particular stage a restriction on presentation to a vacant benefice arises under that section and the process for filling the vacant benefice under the Patronage (Benefices) Measure 1986 is automatically stayed.

Questions on Proposal 1

26. **Do you agree that significant delay in the commencement of the process for filling a vacancy should normally be avoided?**
27. **Does the mechanism set out in proposal 1 provide a suitable means of avoiding unnecessary delay?**

PCC duties in relation to filling a vacancy

28. A further issue is the complex set of deadlines the PCC has for fulfilling its various duties and other functions described in paragraph 14(e) and (f) above.
29. The secretary to the council has to convene one or more meetings of the council (i.e. section 11 meetings) at which the council has to take various significant decisions, all within a period of just 4 weeks. These are the meetings at which the statement describing the conditions, needs and traditions of the parish is agreed and at which parish representatives are appointed. As the Church Representation Rules generally require 10 days' notice of each meeting to be given, it is not easy for the PCC – and in particular its secretary – to comply with these requirements, especially if it is necessary (as the legislation envisages) to hold more than one section 11 meeting during the 4-week period.
30. The PCC may make a request for a joint meeting with the bishop and the patron (i.e. a section 12 meeting) for the exchange of views on the parish's statement and a statement by the bishop about the needs of the diocese and the wider interests of the church. Alternatively, the bishop or patron may request a joint meeting (provided he or she does so within 10 days of receiving the statement describing the conditions, needs and traditions of the parish). If a request for a section 12 meeting is made the secretary to the PCC is obliged to arrange the joint meeting to take place within 6 weeks of the request being made, giving 14 days' notice of the time and place of the meeting to all those involved unless they all agree a shorter period of notice.
31. If the PCC fails to send its statement describing the conditions, needs and traditions of the parish to the patron and the bishop, or a section 12 meeting that has been requested by the bishop or patron is not arranged, within the time limits prescribed by the Measure the parish loses the right, through parish representatives, to approve the making of an offer to a priest to present him or her to the benefice. The result of not complying with the statutory provisions are potentially very serious for the parish.

Proposal 2

32. **It is accordingly proposed that the parts of the procedure for which the PCC is responsible (outlined in paragraph 14(e) and (f) above) should be simplified, in particular to make it easier for PCCs and PCC secretaries to carry out the duties they have in the process for filling vacancies, on the basis that the current requirements result in an administrative inconvenience and an obstacle to efficiency.**
33. **It is envisaged that the existing periods of 4 weeks for section 11 meetings and 6 weeks for a section 12 meeting that follow the receipt of formal notice of the vacancy from the designated officer should be replaced with a single maximum period of 6 months beginning with the 'start date' specified in the notice given to the PCC secretary by the designated officer¹¹.**
34. **The following would need to take place within that 6-month period:**
 - (a) **the PCC would–**

¹¹ See paragraph 23 above for the start date.

- i. **agree its statement describing the conditions, needs and traditions of the parish,**
 - ii. **appoint parish representatives,**
 - iii. **decide whether to request the patron to advertise the vacancy, and**
 - iv. **decide whether to request a written statement from the bishop describing the needs of the diocese and the wider interests of the church.**
- (b) **the PCC would decide whether to request a joint meeting with the bishop (or bishop's representative) and the patron (i.e. a section 12 meeting);**
 - (c) **the bishop and/or the patron would decide whether to request a joint meeting with the PCC (i.e. a section 12 meeting);**
 - (d) **where a joint meeting was requested, it would be held on a mutually convenient date arranged by the PCC secretary.**
35. The PCC and others concerned would need to complete these matters by the end of the period of 6 months beginning with the 'start date'. This is intended to provide adequate time for the PCC to carry out its duties and for arrangements to be made for the holding of a joint meeting with the bishop and patron where that is requested.
36. The preparation of the PCC's statement describing the needs, conditions and traditions of the parish will usually require consultation with various people, both PCC members and others in the wider parish, and needs careful thought and preparation. Although formally agreeing the statement would need to take place at formal meeting of the PCC held within the six-month period following the 'start date', there would be nothing to prevent the PCC beginning the consultation and carrying out informal drafting work before that date.
37. Once all the matters set out in paragraph 34 have been completed, the patron, bishop and parish representatives will be ready to undertake their respective roles in the task of identifying a priest for appointment to the benefice.
38. It should, in most cases, be possible to complete the matters set out in paragraph 34 within less than 6 months, in which case it would be possible to proceed more quickly to the task of identifying a priest for appointment. There should be no need for it to take longer than at present to get to this stage. But the current requirement to have done so within 10 weeks of the PCC receiving formal notice of a vacancy is unrealistic and six-months would seem to be a reasonable **maximum** period for the required matters to be completed.
39. If these matters were not completed by the PCC within that time, it is envisaged that the existing provisions under which the patron and bishop may proceed with the appointment once the time limit has passed would remain in place and an appointment could nevertheless be made. Those provisions are a safeguard against egregious inefficiency or obstructiveness resulting in inordinate delay.

Questions on proposal 2

40. **Do you agree that the procedure for which the PCC is responsible should be simplified to make it easier for PCCs and PCC secretaries to carry out the duties they have in the process for filling vacancies?**

41. **Do you agree that the existing periods of 4 weeks for holding section 11 meetings and six weeks for arranging and holding a section 12 meeting are unhelpful?**
42. **Do you agree that a longer period should be allowed to enable the PCC to carry out its duties?**
43. **Do you agree with the proposed single maximum period of 6 months, beginning with the ‘start date’, for the PCC to hold section 11 meetings and for a section 12 meeting to be arranged and held?**

Effect on lapse of the right of presentation

44. The rules as to lapse (i.e. the position where a vacant benefice remains unfilled for a particular period of time) were recently amended by the Mission and Pastoral etc. (Amendment) Measure 2018. The right of presentation now lapses from the patron to the bishop (or in certain cases to the archbishop) where a benefice remains unfilled for the period of 12 months beginning with the day on which the vacancy arose or (if later) the day on which the bishop gave notice formally triggering the statutory process for filling the vacancy.
45. The rules as to lapse will require adjustment in consequence of the changes proposed above.

Proposal 3

46. **It is proposed that the period of 12 months before lapse occurs should run from the ‘start date’¹² specified in the notice given to the PCC secretary by the designated officer.**
47. That should mean that there is always a minimum window of 6 months during which the task of finding a suitable priest for appointment and obtaining the approval of the bishop and the parish representatives can take place. If the matters that have to be carried out by the PCC and others (e.g. agreeing the statement describing the needs, conditions and traditions of the parish, holding a joint meeting) are carried out expeditiously, the window for finding a suitable priest will be commensurately greater.

Question on proposal 3

48. **Do you agree that if proposals 1 and 2 are implemented, the 12 month period before lapse occurs should run from the start date?**

Patronage exercised jointly

49. Where the patronage of a benefice is shared by two or more patrons (because, for example, benefices have been united by a pastoral scheme), the right of presentation to a vacancy may be exercisable by the different patrons taking turns. Alternatively, the patronage may be exercised by the patrons jointly.
50. Where patronage is exercisable by turns, the position is straightforward: just one patron is involved on each appointment.

¹² See paragraph 23 above for the start date.

Proposal 4

51. **However, it might be helpful – and represent the removal of a further obstacle to efficiency – if the patrons who have subsequent turns are informed by the registrar when a turn has been taken so that they are aware of that fact and that their turn is next, next but one etc. That would provide the opportunity for the registrar to ensure that the information on the patronage register is up to date, to obtain email addresses (see below) and for the patron whose turn it is next to be prepared for his or her turn in due course.**

Question on proposal 4

52. **Do you agree that where patronage is exercised by different patrons by turns, the registrar should inform the patrons with subsequent turns that a turn has been taken and ask them about any changes to the details contained in the patronage register?**

53. Where patronage is exercised jointly, there may be quite a large number of patrons who have to co-operate in decision making to enable the making of the appointment. Some patrons might find it helpful in these circumstances to be able formally to nominate one of the other patrons to act for them in relation to a particular appointment.

54. Any such nomination should be on a voluntary basis; no joint patron would be required to nominate a representative from among the other joint patrons. But the facility for such nominations to be made would have the potential to remove the obstacle to efficiency and administrative inconvenience that is presented by the need for a number of different patrons simultaneously to attend section 12 meetings, obtain the consent of the bishop and parish representatives to the making of an offer to a priest to present him or her for admission to the benefice, and, finally in sending a notice to the bishop presenting the priest.

Proposal 5

55. **It is proposed that where patronage is exercised jointly by two or more patrons, there should be a facility for any patron to nominate one of the other patrons to act on his or her behalf for the purposes of filling the vacancy.**

Question on proposal 5

56. **Do you agree that where patronage is exercised jointly a joint patron should be able to nominate one of the other patrons to act on his or her behalf?**

Use of electronic communication

57. The Measure currently provides for notices and other documents to be sent by post. As communication by email, even for many formal purposes, is now standard practice, the inability to do so in respect of notices and other documents under the Measure represents an obstacle to efficiency. Moreover, the provisions of the Measure would not currently be compatible with any online system for filling vacant benefices and it would seem a good idea to make provision for that possibility. The existing requirements of the Measure as to the service of notices etc. result in administrative inconvenience and obstacles to efficiency.

Proposal 6

58. It is accordingly proposed that the Measure and the rules made under it be amended—

- (a) to enable the use of communication by email and communication through a website or other electronic means as an alternative to sending notices and other documents by post;
- (b) to require the patronage register for each diocese to include details of the email address of each registered patron where the patron has provided one.

Question on proposal 6

59. Do you agree that the Measure should be amended to enable email and other electronic forms of communication?

Issues relating to multi-parish benefices

- 60. Although we are not currently proposing changes here, we thought we should draw attention to another issue relating to multi-parish benefices on the basis that the existing provisions of the Measure that are intended to provide an efficient way of working are not adequately known or understood.
- 61. It would present a serious obstacle to efficiency if it were necessary, where a vacancy arose in a multi-parish benefice, for the PCC of each parish in the benefice to meet separately to carry out the duties a PCC has in relation to filling the vacancy, and for any joint meeting with the bishop and patron to be held separately with each PCC.
- 62. Fortunately, Schedule 2 to the Measure already makes special provision for dealing with the situation where a benefice comprises two or more parishes. Where that is the case, the meeting at which the statement describing conditions, needs and traditions is prepared, parish representatives are appointed etc., is required to be a joint meeting of the PCCs concerned. The joint meeting either prepares a joint statement describing the conditions, needs and traditions of each of the parishes belonging to the benefice or decides that the PCC of each parish will prepare its own.
- 63. The joint meeting of PCCs also chooses the parish representatives. Each parish in the benefice has either one or two representatives chosen by the joint meeting. Or in default, the churchwardens of all the parishes choose not more than five of their number to act as parish representatives of all the PCCs.
- 64. The joint meeting also carries out the other duties that are usually discharged by a PCC such as deciding whether to request that the patron consider advertising the vacancy or requesting a joint meeting with the bishop and patron.
- 65. Where a joint meeting is requested, it is a joint meeting of all the councils together with the bishop and patron.
- 66. If the provisions of the Measure are properly applied, there should not be a multiplicity of meetings when it comes to filling a vacancy in a multi-parish benefice.
- 67. **However, although no amendments to these provisions are currently proposed, we would welcome responses on whether there are in fact further improvements that could be made to them with a view to reducing burdens.**

Guidance

68. It is envisaged that updated guidance will be issued on matters of best practice in relation to the filling of vacancies in benefices, and the appointment of priests in charge. As well as explaining the way the legislation is intended to work and how to make it work to greatest advantage, the guidance would also contain material on matters that are not covered by legislation such as the preparation and agreement of role descriptions and person specifications, and other material that is likely to assist in making appointments, including how any disagreements are resolved.

Consultees and responses

69. The Legislative Reform Committee considers that the following should be consulted under section 4(1) of the Legislative Reform Measure:

- all members of the General Synod
- other members of the College of Bishops
- diocesan secretaries
- secretaries of diocesan mission and pastoral committees
- clergy, churchwardens and PCC members (through advertising – with an invitation to find the consultation document on the Church of England website or to ask for a copy in paper form);
- patrons (through direct contact with groups representing patrons, and with cathedrals and patronage bodies, and through advertising – with an invitation to find the consultation document on the Church of England website or to ask for a copy in paper form);
- diocesan registrars (who maintain patronage registers under the Measure);
- archdeacons; and
- the Crown (because although the provisions being amended are generally not applicable to the Crown, the Crown seeks to take account of the general practice in exercising its parochial patronage).

70. The consultation has, in accordance with section 4(4) of the Legislative Reform Measure, been laid before both Houses of Parliament and we would welcome responses to the consultation from members of either House.

71. In addition to the above, we would welcome responses to this consultation from anyone else with an interest in the operation of the Patronage (Benefices) Measure 1986.

72. Responses to this consultation are invited by **24 January 2019**. They should be sent by email to jenny.jacobs@churchofengland.org or by post to Jenny Jacobs, Central Secretariat, Church House, Great Smith Street, London SW1P 4JZ (telephone 020 7898 1363).

Legislative Reform Committee
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