

THE CHURCHWARDENS MEASURE 2001

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1. INTRODUCTION

The Churchwardens Measure is concerned with the number of churchwardens in a parish, the qualifications to be a churchwarden, how they are appointed, and how they may cease to hold office. Nowhere does the Measure state anything about what a churchwarden actually does. For this you must look elsewhere.¹ Two useful guides are *A Handbook for Churchwardens and Parochial Church Councillors* by Kenneth Macmorran and Timothy Briden (Mowbray, 2000), and *Practical Church Management* by James Behrens (Gracewing, 1998).

The Churchwardens Measure received the Royal Assent in April 2001, and is likely to be brought into force not later than 1 January 2002.² One particular clause, the clause giving bishops the power to suspend a churchwarden from office, has caused the delay and almost a constitutional clash between Church and State.

2. CHURCH v STATE

The original draft Measure largely followed the recommendations made by a working party appointed by the General Synod in December 1993. The report of the Working Party on Lay Office-holders was published in 1995.³ This led to a draft Measure, which was first approved by General Synod in July 1997.

Measures, of course, only become law when they receive the Royal Assent. The procedure for this is that the draft Measure is referred first to Synod's Legislative Committee, and then to the Ecclesiastical Committee of Parliament. The Ecclesiastical Committee of Parliament drafts a report on the Measure, and if the Legislative Committee of Synod then wishes to proceed with the Measure the draft Measure and the report of the Ecclesiastical Committee are laid before both Houses of Parliament for approval. If the report of the Ecclesiastical Committee is unfavourable, the Legislative Committee of Synod has the option of withdrawing the proposed Measure.⁴

In the case of the Churchwardens Measure, the draft Measure approved by Synod in July 1997⁵ was considered by the Ecclesiastical Committee in December 1998. A number of members of the Ecclesiastical Committee expressed serious concern over clause 9 of the proposed Measure, the clause giving the bishop power to suspend a churchwarden from office.

The Ecclesiastical Committee requested a joint conference with the Legislative Committee to discuss clause 9. This conference took place in May 1999. In the light of the concerns of the Ecclesiastical Committee expressed at this conference, in June

¹ For example, Canon E 1: see *The Canons of the Church of England* (6th edn) (Church House Publishing, 2000).

² This is the latest information available to the Legal Office of the Church of England as at 20 April 2001.

³ Working Party on Lay Office-holders, Report and proposed Measure and Canon (Church House Bookshop, 1995, reference GS 1164, GS 1165, GS 1166).

⁴ See Mark Hill, *Ecclesiastical Law* (2nd edn) (Oxford, 2001), para 2.06.

⁵ The draft Measure as approved by General Synod in July 1997 has the General Synod reference GS 1165 C.

1999 the Legislative Committee withdrew the Measure from further consideration by the Ecclesiastical Committee in order for it to be returned to the General Synod in July 1999.

In July 1999 the Measure came back to General Synod. The General Synod agreed to delete the existing clause 9, and to put in a new clause 9.⁶ The Measure was then referred back to the Legislative Committee of General Synod for a final scrutiny before being resubmitted to the Ecclesiastical Committee of Parliament. It was anticipated that the new clause 9 would meet with approval by the Ecclesiastical Committee.

Such proved not to be the case. In March 2000 the Clerk to the Ecclesiastical Committee wrote to the Secretary-General that:

‘Although they did not formally find the Measure inexpedient, leaving it to the Synod to approach them, if the Synod so desire, to convince them that the Measure is indeed expedient as it stands, I think it right to indicate that they would be most unlikely to do so. The principal objection was to clause 9(2)(c), which the Committee considered could not be cured by altering the draft Code of Practice from the House of Bishops. There was also objection to clause 9(5), on the grounds that if an elected Churchwarden was suspended any person appointed to perform his functions during the suspension should also be elected.’

A clash between Church and State looked possible. But in May 2000 the Legislative Committee decided to submit the Measure once more to Synod with the recommendation that the power to suspend a churchwarden be withdrawn. And at its July meeting Synod agreed to adopt this course. The other provisions of the Measure were too important for the whole Measure to be lost. The amended Measure, without the suspension clauses 6(5), and 9 to 11, went back to the Legislative Committee, and was submitted to and approved by the Ecclesiastical Committee. In March 2001 it was approved by both Houses of Parliament, and in April it received the Royal Assent.

It is therefore expected that the Measure will become law in time for the annual parochial church meetings held between January and April 2002.

So the clash between Church and State is off, for the time being. According to the report in the *Church Times*,⁷ Synod was assured that steps would be taken to initiate separate legislation covering the power of suspension early in the life of the new Synod elected in autumn 2000. So, wait for the next instalment!

The version of the Measure which has been approved by the Ecclesiastical Committee has not yet been published, but the clause numbers to which I refer in this paper are those in the version which has been approved by the Ecclesiastical Committee.⁸ For ease of reference, I have set out the order of clauses in an appendix to this paper.⁹

⁶ The draft Measure as approved by General Synod in July 1999 has the General Synod reference GS 1165 D.

⁷ *Church Times*, 14 July 2000, p 8.

⁸ The version approved by General Synod in 1997 had seventeen clauses; the version approved by General Synod in 1999 had nineteen. The final version has sixteen clauses.

⁹ In this paper I refer sometimes to clauses, sometimes to sections. Strictly, while a Measure is still in draft, before it has been approved by Parliament, it contains clauses; once it has become law its provisions are referred to as sections. To add to the confusion, even while a Measure is in draft, cross references within the Measure to other parts of the Measure always refer to *section* numbers.

3. THE NUMBER OF CHURCHWARDENS

The normal rule is that there are to be two churchwardens for each parish.¹⁰

A small number of parishes have a custom of appointing more than two churchwardens, or some special way of appointing them. The Measure allows these customs to continue, provided they go back to before 1925.¹¹ But the Measure now allows a meeting of the parishioners to pass a resolution to abolish such a custom. If they do so, the normal rules will apply from then on, and the custom cannot be revived.¹²

Another exception is where under a pastoral scheme a parish has more than one parish church. Where this is the case, two churchwardens are appointed for each of the parish churches.¹³ In such a pastoral scheme, all the churchwardens are churchwardens of the whole parish except to the extent that they divide up their duties between them.

Churches within the City of London are also an exception. A scheme which came into force in the nineteen-fifties under the Reorganisation of Areas Measure 1944¹⁴ stipulates the number of churchwardens for each parish within the old deaneries of the East City and the West City. For example, the scheme allows St Vedast, Foster Lane, twenty-six churchwardens!¹⁵

4. DEPUTY CHURCHWARDENS

The Churchwardens Measure says nothing about deputy churchwardens. Deputy churchwardens are appointed in some cases where a parish has two or more places of worship: the PCC may make a scheme providing for the appointment of deputy churchwardens.¹⁶ Similarly, a pastoral scheme setting up a team ministry may make provision for deputy churchwardens.¹⁷ Other churches have informal arrangements for deputy churchwardens to act as assistants to the real churchwardens. As the Churchwardens Measure is silent on the subject, both these formal and informal arrangements can continue.

The rights of deputy churchwardens are very limited compared to the rights of full churchwardens. Deputy churchwardens do not, for example, have a right to be consulted under various Measures, nor can they act as sequestrators.¹⁸ Even where there is a scheme setting up a district church council under rule 18 of the Church Representation Rules, the legal responsibilities of the office of churchwardens of the parish remain with the churchwardens, regardless of the powers delegated to the district church council and deputy churchwardens in the scheme.¹⁹ Under an amendment to the Church Representation Rules which came into force in January 2000, deputy

¹⁰ Churchwardens Measure, cl 1(1).

¹¹ *Ibid*, cl 11(2).

¹² *Ibid*, cl 12. If the custom involves a person other than the minister in the choice of the churchwardens, then that person must give written consent for the custom to be abolished: cl 12(3).

¹³ See the Pastoral Measure 1983, s 27(5), now the Churchwardens Measure, cl 1(2)(a).

¹⁴ The Measure has been repealed, but schemes made under it remain in operation until replaced by some other scheme.

¹⁵ Duncan Kent, the synod officer for the Diocese of London, informs me that the full title of St Vedast includes the dedications of some fifteen other churches. Whether St Vedast still appoints twenty-six churchwardens is not known.

¹⁶ Church Representation Rules, r 18(4).

¹⁷ Pastoral Measure 1983, Sch 3, para 4(2)(d).

¹⁸ Unless they were specifically appointed as such, which would be very unusual.

¹⁹ Almost all the legal provisions relating to churchwardens refer to their parochial office, not any district within a parish. One exception is churchwardens in a conventional district. A conventional district remains part of the original parish, but functions effectively as a separate parish with its own PCC and churchwardens.

churchwardens appointed under a rule 18 scheme now become members of the PCC automatically, whereas other deputy churchwardens do not.²⁰

5. QUALIFICATIONS FOR CHURCHWARDENS

The existing rules for the appointment of churchwardens²¹ state that churchwardens must

- be resident in the parish or on the church electoral roll for the parish;
- be actual communicants members of the Church of England, unless the bishop gives permission otherwise;
- be twenty-one years old or more;
- consent to be appointed.

The Churchwardens Measure now makes it a requirement that a churchwarden must be on the electoral roll for the parish.²² It is no longer enough just to be resident in the parish.

The Working Party was not in favour of lowering the minimum age for churchwardens from twenty-one to eighteen, in view of the highly responsible nature of the office, the fact that the role of churchwarden is more demanding than that of a member of the PCC, and the maturity which the Working Party saw as essential in order to perform the role effectively.

Being an actual communicant means that the person must have received communion at least three times in the past year according to the use of the Church of England or of a church in communion with the Church of England. To receive communion according to the use of the Church of England a person should normally be confirmed or ready and desirous of being confirmed.²³

Some churches now permit children to take communion before confirmation, under guidelines issued by the House of Bishops. It is to be hoped that such children will be confirmed as they get older. It is possible in years to come that a person who has been taking communion for years under these new arrangements, but who has not been confirmed, may be a suitable candidate for churchwarden. If this arises, such a person should be confirmed as soon as possible after being made churchwarden.

A similar problem may arise in the case of a church which may have some members who come from a non-conformist background, and who may not have been

²⁰ Church Representation Rules, r 14(1)(d). In practice, a deputy churchwarden is very likely to be a person who is already a member of the PCC.

²¹ Churchwardens (Appointment and Resignation) Measure 1964, s 1.

²² Churchwardens Measure, cl 1(3)(a).

²³ This is a slight simplification of the effect of the Church Representation Rules, r 54(1), and Canon B 15A. Rule 54(1) (which is applied by the Churchwardens Measure, cl 13(1)). states:

“actual communicant” means a person who has received Communion according to the use of the church of England or of a Church in communion with the Church of England at least three times during the twelve months preceding the date of his election or appointment being a person whose name is on the roll of a parish and is either—

(a) confirmed or ready and desirous of being confirmed; or

(b) receiving the Holy Communion in accordance with the provisions of Canon B 15A paragraph 1(b).

Canon B 15A, para 1(b), says that there shall be admitted to the Holy Communion ‘baptized persons who are communicant members of other Churches which subscribe to the doctrine of the Holy Trinity, and who are in good standing in their own Church.’

confirmed. Again, if a suitable candidate for churchwarden has not been confirmed, they should be asked whether they would like to be. If they would, arrangements should be made for them to be confirmed as soon as possible after they are made churchwarden. If they do not wish to be confirmed, then the bishop's permission should be sought before they are elected as churchwarden.

In exceptional circumstances the bishop can allow someone to be appointed as a churchwarden even if they do not fulfil these requirements.²⁴ It might be appropriate for example where a person belongs to some other denomination, but worships at the parish church. A bishop's permission lasts only for one period of office as churchwarden, so fresh permission needs to be sought each year if the person is to be re-appointed.²⁵

Under the existing law, a person can be a churchwarden of more than one church at the same time. Under the Measure this is no longer the case, unless the two churches are related parishes, for example where two parishes both belong to the same benefice, or have the same minister.²⁶

The same new rule applies for a churchwarden chosen to fill a casual vacancy (where, for example, one churchwarden retires or dies during the course of the year). The new churchwarden must not already be a churchwarden elsewhere.²⁷

It used to be the law that 'aliens' (that is, foreigners) and Jews could not be churchwardens. The Measure abolishes this rule.²⁸ It would of course be necessary to obtain the bishop's consent for the appointment of a Jew as a churchwarden, as a practising Jew would not also be an actual communicant member of the Church of England.²⁹ For the same reason, the bishop's consent would be needed before a Roman Catholic or non-conformist can be appointed as churchwarden.³⁰

There is no upper age limit on being a churchwarden. Many serve well into their seventies or even later.

6. GENERAL DISQUALIFICATIONS

Clause 2 of the Measure sets out three general grounds for disqualification.

(a) *Dishonesty*

The churchwarden's duties involve the handling of money and the ownership and care of valuable property. This calls for as much financial integrity as a charity

²⁴ Churchwardens Measure, cl 1(4).

²⁵ See *ibid*, cl 1(4), and the Working Party Report, paragraph 23.

²⁶ See the Churchwardens Measure, cl 1(5)(b). This rule does not prevent a churchwarden of an ordinary parish church being at the same time a churchwarden of a Guild Church in the City of London: see cl 9(2).

²⁷ See *ibid*, cl 1(6).

²⁸ *Ibid*, cl 2(4).

²⁹ Whether it is theologically possible for a person to be both a Jew and a Christian, or both a Jew and a member of the Church of England, is beyond the scope of this paper.

³⁰ It is arguable that you might appoint a Roman Catholic as a churchwarden without the bishop's consent, as long as they have declared they are a member of the Church of England, have attended worship for six months, are receiving 'Anglican' communion, and are a communicant Roman Catholic of good standing in the Roman Catholic church. This would be a very unusual situation, and would involve the Roman Catholic receiving some dispensation from the Roman Catholic Church from the requirements of Canon 844 §1 of the *Code of Canon Law* 1983, which provides that a Roman Catholic should only receive communion from a Roman Catholic priest.

trustee. Indeed in many parishes the churchwardens become trustees of some charity linked to the church. There is therefore a new rule preventing people from serving as churchwardens if they are currently disqualified under the Charities Act 1993 from being a charity trustee.³¹

(b) Offences against children

Persons who have been convicted of various criminal offences against a child are disqualified from acting as churchwarden.³² These offences include murder, manslaughter, common assault, abandonment, cruelty, infanticide, abduction, and sexual offences.

(c) Being a cause of pastoral breakdown

Where there is a serious pastoral breakdown of the relationship between the incumbent and the parishioners, a tribunal can be appointed to inquire into the matter. If the tribunal concludes that the conduct of one or more of the parishioners has contributed to the breakdown over a substantial period, the bishop can rebuke the parishioners, and disqualify them from holding office for up to five years.³³

7. DISQUALIFICATION AFTER SIX PERIODS OF OFFICE

Clause 3 of the Churchwardens Measure is a new rule. Where a person has served as churchwarden in the same parish for six successive years, he is disqualified from being churchwarden for two years. After then he can be appointed once again, and the six-year period starts afresh.

The rule will not start to bite for six years after the Measure comes into force, as time spent as a churchwarden before the Measure comes into force does not count.³⁴ An example will show how this works in practice. Take the case of a churchwarden who is chosen at the annual meeting in April 2001, and admitted to office by the bishop in May 2001.³⁵ Suppose the Measure comes into force on 1st January 2002, and the churchwarden continues in office each year thereafter. The Measure says that 'no account is taken of any period of office commencing before the coming into force of this Measure'. So no account is taken of the period of office commencing May 2001. The first period of office which counts is therefore the one commencing May 2002, the sixth is the one commencing May 2007, and the first annual meeting where the churchwarden cannot be chosen is the one in April 2008.

The purpose of this delayed start for the rule is to allow the church plenty of time to identify other candidates for office. It also allows the introduction of a new churchwarden to be 'phased in', and gives an opportunity to the new churchwarden to learn from the experience of the long-standing churchwarden.³⁶ The author appreciates the desire to allow time to identify and train up a new churchwarden before he is to be appointed, but questions whether this need take seven years. It does seem to take the edge off the importance of the reform if it is not going to come into operation until 2008.

³¹ Churchwardens Measure, cl 2(1).

³² *Ibid*, cl 2(2).

³³ Incumbents (Vacation of Benefices) Measure 1977, s 10(6); Churchwardens Measure, cl 2(3).

³⁴ *Ibid*, cl 14, Sch 1, para 2.

³⁵ As explained below, a person chosen as churchwarden by the meeting of the parishioners only formally becomes the churchwarden when he is admitted to this office by the bishop in about May.

³⁶ See the Working Party Report, para 30.

³⁷ Churchwardens Measure, cl 3 proviso.

A meeting of the parishioners can pass a resolution that the new rule is not to apply to the parish.³⁷ So, for example, if there really is no-one else suitable to take on the position of churchwarden, the parishioners may decide to allow the long-standing churchwarden to continue in office for a further year. In some rural parishes it is very difficult to find anyone willing to stand for election as churchwarden, and if the six-year rule could not be overridden such a parish might find itself in great difficulty. The position should be contrasted with that which applies in Wales. There the six-year rule has been in operation since 1979, and parishes have to apply to the arch-deacon for exemption.³⁸

Such a resolution can be revoked by a subsequent meeting of the parishioners.³⁹ So, if the parishioners pass a resolution to allow the churchwarden to be appointed for a seventh year, and he is appointed, a later meeting of the parishioners can pass a resolution which will prevent him being a churchwarden for the eighth year running.

It remains to be seen how useful the new disqualification rule will be. The Working Party regarded it of major importance. Parishes do have the power to override it, but they should consider carefully before doing so.

8. TIME AND MANNER OF CHOOSING

Clauses 4 and 5 set out how the churchwardens are to be chosen for the parish. The churchwardens are chosen annually at a meeting of the parishioners not later than 30 April in each year.⁴⁰

There is a new provision that a candidate for election must be nominated and seconded in writing.⁴¹ His nomination paper must be given to the minister of the parish before the commencement of the meeting.⁴² If the bishop's permission is needed for someone who would not otherwise qualify, then that permission must also be obtained before the nomination paper is given to the minister.⁴³

The normal procedure for the election is as follows:

- Candidates for election give their nomination papers to the minister before the meeting.
- The meeting elects two of the candidates.

If the minister considers that the election of a particular person nominated might give rise to serious difficulties between that person and the minister in the carrying out of their respective functions, the minister may before the election make a statement that only one person is to be elected by the meeting. In that case, the minister chooses one warden from the various candidates, and the meeting then elects the other churchwarden.⁴⁴

This procedure is designed to avoid conflict situations, but it only assists if there are more than two candidates, and even then it does not help much. If there are only two

³⁸ I am grateful to Thomas Watkin of the Cardiff Law School for this information.

³⁹ Churchwardens Measure, cl 3 proviso.

⁴⁰ Churchwardens Measure, cl 4(1), (2). As to the meeting of parishioners, see para 9 below.

⁴¹ *Ibid*, cl 4(3).

⁴² *Ibid*, cl 4(4)(a). The Working Party recommended that nominations should be given in at least two clear days before the meeting, but the Measure just requires them to be given before the commencement of the meeting.

⁴³ Churchwardens Measure, cl 4(4)(b).

⁴⁴ *Ibid*, cl 4(5).

candidates, under the new rules both will be appointed even if the minister will find it difficult to work with one of them. And where there are more than two candidates, the minister cannot 'blackball' the one he does not want: the most he can do is select one person himself, and allow the meeting to choose the other one.

The Measure does not say how the election is to be carried out. The meeting has power to determine its own rules of procedure.⁴⁵ In most cases the election of churchwardens is carried out by a show of hands, but it can be by ballot. The minister does not have a vote on the choice of churchwardens, but he does have a vote on matters of procedure, such as a proposal to adjourn. He does not have a second or casting vote on any matter.⁴⁶

If there is a casual vacancy, the minister summons a meeting of the parishioners to choose the new churchwarden, and the new person is chosen in the same way as the churchwarden whose place he is to fill.⁴⁷

9. MEETING OF THE PARISHIONERS

Clause 5 deals with the procedure for convening the meeting. A notice must be affixed on or near the main door of the church and every other building licensed for worship in the parish for at least the two Sundays before the meeting.

The persons entitled to vote at the meeting to choose the churchwardens are:

- anyone who is on the church electoral roll, and
- anyone who is resident in the parish, and whose name is entered on the register of local government electors by reason of such residence.⁴⁸

To be on the church electoral roll you need either to be resident in the parish or to have habitually worshipped at the church for six months.⁴⁹ And if you have recently moved into the area or joined the church you also need to apply to have your name added to the roll in the period before the annual meeting.

10. ADMISSION

Although chosen by the parishioners, a person does not become churchwarden until he or she has been admitted to office by the bishop or someone on the bishop's behalf. This usually happens in May, at a service attended by the archdeacon. At this service the churchwarden must make an oral declaration that he will 'faithfully and diligently perform the duties of [his/her] office'. He also signs a declaration that he will do this, and that he is not disqualified from serving as a churchwarden for any of the reasons set out in clause 2.⁵⁰

In summary, there are three new rules:

⁴⁵ *Ibid*, cl 5(7).

⁴⁶ *Ibid*, cl 5(6), is very confusing. It provides: 'In case of an equal division of votes on any question other than one to determine an election of a churchwarden the chairman of the meeting of parishioners shall not have a second or casting vote and the motion on that question shall be treated as lost.' This suggests that in the election of the churchwarden the minister (who is the chairman if he is present: see cl 5(5)) does have a casting vote. However, this would be wrong. The Church Representation Rules, r 13 (1), makes it clear that the minister does not have a vote in the election itself. The clause could have been better worded.

⁴⁷ Churchwardens Measure, cl 4(7), (8).

⁴⁸ *Ibid*, cl 5(1).

⁴⁹ See the Church Representation Rules, r 1(2).

⁵⁰ Churchwardens Measure, cl 6(1).

- Churchwardens have to be admitted to office every year.
- They remains in office until a successor is admitted to office.
- If a churchwarden is not admitted to office by 31 July, the position becomes vacant, and there needs to be a new election.

So, if a person who is already a churchwarden is re-elected by the parishioners for a further term, he must still attend the admission ceremony to be re-admitted each year.

If a person is chosen as churchwarden and has not been formally admitted to office by 31 July, a casual vacancy arises, and there needs to be another election.

A retiring churchwarden's term of office continues until his successor is admitted to office by the bishop, or until 31 July if the successor is not admitted by that date.⁵¹

Where a casual vacancy arises, and a person is chosen as churchwarden, he must be admitted to office within three months, or by the date of the next annual meeting if earlier, otherwise another casual vacancy arises.⁵²

An important point not covered by the Measure is that a person who is chosen as churchwarden becomes a member of the PCC immediately, even before he has been admitted to office by the bishop.⁵³ So for the period between the annual meeting and the admission of the new churchwardens to office, there may be four churchwardens on the PCC.

11. RESIGNATION

At present a churchwarden cannot resign without the permission of the bishop. He also needs the written consent of the parish priest and any other churchwarden in the parish.

This is to be changed under the Measure. The new rule is that a churchwarden may only resign by sending written notice of resignation to the bishop by post.⁵⁴ The resignation takes effect two months thereafter, or earlier if the bishop so decides, after consulting the minister and the other churchwardens in the parish.⁵⁵

The involvement of the bishop ensures that he is alerted to any pastoral problems which have arisen, and to take action if necessary.

12. VACATION OF OFFICE

A person automatically ceases to be a churchwarden if their name is removed from the electoral roll of the parish.⁵⁶ This may happen at his request, for example if he moves out of one parish to another, or from one church to another. It also should happen automatically if he does not live in the parish and has not regularly worshipped at the church for six months.

Similarly, a person automatically ceases to be churchwarden if his or her name is not on the new church electoral roll when this is prepared in the year 2002.⁵⁷

⁵¹ *Ibid*, cl 6(2).

⁵² *Ibid*, cl 6(4).

⁵³ Church Representation Rules, r 14(2).

⁵⁴ Churchwardens Measure, cl 7(2). Post means post: not fax or e-mail.

⁵⁵ *Ibid*, cl 7(3).

⁵⁶ *Ibid*, cl 8(1)(a). As to such removal, see the Church Representation Rules, r 1(9).

⁵⁷ Churchwardens Measure, cl 8(1)(b).

A person automatically ceases to be churchwarden if he or she becomes disqualified under the general disqualification rules in clause 2.⁵⁸

The same principles apply to a person who has been chosen to be a churchwarden but who has not yet been admitted to office by the bishop.

13. SUSPENSION

This is the clause⁵⁹ that has caused so much fuss, and which now will *not* form part of the Measure. At present there is no procedure (other than under section 10 of the Incumbents (Vacation of Benefices) Measure 1977, following an inquiry by a provincial tribunal) for removing a churchwarden from office against his or her will before the time comes for re-election. The Working Party identified three types of cases where it considered such a procedure is necessary:

- where the churchwarden ceases to be able to fulfil his or her duties, for example because of illness or absence from the parish, but refuses to resign (or possibly, in the case of serious illness, is unable to do so); or
- where the churchwarden is guilty, or accused, of a serious breach of his or her legal duties, for example by refusing to co-operate with the incumbent or stirring up dissension in the parish; or
- where the churchwarden commits, or is accused of, other serious misconduct, so that his or her continuing to act as churchwarden would result in grave scandal and would be seriously detrimental to the Church, either in the parish or more widely.

The Working Party said that, fortunately, these situations do not arise frequently, but when they do they can have a seriously adverse effect on the life of the Church in the parish. In theory, the difficulty should be resolved within twelve months at the most, as the parishioners will then have an opportunity to elect someone else. However, the Working Party said that there may be cases where, out of sympathy with the churchwarden or for other reasons, the meeting of parishioners decides to re-elect him or her, even though that may not be in the best interests of the parish. The Working Party therefore recommended that the bishop should be given express powers to deal with such situations, even though the Working Party hoped that they will not need to be exercised frequently.

The original clause 9 commenced as follows:

Suspension.

'9. - (1) Subject to subsection (2) below, the bishop may for any cause which appears to him to be good and reasonable suspend a person who holds the office of churchwarden, that is to say, prohibit the holder from exercising without the consent of the bishop any right or duty incidental to that office during the current term of that office, after giving that person sufficient opportunity of showing reason to the contrary.'

It was the words 'for any cause which appears to him to be good and reasonable' which caused problems. It was suggested that this gave the bishops an almost arbitrary power, and one which they might abuse.

⁵⁸ *Ibid.*, cl 8(1)(c).

⁵⁹ Or clauses. In the draft Measure approved by Synod in 1997 there was one suspension clause, clause 9. In the draft Measure approved by Synod in 1997 this one clause had become three: clauses 9 to 11. (There is also a reference to suspension in cl 6(5). This also is removed in the version submitted to the Ecclesiastical Committee following Synod's resolution of July 2000.)

Following the rejection of the Measure by the Ecclesiastical Committee of Parliament, the Legislative Committee of General Synod produced a possible revised version of clause 9, which was approved by General Synod in July 1999. The revised clause 9 sets out four circumstances in which a person might be suspended:

- The first is ‘that the person has requested or consented to the suspension’. The idea here is that, in the case of a false accusation, the churchwarden would want to ask the bishop to suspend her or him until the truth was decided.
- The second is ‘that the person is unable to carry out the duties of churchwarden by reason of absence, illness, or other incapacity’. This enables the bishop to act in cases unforeseen by the electors.
- The third is ‘that the person has been charged with any offence which is punishable with imprisonment or, if not so punishable, would on conviction disqualify that person from being chosen for the office of churchwarden by virtue of section 2(1) or (2) above’. The idea here is that a bishop should be able to suspend a churchwarden who is charged with a serious criminal offence: one which is punishable by imprisonment, one which would disqualify him or her under the Charities Act 1983 from being a charity trustee, or one of a list of offences against children.
- The fourth is ‘that the person has been convicted of any offence which is punishable with imprisonment’. This allows suspension when the churchwarden has been convicted of an offence punishable with imprisonment, but which did not automatically disqualify him or her from being a churchwarden.

Under the 1999 version, suspension is not automatic: the bishop has to consider whether it is justified, and he has to consult the minister and PCC before deciding to suspend the churchwarden. The power to suspend can be exercised only twice in relation to any one matter. The bishop must also have regard to a code of practice which will be drawn up by the House of Bishops giving guidance for bishops on the exercise of the power of suspension.⁶⁰ The churchwarden has a right of appeal against his or her suspension within twenty-one days to the Dean of the Arches and the Auditor.⁶¹

Under both the 1997 and the 1999 versions of the proposed Measure, where the bishop does decide to suspend a churchwarden, as soon as practicable the bishop should consult with the minister and the PCC, and appoint a person to serve as acting churchwarden during the period of the suspension. The Ecclesiastical Committee objected to this, saying that if an elected churchwarden was suspended any person appointed to perform his functions during the suspension should also be elected.⁶²

14. GUILD CHURCHES

The office of churchwarden of a Guild Church in the City of London is governed by the City of London (Guild Churches) Act 1952. Some of the rules relating to such churchwardens are the same as for parishes, but others are different. The Churchwardens Measure does not apply to Guild Churches, apart from requiring that

⁶⁰ Clause 10 in the 1999 version of the draft Measure.

⁶¹ Clause 11 in the 1999 version of the draft Measure. The Dean of the Arches presides over the provincial court of appeal for the Province of Canterbury; the Auditor presides over the provincial court of appeal for the Province of York. Both offices are held by the same person, currently Sheila Cameron QC.

⁶² See the letter from the Clerk to the Ecclesiastical Committee quoted in section 2 above.

churchwardens of Guild Churches are to be actual communicant members of the Church of England unless the bishop (of London) permits otherwise.⁶³

15. SPECIAL PROVISIONS

The bishop is given a range of powers:

- He can make provision for any matter not expressly provided for.
- He can appoint a person to do an act where there has been a failure to carry out a duty under the Measure.
- He can extend or alter time limits for holding any meeting or election or modify the procedure laid down by the Measure.
- Where there has been no valid choice, he can direct a fresh choice to be made, and give whatever directions he thinks necessary in connection with the matter.
- He can give directions in case of difficulty.⁶⁴

What he cannot do is validate anything that was invalid at the time it was done.⁶⁵

Some examples may assist. There may be a dispute about whether a churchwarden was validly chosen by the parish meeting. Perhaps the meeting may not have been properly convened, or there may have been some mistake in the voting procedure, or the parish may have forgotten about the need to have nomination papers. The bishop can decide the issue whether or not the churchwarden was validly chosen, or he can give directions for the holding of a fresh meeting. What he cannot do is to validate the appointment of the churchwarden if it is clear that the appointment was invalid because, for example, the meeting had not been properly convened.

Another example might be about the date of the meeting of the parishioners. If through illness or some other reason the meeting has not been held by 30 April, the bishop can authorise it to be held in early May.

Similarly, if a person chosen as churchwarden was unable to attend the admission to office service, and 31st July looms close, the bishop can extend the time for special arrangements to be made rather than have a casual vacancy.

16. GEOGRAPHICAL EXTENT

There are special rules relating to churchwardens in the diocese of Sodor and Man and on the Channel Islands, and so the Measure does not extend to these areas. Otherwise it extends to the whole of the provinces of Canterbury and York, including the Diocese in Europe.⁶⁶

⁶³ The Churchwardens Measure, cl 9(3), defines 'actual communicant member of the Church of England' for this purpose. It means 'a member of the Church of England who is confirmed or ready and desirous of being confirmed and has received Communion according to the use of the Church of England or of a church in communion with the Church of England at least three times during the twelve months preceding the date of his election or appointment'. There is no requirement that the person has entered his name in the Guild Church electoral roll. To do this a person must have been baptised, and must declare that they are a member of the Church of England and that they do not belong to any church not in communion with the Church of England: *City of London (Guild Churches) Act 1952*, s 15(1). So, for Guild Churches the qualification of membership is a little stricter than for non-Guild churches, but this does not affect the appointment of churchwardens.

⁶⁴ Churchwardens Measure, cl 10(1)(a)–(e).

⁶⁵ *Ibid.*, cl 10(2).

⁶⁶ *Ibid.*, cl 16(3).

17. MATTERS TO BE NOTED BY PARISHES

The following matters should be noted by parishes:

(a) *Disqualification*

The Measure does not require the diocese or the parish to make any inquiries as to whether a person may be disqualified from serving as churchwarden. Obviously if the disqualification followed a tribunal hearing in the case of serious pastoral breakdown, the diocese would have a record of this fact. Otherwise matters are left to the honesty of the person chosen as churchwarden when he signs a declaration that he is not disqualified. The parish is not required to make any inquiries from the police, or from the Charity Commissioners, about individuals. That said, the parish should contact the diocesan registrar for legal advice if there is reason to suspect the person is not telling the truth.⁶⁷

(b) *Long-serving churchwardens*

Parishes with long-serving churchwardens should be alert to the fact that if the Measure comes into force in January 2002, the six-year rule will bite in 2008. Parishes should therefore aim to train someone up to take over the position in that year. Parishes have the option of deciding not to apply the six-year rule; but the normal rule is that after person has served as churchwarden for six years he or she should stand down for two years before serving again as churchwarden.

(c) *The meeting of parishioners*

Ministers need to be aware of the new procedures in time for the next meeting of parishioners. Nomination forms need to be prepared, and the minister must be prepared to consider nominations received only just before the meeting. The minister needs to be able to decide quickly whether to have an election of both churchwardens, or whether to choose one himself and have an election for the other churchwarden.

(d) *Admission to office*

The churchwardens need to be reminded of the importance of attending the admittance to office service, and that if they do not attend, they will have to be re-elected at a new meeting of parishioners.

18. CONCLUSION

With the two exceptions, namely the bishop's right of suspension and the disqualification after six periods of office, the amendments proposed by the Measure are somewhat technical, either clarifying areas which were previously matters of doubt, or dealing with matters of procedure. We see in the Measure an example of the current trend to make the Church subject to the same laws as other voluntary bodies, in the new general disqualification from holding office.

The General Synod's Legislative Committee should perhaps have realised that the bishop's right of suspension was too delicate a matter for the broad brush of the original clause 9. Whether the result would now be any different if the Legislative Committee had started with the much more limited 1999 version is speculation: I suspect not. For some reason the public perception of the Measure has been unfavourable from the outset and, as General Synod acknowledged, the damage having been done, the Church must now win back public approval for its proposal to increase the power of bishops.

⁶⁷ This is obviously a very delicate situation, so it is essential to obtain legal advice.

Churchwardens Measure

ARRANGEMENT OF CLAUSES

Clause

1. Number and qualifications of churchwardens.
2. General disqualifications.
3. Disqualification after six periods of office.
4. Time and manner of choosing.
5. Meeting of the parishioners.
6. Admission.
7. Resignation.
8. Vacation of office.
9. Guild Churches.
10. Special provisions.
11. Savings.
12. Abolition of existing customs.
13. Interpretation.
14. Transitional provisions.
15. Consequential amendment and repeals.
16. Short title, commencement and extent.

SCHEDULES:

- Schedule 1 — Transitional provisions.
 Schedule 2 — Consequential amendment.
 Schedule 3 — Repeals.

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Deleted clauses are as follows:

9. Suspension
10. Suspension: Code of Practice
11. Suspension: right of appeal

and also part of clause 6: clause 6(5)