

**GENERAL SYNOD**

**DRAFT LEGISLATIVE REFORM (PATRONAGE OF BENEFICES) ORDER**

**REPORT OF THE SCRUTINY COMMITTEE**

**Chair:** The Right Worshipful Charles George QC, Dean of the Arches and Auditor

**Members elected by General Synod:** Carl Fender  
Debrah McIsaac  
Clive Scowen

**Members appointed by the Appointments Committee:** Dr Chris Angus  
Margaret Parrett  
Dr Michael Todd

**Members appointed by the Archbishops' Council:** Rev. Canon Simon Butler  
The Venerable Douglas Dettmer

*References in this report to “the Committee” are references to the Scrutiny Committee.*

*All decisions taken by the Committee were unanimous.*

*A reference to an article is to an article of the draft Order unless otherwise indicated.*

*This report should be read alongside the Patronage (Benefices) Measure 1986 and the draft Legislative Reform (Patronage of Benefices) Order 2019 as amended by the Scrutiny Committee.*

*This report should also be read alongside the explanatory document which accompanied the draft Order as originally laid before the General Synod (GS 2128X).*

**Background**

1. The Legislative Reform Measure 2018 (“the 2018 Measure”) enables the Archbishops’ Council (“the Council”), with the approval of the General Synod, to make orders removing or reducing burdens that result from ecclesiastical legislation (known as “Legislative Reform Orders”).
2. On 1 November 2018, the Council issued a consultative document on proposals for a Legislative Reform Order to remove or reduce burdens of a procedural nature that arise under the Patronage (Benefices) Measure 1986 (“the 1986 Measure”). The consultation period ended on 24 January 2019. The detail of the proposals is set out fully in an explanatory document (GS 2128X) which accompanied the draft Order.

3. The Council, acting through its Legislative Reform Committee, has considered the numerous responses to the consultation. Following consultation, the Council approved three changes to the draft Order:
  - (1) In **article 4**, which amends section 16 of the 1986 Measure [presentation to benefices remaining vacant] they substituted the period of 18 months for 12 months;
  - (2) In **article 5**, which amends section 20A of the 1986 Measure [patronage exercised jointly], the Council agreed that any appointment or revocation of appointment must be made in writing; and
  - (3) In **article 6**, which amends section 37 of the 1986 Measure [service by email] the Council agreed that the 1986 Measure should be amended to allow service to a given email address, but not by “other electronic means”.
4. On 21 March 2019, the Clerk to the General Synod laid before the Synod the draft Legislative Reform (Patronage of Benefices) Order 2019. The draft Order automatically stands referred to the Scrutiny Committee.
5. This is the first report of the Scrutiny Committee constituted in accordance with SOs 69A and 69B. The Scrutiny Committee met on one occasion and completed its remaining business by correspondence pursuant to SO 69F(2). Canon Simon Butler was unable to attend that meeting, but has approved this report.
6. The Committee received one joint submission in the name of Simon and Sharon McKie. Neither Mr nor Mrs McKie is a member of General Synod.
7. The Committee exercised its right under SO 69E(4) to invite Mr and Mrs McKie to attend the meeting. With the consent of the chair, in consultation with the Committee, Mr and Mrs McKie attended the Committee and Mr McKie (with Mrs McKie’s consent) spoke to their representations.
8. As a preliminary matter, the Committee considered whether it would be appropriate for Mr and Mrs McKie to remain present during the Committee’s deliberations on their representations. Members noted provisions in the Standing Orders with respect to the conduct of Revision Committees and the conventional practice in those committees (in which the members of such committees consider whether representors should be allowed to remain on a case by case basis) and they considered that similar provisions should, by analogy, apply to the conduct of the Scrutiny Committee. Members of the Committee emphasized their view that, unless compelling circumstances required it, the legislative process should be open and transparent. Accordingly, the Committee allowed Mr and Mrs McKie to remain present for as long as they wished, provided that they did not attempt to play any part in the proceedings when their allotted time had elapsed.

9. The Committee noted that, in accordance with SO 69F(2) and section 6(3) of the 2018 Measure, it must assess:
  - (1) The extent to which the draft Order would remove or reduce burdens as defined by section 1 of the 2018 Measure;
  - (2) The extent to which the conditions under section 2 of the 2018 Measure (so far as relevant) are satisfied;
  - (3) Whether the draft Order includes provision of a kind prohibited by section 3 of the 2018 Measure;
  - (4) The extent to which the consultation required by section 4 of the 2018 Measure has been undertaken; and
  - (5) Whether it is appropriate for the provision contained in the draft Order to be made by way of Legislative Reform Order rather than by Measure.
10. The Committee heard from Mr and Mrs McKie. As they had during the consultation on the draft Order, Mr and Mrs McKie put before the Committee written representations which set out numerous and wide-ranging criticisms of the provisions of the 1986 Measure and the proposed use of a Legislative Reform Order to amend that Measure. In oral submissions Mr McKie submitted that at least some of the matters proposed in the draft Order are *ultra vires*, and do not constitute matters for which provision should be made by Legislative Reform Order. Mr McKie argued that, considered as a whole, the provisions of the 1986 Measure set out a delicate balance between the rights of the PCC, bishop and patron. He suggested that the use of a Legislative Reform Order was not appropriate because the 1986 Measure represented a complex balance of interests and was ripe for wholesale reform. Accordingly, he suggested that the draft Order should be withdrawn.
11. Given its potential significance to the whole draft Order, the Committee first considered the contention that at least some of the draft Order was *ultra vires*.
12. The Committee had regard to the power set out in section 1 of the 2018 Measure and the preconditions set out in section 2. The Committee considered that, in principle, the provisions of the draft Order could fall within the scope of the 2018 Measure, so long as on further consideration those provisions met the necessary conditions set out in the 2018 Measure and, in particular, depending on whether the Committee concluded that the provisions removed any *necessary* protection (see section 2(1)(d) of the 2018 Measure). Accordingly, the Committee considered the provisions of the draft order article by article in accordance with SO 69F(3).
13. A list of the representations made which raise points of substance is set out at **Annex A**.

14. A list of the amendments to the draft Order which the Committee has made is set out at **Annex B**.
15. This report sets out the Committee's consideration of the representations made in connection with each article and its response. It then sets out the Committee's assessment of the draft Order taking into account the factors set out in SO 69F(2).

#### *Article 1*

16. This article sets out standard provision in respect of commencement and interpretation. No representations were received in connection with this article. For the reasons set out in paragraph 62 below, the Committee considered that the requirements of SO 69F(2) are met.

#### *Article 2*

17. This article primarily proposes amendments to section 7 of the 1986 Measure in relation to the notification of a vacancy in a benefice.
18. Mr and Mrs McKie argued that the provisions of **article 2(3)**, (which would substitute new sections 7(2) and (2A) of the 1986 Measure), do not meet the requirement set out in section 2(1)(d) of the Measure that a provision must not remove any necessary protection. In particular, they submitted that, at present, it is the effect of section 7(2) that a bishop must give advance notice within a few days after becoming aware that a benefice is shortly to become vacant or has become vacant, i.e. this is a mandatory requirement. Conversely, they argued, new section 7(2A) amounts to a discretionary provision.
19. Mr and Mrs McKie also argued that the provisions of **article 2(6)**, (which would substitute a new subsection 7(4A)(b)), do not meet the requirement that a provision must not remove a necessary protection. It is said that a provision which entitles a bishop to delay the "start date" by up to three months amounts to an unnecessary delay and gives too great a degree of discretion to a bishop, to the potential detriment of the PCC and the patron.
20. Mr and Mrs McKie also argued that there was no need for section 6 of the 1986 Measure to make provision for the "designated officer" of the diocese. They suggested that the bishop might give notice of the vacancy directly to the PCC. They argued that the interposition of the designated officer in the process caused unnecessary delay.
21. Taking article 2(3) first, the Committee agreed that paragraph 17 of the Council's consultation document could have been clearer. They noted in that regard that in its present form section 7(2) of the 1986 Measure provides that where the bishop is aware that a benefice is shortly to become available by reason of resignation or

cession, the bishop shall give such notice of that fact as he or she considers reasonable in all the circumstances to the designated officer of the diocese.

22. The Committee considered that while the giving of notice appeared to be mandatory, there was no reason in principle why a bishop could not, if he or she considered it reasonable in all the circumstances, decide to give notice at any reasonable stage in the proceedings before or after the vacancy had begun. Accordingly, in effect, the requirement to give notice was discretionary at least as to its timing, and the Committee noted that this understanding reflected widespread practice in the operation of the Measure over its lifetime. The Committee did not accept Mr McKie's argument that the bishop had a duty to give a notice but had discretion as to the *nature* of the notice, principally because the Committee considered that the contents of any notice would be factual in any case with little scope for variation of the content. In that regard, they considered that the language of existing ss. 7(1) and (2) of the 1986 Measure has in view the period of the notice rather than its nature or contents.
23. In their submissions Mr and Mrs McKie suggested that their own experience showed that it was the practical effect of the current provisions that lengthy delays could occur in the bishop giving notice. Responding to that concern, the Committee noted that the proposed amendment provided a backstop in that under new section 7(2) where a benefice became vacant by way of resignation or cession the bishop would be required to give notice no later than the day on which the vacancy occurs, i.e. the requirement is made contingent on an unequivocal event. They considered that this would provide additional certainty and remove an obstacle to efficiency.
24. The Committee moved on to consider Mr and Mrs McKie's submission relating to article 2(6). The Committee noted that there can be good reasons for delay in certain circumstances. The Archdeacon of Totnes confirmed that the Legislative Reform Committee had considered that the 1986 Measure should provide for some pastoral discretion and it had concluded that the period up to three months would allow a bishop to respond to the particular circumstances which might arise in a vacancy caused by reasons other than the death of the incumbent. This would include questions relating to suspension of the rights of presentation in connection with proposed pastoral re-organisation.
25. The Committee concluded that the bishop should be entitled to have regard to the relevant circumstances of any vacancy in making a decision whether or not to delay the "start date". The Committee accepted that while the duty to have regard to the circumstances is implied under the usual provisions of administrative law, the draft Order should be explicit that the bishop must have had regard to all the circumstances before giving a direction to postpone the start date. Accordingly, the Committee has amended article 2(6) to require that the bishop may direct a "start date" no later than three months after the date on which the benefice became, or is expected to become, vacant "having had regard to all the circumstances". It is the intended effect of this amendment that the bishop will have had to have had regard before they take any decision to delay the "start date" and should not regard such delay as the norm.

26. Finally, the Committee considered whether or not to recommend any amendment in connection with the involvement of the “designated officer”. The Committee was sympathetic to the McKies’ suggestion that the requirement for a “designated officer” could potentially lead to delay. The Committee considered, however, that the removal of the requirement had not formed part of the consultation. They also noted that the removal of the requirement for a “designated officer” would require potentially significant consequential amendments throughout the rest of the 1986 Measure. Finally, some members of the Committee were concerned that the practical effect of the removal of the “designated officer” might increase burdens on a bishop’s staff whose costs are met by the Church Commissioners who ought, therefore, to be consulted, particularly in light of section 3(3) of the 2018 Measure.
27. Subject to the amendment set out above, the Committee was satisfied that the requirements of SO 69F(2) are met for the reasons set out in paragraph 62 below.

### *Article 3*

28. Article 3 amends sections 11, 12 and 13 of the 1986 Measure in connection with meetings of the PCC. The principal amendment proposes a single maximum period of six months beginning with the “start date” for the holding of section 11 and 12 meetings.
29. Mr and Mrs McKie agree that the relevant procedure should be simplified but they did not agree with the suggested provision of a single maximum period of six months. They did, however, agree that a longer period should be allowed for the PCC to carry out its duties. Mr and Mrs McKie proposed an entirely new procedure, which has in view multi-parish benefices, which they suggested would be more practical than the current system.
30. The Committee noted that a wholesale amendment of the type put forward by Mr and Mrs McKie was outside the scope of the 2018 Measure and the draft Order.
31. On balance, the Committee supported a single six-month period as a proportionate provision. Members accepted that it could take time for the necessary meetings to take place depending on the availability of key personnel and the time of year. While, as result, the Committee did not press any amendment, members suggested that parishes should be encouraged to act as soon as possible. In addition, the Committee suggested that PCC members should familiarise themselves with their rights under the 1986 Measure.
32. The Committee proposed no further changes.
33. The Committee was satisfied that the requirements of SO 69F(2) are met for the reasons set out in paragraph 62 below.

#### *Article 4*

34. Article 4 amends section 16 of and Schedule 2 to the 1986 Measure in connection with the presentation to benefices remaining vacant. The Council accepted an amendment following consultation to make provision for presentation where a vacancy remains after 18 months rather than 12 months as initially proposed.
35. Mr and Mrs McKie suggested that the rights of presentation should lapse to the PCC not the bishop.
36. The Archdeacon of Totnes outlined the Council's thinking that this amendment would take into account multi-parish benefices, particularly in rural areas. The Committee considered that the proposal did not amount to a change of substance.
37. At the suggestion of legislative counsel, the Committee agreed that article 4(3)(b) and (c), which update the current references to the Pastoral Measure 1983, should be moved to article 7.
38. The Committee proposed no further changes.
39. The Committee was satisfied that the requirements of SO 69F(2) are met for the reasons set out in paragraph 62 below.

#### *Article 5*

40. Article 5 inserts a new section 20A into the 1986 Measure in connection with the joint exercise of patronage, where the right to present to a benefice upon a vacancy is vested in different persons jointly.
41. The Committee received no representations in connection with this proposal.
42. The Committee welcomed the Council's amendment to the extent that any appointment, or revocation of any appointment, must be made in writing.
43. The Committee noted that this was an area in which the Council might in the future consider putting forward suggestions for further reform.
44. The Committee proposed no changes.
45. The Committee was satisfied that the requirements of SO 69F(2) are met for the reasons set out in paragraph 62 below.

#### *Article 6*

46. Article 6 amends section 37 of the 1986 Measure to make provision for the service of notices and other documents by an email address which a person has provided.
47. The Committee noted that the Council had amended the draft Order to remove a reference to "other electronic means". In doing so the Council had already met the

representation of Mr and Mrs McKie that such provision should not be made. This had been the sole representation of Mr and Mrs McKie received in connection with this article.

48. Nevertheless, the Committee considered that it would be desirable for the operation of the 1986 Measure to take account of improvements in technology and they agreed that the article should be amended to make provision for the Patronage (Procedure) Committee (see paragraph 65 below) to be able to prescribe other electronic methods of service in rules (this power is conferred on the Patronage (Procedure) Committee by section 38(2) of the 1986 Measure). They considered that this was a proportionate mechanism to remove possible administrative inconvenience. The Committee further noted that section 1(5)(a) of the 2018 Measure expressly permits a provision which confers a power to legislate.

49. The Committee proposed no further changes.

50. Subject to the amendment set out above, the Committee was satisfied that the requirements of SO 69F(2) are met for the reasons set out in paragraph 62 below.

#### *Article 7*

51. Article 7 makes provision to update a number of references to various enactments.

52. The Committee received no representations in connection with this proposal.

53. Other than the amendment referred to at paragraph 37 above, by way of a printing correction, the Committee agreed that article 7 should refer to “the 1986 Measure” rather than “that Measure” for the sake of clarity and the removal of any ambiguity.

54. Subject to the amendment set out above, the Committee was satisfied that the requirements of SO 69F(2) are met for the reasons set out in paragraph 62 below.

#### *Article 8*

55. Article 8 makes conventional provision for the application of the draft Order to the Isle of Man, following provision made in s. 9(2) of the 2018 Measure. The Committee noted that the 2018 Measure extends automatically to the Isle of Man and that each Legislative Reform Order must, therefore, specify whether, and to what extent, it applies to the Isle of Man. The Committee noted that the 1986 Measure itself is extended to the Isle of Man by the Patronage Measure (Isle of Man) 1997, and that article 8 of the draft Order makes the changes requested by the Isle of Man authorities for compliance with their 1997 Measure.

56. The Committee noted that the draft Order does not make any provision in relation to the Channel Islands. In that regard, the Committee noted that the 2018 Measure does not extend there automatically but could, as is usually the case, be extended there



under the Channel Islands (Church Legislation) Measure 1931. The Committee noted that the 2018 Measure has not been extended to the Channel Islands, nor has the 1986 Measure itself, and accordingly the question of provision for the Channel Islands does not arise.

57. The Committee received no representations in connection with this proposal.

58. The Committee was satisfied that the requirements of SO 69F(2) are met for the reasons set out in paragraph 62 below.

#### *Article 9*

59. Article 9 makes transitional provisions.

60. The Committee received no representations in connection with this article and proposed no changes.

61. The Committee was satisfied that the requirements of SO 69F(2) are met for the reasons set out in paragraph 62 below.

#### **Assessment of the draft Order under SO 69F(2)**

62. Having considered each article, and the representations made, the Committee's assessment of the requirements of SO 69F(2) in connection with all of the provisions in the draft Order is as follows:

- (1) The Committee is satisfied that the provisions of the draft Order would reduce the identified burdens;
- (2) The Committee is satisfied that the provisions require legislative means;
- (3) The Committee is satisfied that the provisions are proportionate to the policy objective to be secured, namely the removal of burdens, including administrative inconvenience and obstacles to efficiency;
- (4) The Committee is satisfied that the provisions, taken as a whole, strike a fair balance between the public interest, the Church of England as a whole (including PCC members, bishops, and patrons) and the interests of any person who might adversely be affected by the provisions. In particular they note that providing greater clarity in connection with the exercise of patronage is in the interests of the Church of England as a whole. The Committee has paid regard to the impact on PCCs;
- (5) The Committee is satisfied that the proposals do not remove any *necessary* protection. In that regard, they reject the analysis put forward by Mr and Mrs

McKie that provisions in article 2 have in substance replaced a mandatory requirement with a discretionary requirement;

- (6) The Committee is satisfied that the provisions do not prevent a person from receiving or continuing to receive a financial benefit to which they are entitled or could reasonably expect to become entitled;
- (7) The Committee is satisfied that the provisions do not prevent a person from exercising or continuing to exercise a right or freedom which that person could reasonably expect to exercise or continue to exercise;
- (8) The Committee is satisfied that the provisions are not of constitutional significance;
- (9) The Committee is satisfied that the provisions do not include a provision of a kind prohibited by section 3 of the 2018 Measure;
- (10) The Committee is satisfied that the consultation required under section 4 of the 2018 Measure has taken place. The Committee reminded themselves who had been consulted and are satisfied that consultation responses have been taken into account. The Committee is satisfied that no further consultation is required. The Committee notes that the Council should consider how best to reach the fullest range of consultees, particularly the laity, in connection with future Legislative Reform Orders. They noted that this might include different means of communication about the consultation;
- (11) The Commission considers that it is appropriate for the provisions contained within the draft Order to be made by Legislative Reform Order rather than by Measure.

63. It follows from the above that the Committee is satisfied that the proposals, and the amendments which they have made, are within the scope of the 2018 Measure.

### **Additional matters**

64. Having considered the draft Order and the representations of Mr and Mrs McKie, the Committee wishes to make the following points.

#### *Procedural points*

65. The Committee reminds itself that Mr and Mrs McKie and a number of those consulted by the Council made submissions related to potential procedural delays in the 1986 Measure even as proposed to be amended by the draft Order. The Committee noted that section 38 of the 1986 Measure makes provision for a Patronage (Procedure) Committee which has a power to make rules with regard to any matter of procedure under the Measure.

*Multi-parish benefices*

66. While the Committee recommends that the draft Order (as amended) should be approved, it notes that further work may be needed in connection with the 1986 Measure. In particular, it notes that the draft Order tinkers with the regime but does not make substantive changes. The Committee is sympathetic to Mr and Mrs McKie's submissions regarding the application of the 1986 Measure to multi-parish benefices and suggests that the Council may wish in due course to consider bringing forward proposals in that regard.

**Charles George QC**  
Chair of the Scrutiny Committee

May 2019

## ANNEX A: Representations

### Representations received

The Committee has received representations from:

- 1) Mr Simon McKie and Mrs Sharon McKie

<b>Article</b>	<b>Substance (in summary)</b>
2	<p>Mr and Mrs McKie do not consider that the proposal provides a suitable means of avoiding unnecessary delay.</p> <p>Mr and Mrs McKie see no need for the role of the “designated officer” in the process. They say that the unnecessary delay thereby caused has the result that the twelve-month period specified in the 1986 Measure may run and expire. They also say that it is a cause for confusion.</p> <p>Mr and Mrs McKie also say that there is no reason why discretion should be given to the bishop to delay the process.</p> <p>Mr and Mrs McKie also say that the consultation document incorrectly states that the giving of notice under s. 7(2) of the 1986 Measure is discretionary rather than mandatory.</p>
3	<p>Mr and Mrs McKie agree that the relevant procedure should be simplified.</p> <p>Mr and Mrs McKie agree that the existing periods of four weeks for holding s. 11 meetings and six weeks for a s. 12 meeting are unhelpful.</p> <p>Mr and Mrs McKie agree that a longer period should be allowed but they don’t agree that the procedures suggested are appropriate.</p> <p>Mr and Mrs McKie do not agree with the proposed single maximum period of six months beginning with the “start date”.</p>
4	Mr and Mrs McKie consider that rights

	should lapse to the PCC / PCCs of the benefice concerned rather than the bishop.
5	None
6	Mr and Mrs McKie consider that the Measure should allow email communication but not other forms of electronic communication at this time.
7	Mr and Mrs McKie do not consider that it is appropriate to amend the 1986 Measure by a Legislative Reform Order. They suggest that the 1986 Measure should be repealed and replaced with a new Measure.
8	None
9	None

## ANNEX B: Amendments made by the Scrutiny Committee

<b>Amendment made</b>	<b>Intended effect</b>
Article 2(6) and inserted subsection (4A), paragraph (b)	The bishop must have had regard to all the circumstances before giving a direction to postpone the “start date”. It is the intended effect of this amendment that the bishop will have had to have had regard to all the relevant circumstances in a particular case before they take any decision to delay the “start date”.
Article 4, paragraph (3).	The amendments update the references in section 16 to the Mission and Pastoral Measure 2011. Those amendments are now made by Article 7 in a new paragraph (2).
Article 6 and explanatory note	The Patronage (Procedure) Committee would be able to prescribe other electronic methods of service in rules.
Article 7	The amendments update the references in section 16 as set out above.