



HOUSE OF LORDS

228th Report

Ecclesiastical Committee

**Church of England (Miscellaneous
Provisions) Measure
Vacancies in Suffragan Sees and
Other Ecclesiastical Offices
Measure
Crown Benefices (Parish
Representatives) Measure**

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The Ecclesiastical Committee

The Ecclesiastical Committee is a statutory Committee appointed under the Church of England Assembly (Powers) Act 1919.

It comprises thirty members, fifteen of whom are Members of the House of Commons, appointed by the Speaker, and fifteen of whom are members of the House of Lords, appointed by the Lord Speaker. The quorum is twelve.

Appointments to the Committee are generally made early in a Parliament. Unless the Speaker or the Lord Speaker decide otherwise, members appointed by them remain on the Committee for the life of the Parliament.

While its powers are those laid down by the Act, the procedures it has adopted are those of a Joint Select Committee.

Current Membership

HOUSE OF LORDS	HOUSE OF COMMONS
Lord Davies of Coity	Sir Stuart Bell
Lord Elton	Peter Bottomley
Lord Judd	Ben Chapman
Lord Laming	Sir Patrick Cormack
Lord Lloyd of Berwick (Chairman)	Ann Cryer
Baroness Massey of Darwen	Mr David Drew
Lord Newby	Mr Frank Field
Baroness Perry of Southwark	Mr John Gummer
Lord Pilkington of Oxenford	Mrs Sharon Hodgson
Baroness Rendell of Babergh	Simon Hughes
Lord Shaw of Northstead	Robert Key
Lord Wallace of Saltaire	Mr Gordon Marsden
Lord Walpole	Mr Desmond Swayne
Baroness Wilcox	David Taylor
Lord Williams of Elvel	Steve Webb

Remit

The Ecclesiastical Committee examines draft Measures presented to it by the Legislative Committee of the General Synod of the Church of England. It reports to Parliament on whether or not it considers the measures to be expedient.

It generally asks members of the General Synod to assist it in its deliberations. In some circumstances a conference of the Ecclesiastical Committee and the Legislative Committee may be convened.

The Church of England Measure on which the Committee has reported is presented to both Houses in its final form at the same time as the Committee makes its report.

Before the Measure becomes law, both Houses must approve motions that the Measure should be presented to the Sovereign for Royal Assent in the form that it was laid before Parliament.

Once both Houses have passed the necessary approval motions, the Measure is presented for Royal Assent and becomes law.

Publications

The reports and proceedings of the Committee are published by The Stationery Office by Order of both Houses. All publications of the Committee are on the internet at www.parliament.uk

Contacts

All correspondence should be addressed to the Secretary of the Ecclesiastical Committee, House of Lords, London, SW1A 0PW. The telephone number for general enquiries is 020 7219 3152.

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228th Report by the Ecclesiastical Committee

The Ecclesiastical Committee has met and considered the

- Church of England (Miscellaneous Provisions) Measure
- Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure
- Crown Benefices (Parish Representatives) Measure

referred to it under the provisions of the Church of England Assembly (Powers) Act 1919.

Church of England (Miscellaneous Provisions) Measure

1. The Measure is the tenth in a series of Miscellaneous Provisions Measures. The nature and legal effect of the various provisions are helpfully summarised in the Comments and Explanations submitted to the Committee by the Legislative Committee of the General Synod.
2. **The Committee is of the opinion that the Measure is expedient.**

Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure

3. The Measure modifies the Suffragan Bishops Act 1534 so that only one name (rather than as at present, two) needs to be presented to Her Majesty for appointment to a suffragan see. It modifies the law with regard to the exercise by Her Majesty of patronage belonging to a vacant diocesan see such that the patronage in question may be exercised on behalf of Her Majesty by a suffragan or ‘acting’ bishop during the vacancy in see. It also abolishes certain rights the Crown has to present to vacant ecclesiastical offices where the patronage in question is not normally in the Crown’s gift.
4. For more information about the Measure, see the Comments and Explanations submitted by the Legislative Committee of the General Synod, annexed to this Report.
5. **The Committee is of the opinion that the Measure is expedient.**

Crown Benefices (Parish Representatives) Measure

6. The Measure extends to the Crown benefices specified in the Measure the right of parochial church councils to appoint lay representatives whose approval must be obtained before the patron may offer to present a particular priest to the benefice.
7. For more information about the Measure, see the Comments and Explanations submitted by the Legislative Committee of the General Synod, annexed to this Report.
8. **The Committee is of the opinion that the Measure is expedient.**

MINUTES OF PROCEEDINGS

Wednesday 25 November 2009

Minutes of proceedings on the Church of England (Miscellaneous Provisions) Measure, Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure and Crown Benefices (Parish Representatives) Measure at the meeting of the Ecclesiastical Committee held on Wednesday 25 November 2009 at 4.30pm in Committee Room 4A, House of Lords.

Present:

Lord Davies of Coity	Sir Stuart Bell
Lord Elton	Ben Chapman
Lord Judd	Ann Cryer
Lord Lloyd of Berwick	David Drew
Baroness Massey of Darwen	Robert Key
Baroness Perry of Southwark	Gordon Marsden
Lord Pilkington of Oxenford	Desmond Swayne
Lord Shaw of Northstead	David Taylor
Lord Wallace of Saltaire	Steve Webb
Lord Walpole	
Baroness Wilcox	

Lord Lloyd of Berwick in the Chair.

Mr Allan Roberts, Counsel to the Chairman of Committees, in attendance.

Church of England (Miscellaneous Provisions) Measure
Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure
Crown Benefices (Parish Representatives) Measure

The following representatives of the General Synod assisted the Committee in its deliberations:

The Rt. Rev Dr Thomas Frederick Butler (Bishop of Southwark)
The Venerable George Howe
The Rt Worshipful Timothy Briden
Dr Colin Podmore
The Revd Alexander McGregor – Deputy Legal Adviser to the General Synod

Mr William Fittall – Secretary General

The Committee deliberated.

It was moved that the Church of England (Miscellaneous Provisions) Measure be deemed expedient.

The motion was *agreed to*.

It was moved that the Vacancies in Suffragan Sees Measure be deemed expedient.

The Committee divided:

Contents

Not Contents

Sir Stuart Bell

Desmond Swayne

Ben Chapman

Ann Cryer

Lord Davies of Coity

David Drew

Lord Elton

Lord Judd

Robert Key

Lord Lloyd of Berwick

Gordon Marsden

Baroness Massey of Darwen

Baroness Perry of Southwark

Lord Pilkington of Oxenford

Lord Shaw of Northstead

David Taylor

Lord Wallace of Saltaire

Lord Walpole

Steve Webb

Baroness Wilcox

The motion was *agreed to*.

It was moved that the Crown Benefices (Parish Representatives) Measure be deemed expedient.

The motion was *agreed to*.

The Committee adjourned.

**LEGISLATIVE COMMITTEE OF THE GENERAL SYNOD:
COMMENTS AND EXPLANATIONS ON THE CHURCH OF
ENGLAND (MISCELLANEOUS PROVISIONS) MEASURE**

INTRODUCTION

1. The Legislative Committee of the General Synod, to which a Measure entitled the Church of England (Miscellaneous Provisions) Measure (“the Measure”) has been referred, has the honour to submit the Measure to the Ecclesiastical Committee with these Comments and Explanations.
2. This Measure is the tenth in a series of Miscellaneous Provisions Measures dealing with uncontroversial matters that do not merit freestanding legislation.

THE MEASURE: NOTES ON CLAUSES

3. Clause 1 and Schedule 1 amend the New Parishes Measure 1943.
4. Under section 13 of the 1943 Measure the Church Commissioners have power to acquire land for various church purposes, which subsequently vests under section 16 in either the incumbent or the diocesan authority on trust for the parochial church council. The Commissioners are also required by section 17 of the 1943 Measure to consent to disposals of land acquired under it or under earlier legislation which is no longer required for the purpose for which it was acquired.
5. The Report of the Review of the Dioceses Pastoral and related Measures recommended in 2004 that the Commissioners’ role in the acquisition of property under the 1943 Measure should be devolved to the dioceses on the ground that the work in connection with it could be more appropriately carried out at diocesan level rather than at the centre, save in exceptional circumstances (e.g. where the parties were connected).
6. Paragraph 2 of Schedule 1 accordingly passes the Commissioners’ power to acquire property for the purposes set out in section 13(1) of the 1943 Measure to the diocesan board of finance (‘DBF’) for the diocese in which the property is situated and inserts a new requirement that the consent of the Commissioners to the transaction will be required if the acquisition is a purchase and the seller is a ‘connected person’ (as defined) or if the person or body in whom the property is to vest under section 16 has not obtained a surveyor’s report confirming that the terms on which the acquisition is to proceed are the best that can reasonably be obtained.
7. Paragraph 3 replaces the Commissioners with the DBF as the recipient of gifts or grants of land for sites of churches from corporations and other bodies referred to in section 14 of the 1943 Measure.
8. Paragraphs 4 and 5 make consequential amendments to sections 15 and 16 respectively.
9. Paragraph 6 removes the requirement to obtain the Commissioners’ consent to a disposal of land no longer required for the purpose for which it was acquired, save where the person or body acquiring the land is a connected person or the transaction is not being carried out in accordance with a surveyor’s report

confirming that the terms on which the disposal is to proceed are the best that can reasonably be obtained.

10. Paragraph 7 substitutes references to the Commissioners for references to the DBF in section 20, which contains provisions as to land acquired for burials.

11. Paragraphs 8, 9 and 10 contain consequential amendments and repeals.

12. **Clause 2** amends section 6(3B)(a) of the Church Commissioners Measure 1947 to update a cross-reference which is now out of date following the amendment of section 6(3B)(d) by section 2 of the Church of England (Miscellaneous Provisions) Measure 2005 ('the 2005 MPM').

13. **Clause 3** amends the Church Funds Investment Measure 1958 to reflect the dissolution of the Central Board of Finance by deleting from the types of funds which may be invested under the 1958 Measure funds held by the Central Board of Finance as part of its corporate funds or as trustee.

14. **Clause 4** amends the Clergy Pensions Measure 1961 by giving the Church of England Pensions Board an express power to constitute committees and delegate functions to them.

15. **Clause 5** amends section 2 of the Ecclesiastical Jurisdiction Measure 1963.

16. Subsection (1)(a) amends the 1963 Measure to insert a word inadvertently removed when it was amended by the Church of England (Miscellaneous Provisions) Measure 2006 ('the 2006 MPM').

17. Subsections (1)(b) and (c) and (2) introduce greater consistency in the provisions in the 1963 Measure relating to diocesan chancellors' retirement ages, and give the diocesan bishop power to continue a chancellor in office beyond the statutory retirement age of 70 for up to one further year where this is considered to be in the interests of the diocese.

18. **Clause 6** amends sections 20 and 23 of the Endowments and Glebe Measure 1976. The need for these amendments results from changes made by the Church of England (Miscellaneous Provisions) Measure 2005 which reduce the Church Commissioners' involvement in diocesan glebe transactions to those set out in Schedule 3 to the 1976 Measure.

19. **Clause 7** amends section 69 of the Pastoral Measure 1983 to provide that, where the Privy Council's decision is awaited on an appeal against a decision of the Church Commissioners on a representation made in connection with a draft pastoral scheme, the three-year maximum period for restricting presentation to a benefice referred to in subsections (1) and (3) will extend up to and including the date of delivery of the Privy Council's decision.

20. **Clause 8** amends Part 1 of Schedule 1 to the National Institutions Measure 1998 (which provides for the constitution and membership of the Archbishops' Council) by inserting a new paragraph 4A. Sub-paragraph (1) provides that elected members of the Archbishops' Council are to be elected in accordance with the Standing Orders of the General Synod. Sub-paragraph (2) provides that, where an elected member of the Council ceases to be a member of the Synodical House which elected him or her, he or she will automatically cease to be a member of the Council; this is, however, subject to sub-paragraph (3), which provides that an elected member of the Council does not cease to be a member of the Council simply as a result of the dissolution of the Synod.

21. **Clause 9** provides that, where gifts are expressed as gifts to or for the benefit of 'the Church of England' (or in similar terms lacking clarity as to the donor's

wishes), they will take effect as gifts to the Archbishops' Council. Because there is no corporate body called 'the Church of England', such gifts must currently be dealt with by way of directions under the Royal Sign Manual or schemes made by the court or the Charity Commission. The new provision is intended to avoid the need for such directions or schemes in future. Any gifts covered by it will, of course, remain subject to any trusts or other conditions that the donor imposes in the document under which the gift is made.

22. **Clause 10** contains various provisions relating to cathedrals.

23. Clause 10(1) is declaratory of the existing law in relation to the status of cathedrals and is included for the avoidance of doubt. Ecclesiastical corporations – which include cathedrals – fall outside the definition of 'charity' employed in the Charities Act 1993, which means that they are not subject to the jurisdiction of the Charity Commission. A number of legislative provisions have been made in relation to cathedrals in recent years and it is considered desirable to make clear that the status of cathedrals as ecclesiastical corporations outside the jurisdiction of the Charity Commission remains unchanged.

24. Clause 10(2) relates to Christ Church Cathedral, Oxford. As (uniquely) a joint ecclesiastical-academic foundation, Christ Church is not covered by the provisions of the Cathedrals Measure 1999. The detailed provisions in clause 10(2) were therefore drafted in consultation with Christ Church to introduce changes in the spirit of those affecting all other cathedrals which took effect following the coming into force of the 1999 Measure. Provision is made, amongst other things, to increase the number of non-residentiary canons, to provide for the appointment of lay and ecumenical canons and in respect of the tenure, rights and duties of such canons, as well as for the creation of a college of canons with specified functions.

25. Clause 10(3) amends the Care of Cathedrals Measure 1990 to bring proposals for works which would materially affect human remains in cathedral precincts within the controls contained in that Measure. Because cathedrals are not subject to the faculty jurisdiction, control over human remains in cathedral precincts has up to now been left to secular authorities. The view of the Archbishops' Council's Cathedral and Church Buildings Division and of the Cathedral Fabric Commission, however, is that such works should be brought within ecclesiastical control. If the proposed new provisions are enacted, the intention is to ask the Ministry of Justice to amend the secular legislation, disapplying it in all cases where ecclesiastical controls apply, thus avoiding 'dual control'. (By way of further explanation, relevant paragraphs from the Revision Committee's report dealing with Clause 10(3) are set out in the Appendix.)

26. **Clause 11** amends the Commons Act 2006 to substitute the relevant DBF for the Church Commissioners as the body responsible for particular functions or as fulfilling particular roles under that Act, in line with changes made by the Church of England (Miscellaneous Provisions) Measure 2006.

27. Lastly, **Clause 12 and Schedule 2** make a number of amendments and repeals consequential upon other changes made in the draft Measure, in particular to the definitions of 'connected person' and 'qualified surveyor' in the Parsonages Measure 1938; and **Clause 13** deals with citation, commencement and extent.

SYNODICAL CONSIDERATION

28. The draft Measure was given First Consideration by the Synod in February 2008 and stood automatically committed to a Revision Committee. The Revision

Committee met once and considered one amendment proposed by a member of the Synod and various others proposed by the Steering Committee. As a result, a number of amendments were agreed to the draft Measure, which was then returned to the Synod for Revision in July 2008, at which stage no further amendments were moved and the draft Measure was committed to the Steering Committee in respect of its final drafting.

29. The Final Drafting and Final Approval stages both took place at the February 2009 group of sessions of the Synod. At Final Drafting no special amendments were moved by the Steering Committee and the Synod approved a number of drafting amendments. The Measure was then given Final Approval on a division by Houses. The voting figures were as follows:

	In favour	Against
Bishops	16	0
Clergy	69	1
Laity	100	0

30. No abstentions were recorded in the House of Bishops, none in the House of Clergy and 1 in the House of Laity.

CONCLUSION

31. The Legislative Committee invites the Ecclesiastical Committee to issue a favourable report on the Measure. In the event of the Ecclesiastical Committee requiring any further information or explanation, the Legislative Committee stands ready to provide this.

EXTRACT FROM REVISION COMMITTEE REPORT: AMENDMENT OF THE DRAFT MEASURE IN RELATION TO HUMAN REMAINS IN CATHEDRAL PRECINCTS

New clause 10(3)

1. Control over human remains in cathedral precincts, such as it has been exercisable at all, has up to now been left entirely to secular authorities, and in recent years the way in which the Government has interpreted and applied relevant secular controls has varied. Recently the Government Department responsible (the Ministry of Justice) has taken the view that where human remains were interred in land that was not immediately identifiable on the surface as a 'place of burial', it was not able to grant licences (and so to apply conditions to exhumations) under section 25 of the Burial Act 1857. Despite taking this view about the application of the licensing requirements of that section, the Ministry of Justice had nevertheless suggested that removal of human remains in such circumstances would not necessarily be lawful.

2. The position of the Ministry of Justice has since been revised, and it has said that the section 25 regime will now be applied to most cases of exhumation that are not covered by the faculty jurisdiction (which cathedrals are not). Despite this change of approach, the Cathedral and Church Buildings Division and the Cathedral Fabric Commission for England are of the view that proposals for works affecting human remains in cathedral precincts should be brought within ecclesiastical control. (Human remains in churches, churchyards and consecrated cemeteries are already subject to the faculty jurisdiction rather than secular control.)

3. The Steering Committee therefore proposed the insertion in the draft Measure of a new sub-clause 10(3), providing for the amendment of the Care of Cathedrals Measure 1990 so as to bring proposals for works which would materially affect human remains in cathedral precincts within the controls contained in that Measure. If the proposed new provisions were enacted, the intention would be to ask the Ministry of Justice to amend the secular legislation (by way of Legislative Reform Order), disapplying it in all cases where ecclesiastical controls applied, and thus avoiding 'dual control'. The Association of English Cathedrals had been consulted about the changes and was content with what was being proposed.

4. The Committee agreed to insert the new clause 10(3) and that clause 10, as amended, should stand part of the draft Measure.

On behalf of the Committee

Philip Giddings (Deputy Chair)

June 2009

LEGISLATIVE COMMITTEE OF THE GENERAL SYNOD: COMMENTS AND EXPLANATIONS ON THE VACANCIES IN SUFFRAGAN SEES AND OTHER ECCLESIASTICAL OFFICES MEASURE AND THE CROWN BENEFICES (PARISH REPRESENTATIVES) MEASURE

INTRODUCTION

1. The Legislative Committee of the General Synod, to which two Measures entitled respectively the Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure and the Crown Benefices (Parish Representatives) Measure have been referred, has the honour to submit those Measures to the Ecclesiastical Committee with these Comments and Explanations.

Background to the two Measures

2. In May 2007 the General Synod received, from a group established at its request in 2005 and chaired by Sir Joseph Pilling, a report entitled *Talent and Calling – A review of the law and practice regarding appointments to the offices of suffragan bishop, dean, archdeacon and residentiary canon* (GS 1650) ('The Pilling Report'). That report contained a number of recommendations relating to the appointment of suffragan bishops and other appointments made by the Crown.

3. Shortly before the Pilling Report was due to be debated by the Synod the Government published its green paper, *The Governance of Britain* (Cm 7170) which contained a wide range of proposals for constitutional change. These included the proposal that the Prime Minister should no longer exercise choice in recommending appointments to senior ecclesiastical posts. The Church would in future be asked to forward one name which the Prime Minister would convey to Her Majesty in relation to diocesan bishop appointments. The Government also committed itself to discussing with the Church how changes could be made in relation to cathedral, parish and other Crown appointments so that the Prime Minister no longer played an active role in the selection of individual candidates.

4. On 9 July 2007 the Synod debated the Pilling Report. Noting the proposals contained in *The Governance of Britain* that touched on some of the same subject matter, the Synod passed a resolution welcoming the prospect of the Church achieving 'the decisive voice in the appointment of bishops' (for which the Synod had voted in 1974), endorsed the recommendations contained in the Pilling Report and invited the Archbishops to oversee the necessary consequential discussions with the Government and to report back in February 2008.

5. In October 2007 the Archbishops issued a consultation paper setting out their thoughts on a possible way forward in the light of the Synod's resolution of 9 July and inviting comments from around the Church. In January 2008 the Archbishops published their report to the Synod following on from that consultation (GS 1680). In it they made a number of recommendations.

6. These included recommendations that legislation should be introduced to –
- (a) replace the requirement in the Suffragan Bishops Act 1534 for two names to be presented to the Sovereign with a requirement to submit one name;
 - (b) change the position as regards the Crown's right to appoint in cases where the patronage is not normally in its gift but falls to be exercised by it because either (i) the patronage belongs to a diocesan

see which is vacant at the material time or (ii) the previous holder of the vacant office (or the holder of the office to whom the relevant patronage belongs) has been appointed a diocesan bishop;

- (c) extend to Crown benefices the normal rights of veto enjoyed by the two parish representatives under the Patronage (Benefices) Measure 1986.

7. In February 2008 the Synod approved the recommendations contained in the Archbishops' report, including the recommendations referred to above.

Appointment of suffragan bishops

8. The particular background with regard to recommendation (a) is as follows. Use was made of the Suffragan Bishops Act 1534 to appoint suffragan bishops during the sixteenth and early seventeenth centuries but it then fell into desuetude until Gladstone revived the practice of appointing suffragan bishops in the latter half of the nineteenth century. Although the Act requires the names of two candidates to be presented to the Sovereign, for more than a hundred years the invariable practice has been for the Prime Minister to advise the Sovereign to appoint the first of the two names. In the light of the Government's indication that it wished only one name to be submitted for appointments to archbishoprics and other diocesan sees, the view was taken that it would be curious if, following that change, it continued to be necessary to submit two names for suffragan vacancies.

9. The policy, adopted by the Synod, of removing the requirement for two names was also made against the background of more developed and transparent procedures for selecting suffragan bishops that have resulted from the Pilling Report. The new selection process involves interviews and a greater degree of openness. The Synod took the view that the law should be brought more closely into line with the reality of where the choice is exercised. It also saw a clear advantage in the law regarding the appointment of suffragans not being out of line with the new arrangements for the nomination of diocesan bishops (which now involve just one name being forwarded to the Prime Minister).

Exercise by the Crown of patronage not normally in its gift

10. There are two types of situation covered by recommendation (b) referred to above. The first relates to the position during the vacancy of a diocesan see. Where a diocesan see is vacant, the patronage that belongs to the see – and which would normally be exercisable by the diocesan bishop – is exercisable by the Crown instead. The patronage exercisable by the Crown in these circumstances is known as the Crown's *sede vacante* patronage. The Crown's right arises because during a vacancy in a diocesan see the Crown is the Guardian of the Temporalities of the see, the rights of patronage belonging to the see being among those temporalities. (In fact, as a result of legislation dating from 1943¹ which provided for the making of schemes vesting the endowments and other property of diocesan sees in the Church Commissioners, the rights of patronage belonging to such a see are now the only temporalities that remain.)

11. There is, however, a well-developed practice whereby the Crown allows the relevant suffragan or 'acting' bishop in a diocese where the see is vacant to make

¹ Episcopal Endowments and Stipends Measure 1943.

the choice as to how the *sede vacante* patronage should be exercised. Once the suffragan or ‘acting’ bishop has identified the priest whom he wishes to be presented to a vacant benefice or other office, the Crown is informed of the identity of the priest in question and the necessary paperwork is prepared in the Cabinet Office and the Crown Office. The Crown’s role in relation to the exercise of its *sede vacante* patronage has therefore become purely formal, the decisions being taken in the diocese.

12. In approving recommendation (b), the Synod took the view that there should be greater transparency in the process involved in the exercise of the Crown’s *sede vacante* patronage so that it was clear where the real choice was actually made. It therefore agreed that legislation should be introduced which would provide for the statutory delegation by the Crown of its *sede vacante* patronage to a suffragan or ‘acting’ bishop in a diocese where the see was vacant. That would effectively put on a statutory footing the existing practice referred to above and would remove the need for the purely formal involvement of the Cabinet Office and the Crown Office in producing the necessary paperwork (including Letters Patent) to give effect to the appointment. Instead the suffragan or ‘acting’ bishop would be able to execute a document presenting a priest to a vacant benefice or other office on behalf of the Crown.

13. The second situation addressed by recommendation (b) is that whereby the Crown (by virtue of the Royal Prerogative) has the right to present to a benefice or other office which is not normally in its gift because the previous holder of that benefice or office – or the holder of an office to whom the relevant patronage belongs – has been appointed a diocesan bishop. Where a priest is appointed a diocesan bishop all his existing preferment is automatically vacated by what is known as ‘cession’. The Crown’s rights to exercise patronage in the circumstances just described are therefore referred to as the Crown’s rights in relation to (or upon) cession. In fact such circumstances arise only rarely as most diocesan bishops are, when appointed, translated from other sees (most commonly suffragan sees) rather than being appointed directly from among archdeacons or members of cathedral chapters or from parochial ministry.

14. The Pilling Group considered the question of the Crown’s rights in relation to cession. It noted that instances were relatively rare, only two recent cases being identified. In its report it said that it was “unable to think of any good reason” for the Crown retaining the right to appoint in either of these circumstances which it regarded as an “unnecessary and unhelpful” anomaly.² The report concluded, “[w]e therefore recommend (as the Howick Commission did in 1964) that the Crown’s right to appoint to an office vacated by the office-holder becoming a diocesan bishop be abolished, and that instead the appointment should be made by the person or body who would otherwise have made it.”

15. The Archbishops’ Report to the General Synod proposed implementing that recommendation. The Synod endorsed the Archbishops’ proposal.

Crown benefices – appointment of lay representatives

16. Parochial appointments are governed by the Patronage (Benefices) Measure 1986. That Measure gave parochial church councils the right to appoint two lay representatives whose approval has to be obtained by the patron before making an offer to a particular priest to present him to a benefice. That provision applies in

² Paragraph 8.8.6.

cases where the patron is the bishop, a private individual, a patronage society or other body of trustees, or an institution (such as an Oxbridge college). It does not, however, apply where the patronage of a benefice is exercisable by the Crown on the advice of the Prime Minister or by the Lord Chancellor (acting in the name of the Crown), or by the Duchy of Lancaster or the Duchy of Cornwall. (These benefices are referred to collectively in the 1986 Measure as ‘Crown benefices’). Crown benefices make up about 8% of parochial appointments.

17. In their report to the General Synod, the Archbishops expressed the view that continuing to exempt Crown benefices from the provisions which allow the appointment of lay representatives “would be difficult to justify given the principles set out in the Green Paper [sc. *The Governance of Britain*]”. Their report also noted that in the consultation the Archbishops had conducted there had been “a wide measure of agreement” that the 1986 Measure should be amended to give parish representatives in Crown benefices the same rights that apply in all other benefices. Accordingly, the Archbishops recommended that legislation should be introduced to extend to Crown benefices the normal rights of parish representatives in the appointment process. The General Synod endorsed that recommendation.

Consultation with the Crown etc.

18. Prior to the introduction of the two Measures the Ministry of Justice was consulted as to what was proposed. The department indicated on behalf of the Crown that it was content with the content of the draft Measures.

19. The two Royal Duchies were also consulted about what was proposed in so far as it related to them (in their case only the Crown Benefices (Parish Representatives) Measure). Both Duchies stated that they were content with the content of the legislation.

20. Immediately prior to the First Consideration stage in the General Synod, The Queen’s consent was signified to the two draft Measures. In respect of the Crown Benefices (Parish Representatives) Measure, the Prince of Wales’s consent was signified.

Proceedings in the General Synod

21. Both Measures were introduced into the Synod for First Consideration in July 2008. They were received positively by the Synod and committed to a Revision Committee. They received detailed scrutiny from the Revision Committee and then from the Synod at the Revision Stage in February 2009. The process of revision resulted in a small number of amendments being made to both Measures but these were all of a technical or drafting nature and did not result in any alteration to the policy of either Measure.

22. A small number of further technical, drafting amendments were made to both Measures at the Final Drafting stage which was taken at the July 2009 group of sessions of the Synod. The Final Approval stage immediately followed when both Measures received overwhelming majorities in all three Houses.

23. The voting on each of the Measures at the end of the Final Approval stage was as follows –

The Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure

	In favour	Against
Bishops	19	0
Clergy	115	0
Laity	125	2

The Crown Benefices (Parish Representatives) Measure

	In favour	Against
Bishops	20	0
Clergy	119	0
Laity	125	1

THE PROVISIONS OF THE MEASURE AND THE MAIN ISSUES CONSIDERED BY THE GENERAL SYNOD**The Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure****SECTION 1 – AMENDMENT OF SUFFRAGAN BISHOPS ACT 1534**

24. Section 1 modifies the effect of section 1 of the Suffragan Bishops Act 1534 so that the requirement there for two persons to be presented to Her Majesty for appointment to a suffragan see is to be read as if it required only one person to be presented. Other references in section 1 of the 1534 Act to the two persons are to be read as if they referred to the one person so presented.

25. The effect of section 1 is, therefore, that when a diocesan bishop wishes to petition Her Majesty to appoint a suffragan bishop for his diocese he will no longer need to put forward a second name in addition to the name of the candidate he wishes to be appointed.

26. No amendments were proposed to this section either in the Revision Committee or in full Synod at the Revision Stage and none was made.

SECTION 2 – APPOINTMENTS BY THE CROWN DURING CERTAIN VACANCIES

27. Section 2 provides for the delegation to a suffragan or other bishop (the “relevant bishop”) of the Crown’s right, when there is a vacancy in see, to appoint to offices normally in the patronage of a diocesan bishop (i.e. it provides for delegation of the exercise of the Crown’s *sede vacante* patronage).

28. The delegation is automatic unless the Crown gives notice to the contrary in relation to a particular vacancy in see.

29. The section makes detailed provision for identifying the “relevant bishop”. Where a diocese has a standing scheme of delegation of episcopal functions (for example, on an area basis to suffragan bishops), the suffragan or assistant bishop who would, but for the vacancy in see, have exercised the patronage in question will be the “relevant bishop”. Where there is no such person – because there is not such a delegation in operation in relation to the diocese (or the relevant part of the diocese) – the “relevant bishop” will be the bishop to whom episcopal functions (including the function of giving institution to benefices) has been delegated in connection with the vacancy in see. Once a new diocesan has been appointed following a vacancy in see, the “relevant bishop” is the new diocesan.

Matters raised before the Revision Committee and the General Synod

30. The Revision Committee received a submission proposing that it would give greater transparency if the Crown’s rights in relation to vacancies in see were either abolished or transferred outright to the “relevant bishop”. The Revision Committee was advised that the effect of adopting that proposal would be that the Crown would lose its position as Guardian of the Temporalities (a position which flows from the Sovereign’s position as Patron and Protector of the Church). This was because the rights of patronage belonging to a see are the only temporalities of sees that remain (see paragraph 9 above). If the Crown’s rights in relation to the patronage belonging to vacant sees were to be abolished or transferred outright then there would no longer be any temporalities for it to protect.

31. Irrespective of any merit such a development might in principle be thought to have, the Committee doubted that this was a change which should be made in a Measure intended to give effect to such narrow policy objectives. The Committee was advised, furthermore, that such a change would have significant wider implications. When a diocesan bishop has been elected, confirmed and consecrated, he sues for the temporalities of his see out of the Sovereign’s hands by doing homage. If the Crown’s position as Guardian of the Temporalities were to cease because there were no surviving temporalities, that would remove the basis for new bishops doing homage.

32. The Committee took into account the clear intention of *The Governance of Britain* – as well as of the Archbishops’ own recommendations to the Synod – that the changes proposed in relation to Crown appointments in the Church of England should not result in any fundamental alteration in the relationship between the Crown and the Church (a policy position which had been confirmed in correspondence from the Ministry of Justice).

33. The Committee accordingly concluded that the Measure should not be amended so as to abolish the Crown’s *sede vacante* rights of patronage.

34. The Revision Committee was advised of the need for some amendment to the definition of “relevant bishop” in section 2(4)(a). The proposed amendments were of a purely technical, drafting nature and were agreed by the Committee.

35. No amendments were proposed at the Revision Stage in full Synod. Some further drafting amendments (again of a purely technical nature) were made to the definition of “relevant bishop” at the Final Drafting stage.

36. Section 3 abolishes to the Crown’s right to present to a vacant ecclesiastical office that is not normally in its gift in circumstances where the previous holder of

the office – or the holder of an office to whom the relevant patronage belongs – has been appointed a diocesan bishop. (For further details about this right see paragraph 12 above.)

37. No amendments were proposed to this section either in the Revision Committee or in full Synod at the Revision Stage and none was made.

SECTION 4 – CITATION, COMMENCEMENT AND EXTENT

38. Section 4 provides for the citation, commencement and territorial extent of the Measure.

39. No amendments were proposed to this section either in the Revision Committee or in full Synod at the Revision Stage and none was made.

THE CROWN BENEFICES (PARISH REPRESENTATIVES) MEASURE

SECTION 1 – AMENDMENT OF SECTION 35 OF THE PATRONAGE (BENEFICES) MEASURE 1986

40. Section 1 amends the Patronage (Benefices) Measure 1986 so as to extend the right of parochial church councils to appoint lay representatives, for the purpose of approving proposed appointments of incumbents, to benefices where the patronage is exercisable by Her Majesty (either in right of the Crown of the Duchy of Lancaster) or by the possessor for the time being of the Duchy of Cornwall.

Matters raised before the Revision Committee and the General Synod

41. A significant difference between the Crown's rights of patronage and those of other patrons is that whilst in relation to non-Crown livings the right of presentation lapses after nine months to the Archbishop, in relation to Crown livings it does not. An open-ended requirement for parish representatives to approve the Crown's nominee had therefore been included in the draft Measure as being consistent with the Crown's open-ended right of presentation, an approach with which the Ministry of Justice had expressed agreement. However, the Revision Committee received a submission expressing concern at a perpetual right of "veto" being conferred on parish representatives in relation to Crown livings. That submission proposed instead that, as is the case with all other livings, the right of veto (a shorthand for the right to refuse to approve the making of an offer by the patron to present a priest to a benefice) should be lost after nine months.

42. The Committee was advised that because of the Crown's open-ended right of presentation, acceptance of that proposal would mean that it would in principle be open to the Crown to take no action in relation to a particular vacant living for nine months, and then simply to fill the vacancy however it wished, thereby circumventing the policy behind the draft Measure, that Ministers should no longer make the final decision in respect of Crown appointments (a point secured by giving the right of refusal to parish representatives).

43. The Committee's view was therefore that the proposed amendment should be rejected. In reaching this decision, the Committee was supported by correspondence received from both the Crown and the Duchy of Lancaster stating that as matters stand they do not in practice experience difficulty in reaching agreement with parishes on appointments, and that they do not foresee such difficulties arising in the future. The Committee also noted that if the Crown (or the Duchy of Lancaster or Cornwall) took the view that parish representatives were abusing their rights, the Archbishop could always be asked to exercise his statutory power of review under section 13(5) of the 1986 Measure (for which see further below).

44. The Revision Committee also received a proposal for amendment from the Steering Committee for the Measure that related to the question of the Archbishop's power of review.

45. The extension to parochial church councils of Crown benefices of the right to appoint parish representatives with a right of refusal in relation to a proposed appointment of an incumbent is achieved in the Measure by extending certain provisions of sections 11 and 13 of the Patronage (Benefices) Measure 1986 to Crown benefices. One of those provisions is the section 13(5) right of the "registered patron" – in this case the Crown – to request the Archbishop to review

the parish representatives' refusal to approve the patron's nominee. If such a request is made, having reviewed the matter the Archbishop may authorise the registered patron to present its candidate notwithstanding the refusal. This review provision is applied in the case of Crown benefices by the new section 35(1A)(d) of the 1986 Measure contained in section 1 of the Measure.

46. Where the Crown or either of the Duchies is the registered patron there was no difficulty with section 1 as it was originally drafted. The provision as drafted did not however apply to the exercise of the parish representatives' right of refusal when a right of presentation is exercised by the Crown (or, under clause 2 of the draft Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure, by the "relevant bishop") by virtue of the Crown's position as 'Guardian of Temporalities' during a vacancy in see. This is because in such a case the Crown is not the registered patron.

47. The Steering Committee considered that it would be undesirable to confer upon parish representatives an unreviewable right of refusal in relation to the Crown's vacancy in see patronage, when in relation to the Crown's ordinary patronage a refusal would be reviewable. It accordingly recommended to the Committee an amendment to what is now section 1 of the Measure so that, in relation to the Crown's vacancy in see patronage, the provisions of section 13(5) of the 1986 Measure applied by the new subsection (1A)(d) should apply as if the references to the registered patron in those provisions were references to Her Majesty. This would mean that the Crown could then seek a review in relation to a proposed vacancy in see appointment, and that if he thought fit the Archbishop could authorise the Crown to present its candidate notwithstanding the parish representatives' refusal to approve the Crown's nominee.

48. The Revision Committee accepted this recommendation. It has been given effect by the new subsection (1B) to be inserted in section 35 of the 1986 Measure.

49. No further proposals for amendment were made at the Revision Stage in full Synod.

50. At the Final Approval stage section 1(2) – which makes transitional provision – was added as a drafting amendment.

SECTION 2 – CITATION, COMMENCEMENT AND EXTENT

51. Section 4 provides for the citation, commencement and territorial extent of the Measure.

52. No amendments were proposed to this section either in the Revision Committee or in full Synod at the Revision Stage and none was made.

CONCLUSION

53. The Legislative Committee invites the Ecclesiastical Committee to issue a favourable report on the two Measures. In the event of the Ecclesiastical Committee requiring any further information or explanation, the Legislative Committee stands ready to provide this.

On behalf of the Legislative Committee

Philip Giddings (Deputy Chairman)

October 2009

Deliberation

WITH THE ASSISTANCE OF REPRESENTATIVES OF
THE GENERAL SYNOD

WEDNESDAY 25 NOVEMBER 2009

Present	Davies of Coity, L	Sir Stuart Bell
	Elton, L	Ben Chapman
	Judd, L	Mrs Ann Cryer
	Lloyd of Berwick, L (Chairman)	Mr David Drew
	Massey of Darwen, B	Mr Gordon Marsden
	Perry of Southwark, B	Robert Key
	Pilkington of Oxenford, L	Mr Desmond Swayne
	Shaw of Northstead, L	David Taylor
	Wallace of Saltaire, L	Steve Webb
	Walpole, L	
	Wilcox, B	

The Committee deliberated, with the assistance of:

Witnesses: THE RT REVEREND DR THOMAS FREDERICK BUTLER (Bishop of Southwark), THE VENERABLE GEORGE HOWE, Archdeacon of Westmorland and Furness, THE RT WORSHIPFUL TIMOTHY BRIDEN, Vicar-General, Canterbury Province, THE REVEREND ALEXANDER MCGREGOR, Deputy Legal Adviser to the General Synod and the Archbishops' Council, DR COLIN PODMORE, Secretary, Dioceses Commission, and MR WILLIAM FITTALL, Secretary General of the General Synod and the Archbishops' Council, assisted the Committee.

Q1 Chairman: Perhaps you could start by introducing your team and then we can discuss how we will proceed.

Bishop of Southwark: Well, from my right-hand side, the Rt Worshipful Timothy Briden, who is the Vicar-General of the Canterbury Province, the Venerable George Howe, Archdeacon of Westmorland, and the Reverend Alexander McGregor, who is the Deputy Legal Adviser. I am Bishop Tom Butler, the Bishop of Southwark, Mr William Fittall, who is the Secretary General of the Archbishops' Council, and Dr Colin Podmore, who is the Secretary to the Dioceses Commission.

Q2 Chairman: Can I thank you all, first of all, for being with us and thank you, even at this stage, for the great help we have had from the explanatory notes you have provided. Perhaps the best thing would be for us to start taking the three Measures one by one, starting with the Miscellaneous Provisions Measure, and perhaps you might like to choose somebody to say what lies behind that.

Bishop of Southwark: I think I will have to ask one of my colleagues to introduce that one.

Mr Fittall: Well, as you know, the General Synod does from time to time, usually once in each five-year period, look at what are always, we hope, rather minor and uncontentious matters of the law which need some tidying up, and what you have before you here is a short Measure that deals with the matters

which are described in the explanatory note. I do not believe that any of them were contentious in the Synod and, as you will see from the voting figures at paragraph 16, the Measure passed by 185 votes to one at the final approval, but obviously, if there are any points of detail that you want to ask us on, then we will do our best to respond. I think it is a collection of really quite small adjustments and none of them is of the sort of significance that is covered in the other two Measures that you may want to quiz us on in more detail.

Chairman: Rather than my identifying the provisions here which seem to be more important than the others, the right thing would be to ask whether there are any members of the Committee who would like to ask any questions in relation to the Miscellaneous Provisions Measure.

Q3 Lord Elton: I would like to know, as a matter of interest and procedure, whether any soundings have been taken with the Ministry of Justice as to the likely reaction to your request that they should disapply regulations in certain cases? I am talking about clause 10(3).

Mr McGregor: Yes, we have spoken to the Coroners' Department of the Ministry of Justice about this and, in principle, they are amenable to dealing with situations where there is dual control by way of making legislative reform orders so that that is not necessary and, when we have talked to them about

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other various matters, they have indicated that they would be amenable to that in other contexts too, so this would seem to be of a piece with the general policy view which has been expressed to us by that Department in the Ministry of Justice.

Q4 Lord Wallace of Saltaire: I declare an interest in having an indirect link with Westminster Abbey. We have touched on Royal Peculiars before. The relationship to cathedrals, does this in any way overlap with the particular, peculiar positions of Royal Peculiars, so to speak?

Mr McGregor: No, this will not impinge upon the Abbey or St George's.

Q5 Chairman: The provisions which struck me, as being the more important were, firstly, clause 1 dealing with the transfer of powers from the Commissioners to the Diocesan Board of Finance. It seems perfectly sensible. Are there any comments on that? I cannot see any difficulty arising. Then the election of members to the Archbishops' Council—any questions on that? Then, finally, that curious discovery that the Church of England does not exist—as a corporate body, at any rate—but again these are all miscellaneous provisions, all of which seem to be very sensible. Are there any further questions that anybody would like to ask?

Mr Fittall: I think it would be fair to say in relation to clause 9, gifts to the Church of England, that we have always found a way of ensuring that these do go to proper charitable purposes, but this will remove a certain amount of paperwork when these sorts of gifts appear.

Q6 Baroness Massey of Darwen: I have a very simple question. Why was one person voting against?

Mr Fittall: Those with long experience of the General Synod, and I have only been its Secretary General for the last seven years, I think would testify to the fact that very often there will be one or two people who put their hand up against almost anything that is there, not that they have got any particular objection.

Baroness Massey of Darwen: So it is nothing substantial.

Q7 Chairman: Can we then move to the second of the two Measures before us, the Vacancies in Suffragan Sees Measure. We can take this with, as I understand it, the third Measure because we have only got one set of explanatory notes. That is the position, is it?

Bishop of Southwark: If I may just introduce briefly those two Measures, they are two Measures that inaugurate really quite narrow changes, but what

they are doing is regularising practices which have been followed for some time. Neither was at all contentious in Synod, as can be seen by the voting figures in paragraph 22, but they do touch on the historic relationship between Church and State, so, although they are limited deliberately in effect, they are of significance. They have to be seen in the context of the long-term trends of giving the Church the decisive say in the full range of its appointments rather than the final decision being managed from Downing Street by those supporting the Prime Minister in that role of advising the Crown. In particular, this legislation flows partly from a Church initiative, the Pilling Report, and partly from Her Majesty's Government initiative of July 2007 to reduce the role of the Royal Prerogative not just in Church appointments, but more generally. The most significant change to come from that Government Green Paper of July 2007 was the then Prime Minister's decision that in future he would recommend to the Crown the Church's first choice for diocesan bishop appointments, including the Archbishops of Canterbury and York, and that, in itself, did not require legislation, and these two Measures do not affect that. These two small Measures deliver changes that do require legislation and they concern the appointment of suffragan bishops and the role of parish representatives in Crown livings, and they address arrangements that now would, arguably, be somewhat anomalous, given the wider changes that have been ushered in by the Green Paper, but, as I say, they are essentially regularising practices which in fact have been followed by Church and State for some time.

Chairman: I think we all understand that and are very grateful. Once again, perhaps we could start with suffragan bishops. Are there any questions on that?

Q8 Mr Swayne: If you have been doing it anyway, why do you need the change?

Mr Fittall: I think it is important to take each of these in turn. In relation to suffragan bishops, the reality is that for more than a century the Crown has always accepted the first name that has been put forward. Nevertheless, it is the case that, as a matter of form, two names do have to go forward, so, although this is not going to make a change in reality because the Prime Minister has always, since the 19th Century, recommended the first name, it does mean that we have to put forward two names and, as our processes become more transparent, (we have interview processes and so on), having this formal requirement, which does not really have any substantial value, is

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becoming increasingly difficult. Also, in relation to the delegation to a suffragan or area bishop of the Crown's right to appoint while there is a vacancy in the diocesan see, that, in practice, is done at the moment and this would be formalising it. There are one or two things in these provisions, particularly when we come on to the final Measure, the Crown Benefices Measure, where there is a change of substance. We will, for the first time, be giving the parish representatives effectively the right of veto in relation to the appointment to a living. Now, in practice, it is not a big difference because the Crown already always endeavours to find agreement, and it is exceptionally rare, I think, and in modern times it has hardly ever happened, that somebody has been appointed despite the wishes of the two parish representatives. Nevertheless, this does create a new right. There is one other area—and it is a particularly arcane one—section 3 of the Suffragan Sees Measure, which is a genuine change and it is a small and technical one. This is the circumstance in which a vacancy is created as a result of the Crown making somebody a diocesan bishop. To take an example, a few years ago the Dean of Derby was appointed Bishop of Gloucester. Now, the Crown does not normally appoint to the Deanery of Derby, but, because the vacancy arose through the appointment to Gloucester, that became a Crown appointment. Now, it is an oddity and it happens very rarely. A Church Committee recommended that should be changed about 45 years ago and we have finally, as part of this package, done it and we have consulted those in Government and everybody was entirely happy with it. There are the one or two changes of substance but, by and large, it is regularising what we have been doing for quite a long time.

Q9 Lord Pilkington of Oxenford: On the Prime Minister, who, as we all know, has abandoned the Crown Prerogative, was this discussed with the Leaders of the opposition parties?

Mr Fittall: Well, I cannot say what consultations the Prime Minister and his staff may have had with the other parties. There were consultations with the Church before the announcement in July 2007 was made. It was of course a Green Paper from the Government and there was a statement made both in the Commons and the Lords on the day of the Green Paper.

Lord Pilkington of Oxenford: But, if we agreed to it, it is agreed for ever, whatever a future Prime Minister might think. In other words, it is possible that a future Prime Minister might want to reassert the Prerogative.

Mr Swayne: Quite.

Q10 Lord Pilkington of Oxenford: We are abandoning something quite big here.

Mr Fittall: Well, I think it is important to distinguish two things. One is the Prerogative in relation to diocesan bishops and the Crown deaneries. Now, that is not directly affected by the legislation you have before you and that was the more significant area. I have to say, on the day the statement was made, neither of the two opposition parties made any comment on what was proposed and I am not aware that there is any opposition. Certainly, so far as the Church is concerned, the move, in many respects, gives the Church what it asked for back in the 1970s which was the decisive voice in the choice. Obviously it would, in principle, be open to a future Government to take a different view on those matters. But, so far as suffragan bishops and these parochial appointments are concerned, our view is that, although we are doing them in consequence of those changes and they are logical in the light of that, we would argue that these are sensible changes, irrespective of what future changes there might be for cathedral or diocesan bishops.

Lord Pilkington of Oxenford: But it is absolutely certain—

Q11 Chairman: As I understand it, the changes in relation to suffragans, you say, stand on their own feet, although they can be said to be supportive of the decision taken by the Prime Minister?

Mr Fittall: Yes.

Bishop of Southwark: We deliberately framed the legislation in a narrow way so as not to open up the wider questions. As diocesan Bishop of Southwark, in my 11 years there, I have nominated three suffragan bishops. In each case following the pattern, I have produced two names, but in each case, as for the past 100 years, the Prime Minister has automatically chosen the first name, so there will be no difference there, except, as William says, increasingly we are getting more transparent in our appointments system and we feel it becomes increasingly difficult signalling to a second candidate that his name has been submitted when there is in fact no possibility of his being appointed, so, in a sense, although this makes no practical change, it does better fit our transparent processes.

Q12 Lord Pilkington of Oxenford: The reason I raise this, and I accept the fact that you have reassured me about diocesan appointments and deaneries, is that we are going to live in a rather controversial period in

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the Church of England and it is true that in the past 40, 50 or so years people have not raised a problem of suffragan appointments, but we are going to live in a hotter climate and of course we traditionally have the position of preserving you from the sort of controversy that could occur. It has been accepted, I accept, for many decades that bishops can appoint their own suffragans, but, I assure you, it is going to be a bit like Lebanon in the future and I am just making sure that you have thought of that.

Bishop of Southwark: If I may, one of the ways in which our pattern of appointments has become more transparent is that a diocesan bishop now has to appoint an advisory committee to actually advise him on advertising, on short-listing candidates and on producing, therefore, the preferred candidate. So, if anything, a diocesan bishop is far more constrained now than has been the case in the past and I think there is the opportunity for people to make their voices heard.

Q13 Mr Swayne: Well, can I answer the question that was asked earlier? No, there has not been any consultation and, secondly, as the Leader of the Opposition's Parliamentary Private Secretary, I did ask him about this today and he is not content that this should be done. In answer to the points that have been made, first, whilst two names have always been presented and the Prime Minister has chosen the first name, that does not mean that the choice was automatic. Secondly, with respect to the transparency of appointments, I fail to understand the difficulty if you have been through a selection process and an interview process and you have come up with a name and presumably someone who came close to it. I just do not accept that there is some difficulty in presenting the second name.

Mr Fittall: If I could just comment on the history of this, this is about suffragan bishops. The Suffragan Bishops Act was passed in 1534, but suffragan bishops died out in the Church of England by the following century and there were no suffragan bishops in the Church of England until Mr Gladstone revived them in 1870. Within a very few years of that, certainly by the end of the 19th Century, it had become a convention that the Prime Minister accepted the first name, but nobody went to the trouble of amending the Tudor legislation, so it is actually since the 19th Century in relation to suffragan bishops. There is quite a different set of arguments about diocesan bishops, I do accept that, and I think that may lie behind some of the comments that have been made, but that is not what this legislation is about; it is only about suffragan bishops.

Lord Pilkington of Oxenford: Could I say, the point I made is that we are looking at a different future than has existed for a very long time and the Leader of the Opposition is quite entitled, bearing this in mind this and of course we, as guardians of the situation, have to bear this in mind. Basically, in the late 19th Century, as you know, they balanced the ticket, Anglo-Catholic here, another there, and there was quite a complex system, as anyone who knows any Church history knows about, so my colleague on the Committee is raising a legitimate point, and just quoting that it had not occurred until 1870 is not entirely relevant.

Q14 Mr Marsden: This is really from the point of view of clarity and not least in view of the remarks which have been made about transparency, but the nature of the responsibilities of a suffragan bishop and possibly even the qualities required by a suffragan bishop may vary from those required for a diocesan bishop and, therefore, if we are going to sign off on what seems to be a perfectly logical change, it would be interesting to know what discussion there was in General Synod as to the distinctiveness of the appointment of suffragan bishops and the process, and the Bishop of Southwark has referred to the need to have a committee that advises. It would just be quite helpful to know whether in fact those factors were taken into account, given that you now want to formalise a process which has been going on for some time.

Bishop of Southwark: Yes, I think the mood of Synod in the debates, and those questions have been raised, is that it is likely to become less automatic for diocesan bishops to be appointed from the ranks of suffragan bishops, and we already are beginning to see that, partly because of the processes being more transparent. It is far more possible for somebody who, let us say, is a dean of a cathedral or indeed a parish priest to be appointed straight as a diocesan bishop rather than serving his time as a suffragan bishop, which has the implication that a suffragan bishop is likely perhaps to serve longer as a suffragan bishop than might have been the case in the past. They certainly are different responsibilities and, I have to say, there are different responsibilities in different dioceses regarding suffragan bishops, depending on whether it is an area system or not.

Q15 Lord Judd: I must say, my Lord Chairman, what I find interesting is this concept of a second name going forward. If the process is becoming increasingly transparent and, therefore, the weight of authority is behind the first name that goes forward, what is the basis on which the second name goes

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forward? Does the second candidate know that their name is going forward? It seems to me a rather humiliating experience for somebody to go through just as a formality. If, in fact, the way it is being handled is that it is all geared to one candidate going forward, I do not myself, as an Anglican, find it very enhancing to belong to a church that goes through such a caper.

Bishop of Southwark: If I may say, Chairman, of the three suffragan bishops I have nominated, with the first two the second name did not know that his name was included for that very reason. The third one, the latest one, as we began to get more transparent, did know and it was not helpful because it naturally disturbs a person's ministry.

Baroness Perry of Southwark: It might be helpful to say I have just been a member of the Bishop's Advisory Committee in Liverpool for the appointment of the Bishop of Warrington and I was extremely impressed by the openness of the process and by the hugely wide consultation. Everyone in the diocese was free to write in, we had a complete analysis of all the comments that were made and it fed very directly into the discussions as to who should be appointed, what kind of person we were looking for. I have to say, I did not find it all helpful that we did, at that stage, have to tell our second choice that he was a second choice because there was a very, very clear first choice and the first choice is now happily installed as of last month, and I do think that this is a very sensible Measure to rectify what in fact has been the practice for 30 years or so.

Q16 Mr Swayne: Is not the obvious answer, if that is the problem, not to inform the person who came second that their name is going forward, as has been the case in the past? It seems to have worked adequately then.

Mr Fittall: Perhaps I could just comment on the different procedures between suffragan and diocesan because I think this may help. If somebody is being considered as a diocesan bishop, which is not touched on by this Measure, that is considered by the Crown Nominations Commission and people do not know they are being considered. They are not interviewed and it is entirely secret and, therefore, the question of the two names is in a very different context there. As the Bishop of Southwark has said, it was the case, frankly, years ago that in relation to suffragan appointments people often did not know because the bishop had a wide measure of latitude in terms which were not standard. But we have moved away from that and we have moved to a system where for suffragan appointments there is a much more open process. So this difficulty does immediately arise

because you have got people who have been seen, who have been interviewed, you know that the first name that has emerged is the one that is going to come through and yet you have to go through this rather artificial procedure. So I think the arguments in relation to suffragans and diocesans are really rather different and it is only the former that we are dealing with today.

Q17 David Taylor: I think this is a question, Chairman, to the Bishop of Southwark. Is it commonly the case that someone who is the second name on a particular appointment is the second name again, again and again on future appointments, always the bridesmaid and never the bride, or does it tend to be that, once they have served their time as a second name and never been called, they will quite quickly appear as a first name in the near future?

Bishop of Southwark: I really am not in a position to reply to that because in the past nobody knew who the second name was, except the diocesan bishop concerned, so it might be that somebody was the second name in several dioceses, but we would not have known. As things become more transparent, we perhaps might know and I am not sure whether that is happening or not, it might be so. We are a very 'flat' organisation with 8,000 (stipendiary) parish priests and perhaps 110 bishops and 111 archdeacons, so we do not have a kind of normal career ladder that other organisations have, so it does not necessarily follow that, because somebody has been considered seriously for a senior appointment in one diocese, his name would come up again.

Robert Key: My Lord Chairman, unfortunately, until a few minutes ago, I was not aware that the Leader of the Opposition was seeking to make an issue of this proposal. If I had known, as a member of the General Synod, the Synod of the Diocese of Salisbury and the Council of Salisbury Cathedral and as a regular member of the Church of England, I would have sought to explain to the Leader of the Opposition that the Church of England has been struggling for many years with a lot of extraordinary rules and laws, including the Suffragan Bishops Act of 1534, which have made the Church of England look rather ridiculous. Having sat through the debates on this in the General Synod and observed the process throughout which has ended with this proposal, I am convinced that it has been taken very seriously by all the representatives of each house of the Synod and that it would really not be helpful to seek to oppose this proposal for no good reason other than, if it ain't bust, don't fix it because we can fudge it. You cannot go on fudging these things decade after decade, century after century. And, when the Church of

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The Rt Reverend Dr Thomas Frederick Butler,
The Venerable George Howe, The Rt Worshipful Timothy Briden,
The Reverend Alexander McGregor, Dr Colin Podmore and
Mr William Fittall

England seeks to move into the 21st Century to take account of new human resources methods, issues and legislation, it is not helpful, frankly, for the Leader of the Opposition to take this particular view. So I regret that I did not know that this was the Leader of the Opposition's position because I would have asked to see him to explain. Therefore, I find it hard to agree with my honourable friend for my neighbouring constituency, although a different diocese, on this particular issue and I certainly support this Measure.

Chairman: Could I just say that I do not think it has been suggested that the Leader of the Opposition has expressed any sort of view on the particular Measure before us, but it is on the much wider question of dioceses.

Q18 Lord Pilkington of Oxenford: Perhaps I could say a word in favour of the Leader of the Opposition, and he certainly has not consulted me! The Church of England, and I will not give you a history lesson on this, has existed on the basis of compromise. Mr Gladstone was a case in point, but he balanced the ticket. The Church itself has gone democratic and, as you will know, when there are great divisions in an institution, and I mentioned Lebanon and I could mention Northern Ireland, there is always tension when democracy or a general feeling works and, therefore, I am not going to vote against this or anything, but the business of balancing the ticket is terribly important in the decade that is going to lie ahead.

Bishop of Southwark: If I may just say, my Lord Chairman, and it may not be helpful, I was appointed Bishop of Willesden by Margaret Thatcher, Bishop of Leicester by John Major and Bishop of Southwark by Tony Blair, so I do not think political factors very often impinge on these appointments.

Lord Pilkington of Oxenford: Well, they do not, unless the Prime Minister happens to be a believer. That creates bigger problems.

Q19 Chairman: I think it is probably time we moved on to the third Measure. But before we do so I ought to say, since the discussion has been very much about second names being put forward, that I once allowed my name to be put forward as the second name not, I may say, as a diocesan bishop, but on the strict understanding that I would not be appointed. That seemed to work, though not very transparent, you may feel! Perhaps we can move on to the third of our Measures, which is the Crown Benefices Measure.

Bishop of Southwark: That, my Lord Chairman, makes provision for the appointment of lay parish representatives of Crown benefices to approve the selection of incumbents. In other words, it gives them the same rights as lay representatives of all other patrons have already, but it is a departure. In fact, I understand that mostly it has been the custom in recent years for those making the appointments to consult with lay parish representatives and indeed ask for two names to be nominated, so, in a sense, it is regularising the way that Downing Street have operated in the last few years, but it puts them in the same position as the lay parish representatives of any other benefice. What it does not do is give the diocesan bishop any kind of veto, which he does have over other benefices, so it does not affect the right of the diocesan bishop, but it gives lay parish representatives more rights in the appointment.

Chairman: That does truly seem to be uncontroversial, but can anybody think of a question on that? No, so I think you have persuaded us on that. If there are no final questions anybody would like to ask, I would like to thank you, Bishop, and all of your colleagues for all the help you have given us on this occasion.