

GENERAL SYNOD

DRAFT LEGISLATIVE REFORM (PATRONAGE OF BENEFICES) ORDER 2019

EXPLANATORY NOTES

The draft Legislative Reform (Patronage of Benefices) Order 2019 makes amendments to procedural provisions of the Patronage (Benefices) Measure 1986 concerned with the filling of vacant benefices.

Legislative Reform Orders

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.

Consultation

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 – then considered the responses to the consultation.
3. The Archbishops' Council carried out the consultation on proposals for the draft Order in accordance with section 4 of the Legislative Reform Measure. Paragraph 69 of the consultation document lists those who were consulted. 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 [here](#).
4. 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.

5. An analysis of the consultation responses and the Archbishops' Council's response to them are contained in [GS 2128X](#).

Background – patronage of benefices

6. 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".¹ A benefice may comprise just one parish, or more than one parish (a 'multi-parish benefice').
7. 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.
8. 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.
9. The Measure contains a great deal of highly prescriptive provision, in particular with regard to the procedure for filling vacancies in parochial benefices.
10. 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.²
 - (b) The designated officer sends notice of the vacancy to the patron and the secretary of the PCC(s).³
 - (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.⁴
 - (d) The patron sends the declaration of membership or the name and address of his or her representative to the designated officer.⁵
 - (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

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

² Sections 7(1) and (2).

³ Section 7(4).

⁴ Section 8.

⁵ Section 9.

- (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.⁶
- (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.⁷
- (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.⁸
- (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.⁹
- (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.

11. 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.

⁶ Section 11.

⁷ Section 12.

⁸ Section 13.

⁹ Section 13(6).

The proposals for reform

A. Removing undue delay in commencing the process for filling a vacancy

12. An issue raised in the consultation paper was delay on the part of bishops in triggering the start of the statutory process for filling a vacancy in a benefice.
13. 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.
14. Nevertheless, it seemed generally undesirable to the Legislative Reform Committee that there should be significant delay in the commencement of the formal process for filling a vacancy after that point. The Committee was of the view 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.
15. It is therefore proposed that the statutory process for filling a vacancy should be triggered as follows.
16. **The bishop will 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 will 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.)
17. **The designated officer will be required to give the notice of the vacancy to the PCC secretary as soon as practicable after receiving the notice from the bishop.**
18. **The notice given by the designated officer to the PCC secretary will–**
 - (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.**
19. **The ‘start date’ for the statutory timetable will be the date on which the notice is sent by the designated officer to the PCC secretary or, if the bishop has so directs, having had regard to all the circumstances, a date not later than 3 months after the date of the vacancy.**
20. 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.

21. **Article 2** of the draft Order gives effect to these proposals.
22. 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 will be able to 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.
23. 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.

B. PCC duties in relation to filling a vacancy

24. A further issue raised in the consultation was the complex set of deadlines the PCC has for fulfilling its various duties and other functions.
25. 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.
26. 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.

27. 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.
28. **It is accordingly proposed that the parts of the procedure for which the PCC is responsible 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.**
29. **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 are to 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 officer.**
30. **The following will need to take place within that 6-month period:**
 - a. **the PCC will–**
 - 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.**
31. The PCC and others concerned will 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.

32. 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 will need to take place at a formal meeting of the PCC held within the six-month period following the 'start date', there will be nothing to prevent the PCC beginning the consultation and carrying out informal drafting work before that date.
33. Once all the matters set out in paragraph 30 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.
34. It should, in most cases, be possible to complete the matters set out in paragraph 30 within less than 6 months, in which case it will 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.
35. **Article 3** of the draft Order gives effect to these proposals
36. If the matters set out in paragraph 30 are not completed by the PCC within that time, the existing provisions under which the patron and bishop may proceed with the appointment once the time limit has passed will come into operation and an appointment can nevertheless be made. Those provisions are a safeguard against egregious inefficiency or obstructiveness resulting in inordinate delay.

C. Effect on lapse of the right of presentation

37. 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.
38. The rules as to lapse will require adjustment in consequence of the changes proposed above.
39. The consultation document proposed that a period of 12 months before lapse occurs should run from the 'start date' specified in the notice given to the PCC secretary by the designated officer. Having considered the responses to the consultation, **the Legislative Reform Committee concluded that the period before lapse occurs should be 18 months** in the light of the difficulties that are faced in finding suitable candidates for some benefices.

40. That will mean that there is always a minimum window of 12 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.

41. **Article 4** of the draft Order gives effect to this recommendation.

D. Patronage exercised jointly

42. 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.

43. Where patronage is exercisable by turns, the position is straightforward: just one patron is involved on each appointment.

44. **However, it is proposed that patrons who have subsequent turns should be 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 will 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.**

45. **Article 2** of the draft Order gives effect to this proposal (see article 2(7)).

E. Use of electronic communication

46. 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.

47. **It is accordingly proposed that the Measure and the rules made under it be amended to enable the use of communication by email, or through other electronic means prescribed in Rules, as an alternative to sending notices and other documents by post.**

48. **Article 6** of the draft Order gives effect to this proposal.

The draft Order – notes on individual provisions

Article 1

1. 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

2. Article 2 is 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 to the proposal concerned with the giving of notice to patrons who have subsequent turns that a turn is being taken.
3. 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. 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.
4. 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).
5. 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.
6. 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.

7. 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 having had regard to all the circumstances – a date not more than three months after the beginning of the vacancy.
8. The notice from the designated officer must also include information about the procedure for filling the vacancy.
9. 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.
10. The other provisions of article 2 make consequential amendments.

Article 3

11. Article 3 is 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.
12. 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.
13. 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.
14. 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.
15. The other provisions of article 3 make consequential amendments.

Article 4

16. Article 4 provides that the period before lapse occurs is to be 18 months from the start date.
17. 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.
18. 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.
19. 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

20. Article 5 provides that where patronage is exercised jointly, a joint patron may appoint one of the other joint patrons to act on his or her behalf.
21. 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.
22. 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.
23. 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.
24. 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.
25. An appointment under section 20A may be revoked but without affecting any steps that have already been taken prior to revocation.

26. An appointment, and any revocation of an appointment, under section 20A must be made in writing.

Article 6

27. Article 6 enables the use of email for the purposes of the 1986 Measure. It also enables the Patronage Procedure Committee to make provision in Rules for other forms of electronic communication.
28. 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.
29. 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. It also enables Rules to prescribe other means of electronic communication that may be used.

Article 7

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

Article 8

31. 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

32. 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.

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June 2019