

# THE PATRONAGE (BENEFICES) MEASURE 1986 AN ANALYSIS OF ITS WORKING IN PRACTICE

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## 1. INTRODUCTION

In an article in this Journal recently Peter Smith set out the history of what he called a most peculiar property, the advowson.<sup>1</sup> He finished by mentioning the introduction of the current legislation, the Patronage (Benefices) Measure 1986. This article seeks to take up where he finished by reviewing the practice of appointments under the 1986 Measure, and considering some of the lessons of the last few years. I shall also argue that the time is right to review the Patronage (Benefices) Measure Code of Practice, in the light of some of the legal issues I highlight.

When reviewing the canon law in the Anglican Communion, Doe points out that ‘with minor differences, the same basic framework is to be found in the law of many churches.’<sup>2</sup> He suggests that there are two models of appointment in the Anglican Communion laws, one of which he calls the English Model and the other the American Model. This English Model is based on the current legislation and practice, but is also rooted in the legal history of the appointment process. It is used not only in England but in other parts of the Communion. The system is described as involving presentation or nomination, admission or institution, and induction.<sup>3</sup> The right of presentation was historically called the advowson.

## 2. THE PATRONAGE (BENEFICES) MEASURE 1986

As set out in Smith’s article, each parish has a patron, whose right to present an incumbent to the bishop for admission, institution and induction is called an advowson. However, over many years in the last century it became clear that the system needed a good overhaul. Some argued that the system should be abandoned entirely, while others argued that there was still merit in having a three-party process involving the patron, the bishop and the parish. Most felt it would be good to involve parishes to a greater extent than had been the case under the older system. As a result of this revision process, the law governing the appointments to incumbencies is now the Patronage (Benefices) Measure 1986. Each parish still has a patron or patrons, whose rights are now registered with the Diocesan Registry.<sup>4</sup> The registered patron has the right to present to the bishop candidates for the incumbency. He is not, however, responsible for stipend or housing once the appointment has been made.

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<sup>1</sup> P. Smith, *The Advowson: The history and development of a most peculiar property* (2000) 5 Ecc LJ 320.

<sup>2</sup> N. Doe, *Canon Law in the Anglican Communion* (Oxford University Press, 1998), p 138.

<sup>3</sup> Doe, *Canon Law*, p 138.

<sup>4</sup> Patronage (Benefices) Measure 1986 (No 3), s 1.

The provisions of the 1986 Measure set out the procedures for filling benefices that become vacant in the Church of England. This is affirmed by Canon C 9, para 1.<sup>5</sup> They apply in most, but not all, circumstances. For example, they do not apply where the patron is the Crown, the Lord Chancellor or the Duchy of Lancaster,<sup>6</sup> or when the bishop has suspended the right of presentation under section 67 of the Pastoral Measure 1983.<sup>7</sup> The full details are set out in the 1986 Measure and in the Patronage (Benefices) Rules 1987, SI 1987/773. Further guidance is given in the Patronage (Benefices) Measure 1986 Code of Practice (issued in 1988). A table summarising the Measure is set out in an appendix below.<sup>8</sup>

Each diocese has an appointed 'designated officer'<sup>9</sup> and the first step in the process is for the bishop to notify the designated officer that a vacancy has occurred.<sup>10</sup> The designated officer then has to notify all registered patrons of the benefice and the PCC secretary.<sup>11</sup> The registered patron, if he is an individual and not a clerk in holy orders, must either make a declaration that he is an actual communicant member of the Church of England or of a church in communion with the Church of England, or he must appoint another who can make such a declaration to act in his stead.<sup>12</sup> If the patron is a body of persons corporate or unincorporate, it must appoint an individual who is able to make such a declaration to act in connection with the vacancy.<sup>13</sup> The designated officer must then pass the name of the person dealing with the vacancy on behalf of the patron to the PCC secretary.<sup>14</sup> As in the law before the Patronage (Benefices) Measure, if the patron is a clerk in holy orders or is married to such a clerk, that clerk is disqualified from presentation to that benefice.<sup>15</sup>

The PCC secretary must then call a meeting of the PCC within four weeks.<sup>16</sup> The purpose of this 'section 11' meeting is to prepare a statement describing the conditions, needs and traditions of the parish, to appoint two lay members of the PCC to act in connection with the appointment of a new incumbent, to decide whether to request the patron to consider advertising the vacancy, to decide whether to request a joint meeting of the PCC with the bishop and the patron, and to decide whether to request a statement in writing from the bishop describing, in relation to the benefice, the needs of the diocese and the wider interests of the Church.<sup>17</sup> There are provisions in the Code of Practice as to the number of representatives to be appointed from multi-parish benefices.<sup>18</sup> There are also guidelines as to how the parishes may be helped to prepare the statement referred to above.

<sup>5</sup> Revised Canons Ecclesiastical, Canon C 9, para 1, provides 'A vacancy or impending vacancy in any benefice shall be notified to the bishop of the diocese to the patron and to the parochial church council, and the provisions of the law from time to time in force relating to the filling of such vacancy shall be complied with'.

<sup>6</sup> Patronage (Benefices) Measure 1986, ss 35, 36.

<sup>7</sup> Pastoral Measure 1983 (No 1), s 70 (amended by the Patronage (Benefices) Measure 1986, s41(1), Sch4, para21).

<sup>8</sup> This was prepared by the author as an appendix to *Situations Vacant: A Guide to the Appointment Process in the Church of England*, D. Parrott and D. Field (Grove Books Pastoral Series No 65, 1996). This booklet is designed to help those involved in a vacancy such as bishops, archdeacons, patrons, PCC secretaries and parish representatives. It is available from Grove Books, price £2.25.

<sup>9</sup> Patronage (Benefices) Measure 1986, s 7(5).

<sup>10</sup> *Ibid.*, s 7(1), (2).

<sup>11</sup> *Ibid.*, s 7(4).

<sup>12</sup> *Ibid.*, s 8(1).

<sup>13</sup> *Ibid.*, s 8(2).

<sup>14</sup> *Ibid.*, s 9(6).

<sup>15</sup> *Ibid.*, s 10.

<sup>16</sup> *Ibid.*, s 11(1).

<sup>17</sup> *Ibid.*, s 11(1)(a)-(e).

<sup>18</sup> Patronage (Benefices) Measure Code of Practice 1988, s 74.

When the PCC or the patron or the bishop requests that there be a joint meeting, this 'section 12' meeting is obligatory.<sup>19</sup> The patron or the bishop may send a representative to the meeting and need not attend in person.<sup>20</sup> The rural dean and lay chairman of the deanery synod must also be invited to attend this meeting.<sup>21</sup> Its purpose is to discuss the PCC's statement of needs and any statement prepared by the bishop at the PCC's request.<sup>22</sup>

One further formal requirement has been added to the process since the passing of legislation for the ordination of women to the priesthood. PCCs are required at the section 11 meeting to decide whether to pass either or both of two resolutions designed to describe their attitude to women's ministry.<sup>23</sup>

From that point onwards the selection of an incumbent is, in general terms, in the hands of the patron. When the patron has chosen the priest to be offered the benefice, he must notify the PCC representatives and the bishop.<sup>24</sup> They may approve the offer before it is made.<sup>25</sup> They have a right to refuse such approval,<sup>26</sup> in which case the patron may refer the matter to the archbishop<sup>27</sup> or select another candidate. There are no grounds set out in the Measure as to why the bishop or a PCC representative may refuse to approve.

When a candidate is thus selected by a patron, and neither the bishop nor the PCC representatives have refused to approve his nomination, he or she is offered the post and, when it is accepted, the patron formally presents the candidate to the bishop for institution.<sup>28</sup>

There is in this part of the law an interesting anomaly. There are no grounds set out in the Measure as to why the bishop may refuse to approve, but Canon C 9, para 2 states: 'Every bishop shall have twenty-eight days' space to inquire and inform himself of the sufficiency and qualities of every minister, after he has been presented to him to be instituted to any benefice.' This seems to be a provision in addition to the right to approve in section 13 of the Measure. The section 13 provision is akin to the old admission process. The bishop must be consulted by the patron under that section before making an offer to present a clerk. If the bishop and the PCC representatives consent, and the clerk accepts the patron's offer to present him, the patron then formally moves to present the clerk to the bishop. It is at that point that both Canon C 9, para 2 and the provisions of the Benefices Act 1898 come into force.

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<sup>19</sup> Patronage (Benefices) Measure 1986, s 12(1).

<sup>20</sup> *Ibid.*, s 12(6).

<sup>21</sup> *Ibid.*, s 12(9).

<sup>22</sup> *Ibid.*, s 12(1), (2).

<sup>23</sup> *Ibid.*, s 11(1)(f) (added by the Priests (Ordination of Women) Measure 1993 (No 2), s 3(7)).

The resolutions under the Priests (Ordination of Women) Measure 1993, s 3(1), (2), Sch 1, are: **Resolution A:** 'That this parochial church council would not accept a woman as the minister who presides at or celebrates the Holy Communion or pronounces the Absolution in this parish'; and **Resolution B:** 'That this parochial church council would not accept a woman as the incumbent or priest-in-charge of the benefice or as a team vicar for the benefice'. Resolution A cannot be considered if the incumbent or priest-in-charge or a team vicar or assistant curate in post in the benefice is a woman: s 3(3).

<sup>24</sup> Patronage (Benefices) Measure 1986, s 13(1).

<sup>25</sup> *Ibid.*, s 13(1)(b).

<sup>26</sup> *Ibid.*, s 13(4). In the event of such refusal by a PCC representative, the patron must be informed in writing of the reasons: s 13(4). What may constitute grounds is not stated. Either PCC representative may refuse to approve: they do not have to act together in this regard.

<sup>27</sup> *Ibid.*, s 13(5).

<sup>28</sup> *Ibid.*, s 13(6).

Under that Act, as amended, the bishop has the right to refuse on certain grounds<sup>29</sup> and these appear to be exactly as repeated in Canon C 10, para 3. This states:

'A bishop may refuse to admit or institute any priest to a benefice

(a) on the grounds that at the date of presentation not more than three years have elapsed since the priest who has been presented to him was ordained deacon, or that the said priest is unfit for the discharge of the duties of a benefice by reason of physical or mental infirmity or incapacity, pecuniary embarrassment of a serious character, grave misconduct or neglect of duty in an ecclesiastical office, evil life, having by his conduct caused grave scandal concerning his moral character since his ordination, or

(b) in the case of a presentee who has not previously held a benefice or the office of vicar in a team ministry, on the ground that he has had no experience or less than three years' experience as a full-time assistant curate or curate in charge licensed to a parish.'

It seems that the grounds on which institution may be refused are set out in this canon, although the drafting makes it a little ambiguous. However, if the bishop has offered his approval under section 13(4) of the Patronage (Benefices) Measure 1986, it would be very strange for him to then withhold it under Canon C 9, para 2, and C 10, para 3, and the Benefices Act 1898. Indeed, it may be argued that as a matter of public law the bishop may be precluded from exercising his power under Canons C 9 and C 10 on the basis that there is a legitimate expectation caused by the silence in relation to section 13(4). It may only be a sustainable objection if the circumstances have changed.

After the formal presentation has been made by the patron to the bishop procedures are begun for the institution or collation of the priest to his new ministry. The mode of institution is covered by Canon C 10, para 6, which states:

'The bishop, when he gives institution, shall read the words of institution from a written instrument having the episcopal seal appended thereto; and during the reading thereof the priest who is to be instituted shall kneel before the bishop and hold the seal in his hand.'

The current form of the oath of allegiance, oath of obedience and declaration of assent are all set out in the canons.<sup>30</sup> The oath against simony is no longer taken.

As in the law prior to 1986, after institution or collation has taken place the bishop instructs the archdeacon to induct. This is covered in canon law and the archdeacon is obliged thereupon to induct.<sup>31</sup> The archdeacon may authorise the rural dean or other clergyman beneficed or licensed in his archdeaconry to induct on his behalf.<sup>32</sup> The mode of induction is that the archdeacon takes the priest to be inducted by the hand and lays it upon the key to the church or places his hand on the church door. At the same time he reads the words of induction. The priest then tolls the church bell to make his induction public and known to the people.<sup>33</sup>

There is also provision in the 1986 Measure regarding lapse. The complex rules of lapse valid before the introduction of the Measure have been simplified. There is now one simple lapse procedure. After the period of nine months from the notification of

<sup>29</sup> Benefices Act 1898 (61 & 62 Vict, c 48), s 2(1)(b).

<sup>30</sup> Canons C 13, C 14 and C 15, respectively.

<sup>31</sup> Canon C 11, para 1.

<sup>32</sup> Canon C 11, para 3.

<sup>33</sup> Canon C 11, para 2.

the vacancy the right of presentation lapses to the archbishop, who then acts in the place of the patron.<sup>34</sup>

### 3. MODELS OF THE APPOINTMENT PROCESS

With the help of David Field, until recently Director of Professional Ministry at the Church Pastoral-Aid Society, I suggest a number of models representing ways in which the appointment process described above is operated by the various people involved in the system.<sup>35</sup> The way in which the process is handled is dependent to some extent on the understandings of the church and its ministry which are held by those who manage the process.<sup>36</sup> Although presented as separate models they are not necessarily mutually exclusive.

#### (a) *Presentation Model*

In this model of the process a bishop or patron will ask people in the church to trust that he or she knows what they are doing and to leave them to get on with it. After very little parish consultation, during which time the parish may well feel they have rather been left in the dark, a name will emerge from on high and be presented to the parish. The assumption that has been pre-established is that if this name has come from bishop or patron it must be good and right. It may perhaps be summed up in the phrase: 'Trust me and I'll decide what's best!'

#### (b) *Collaboration Model*

This is perhaps the opposite end of the spectrum to the presentation model. In this way of working the patron will seek to draw all parties, bishop, patron and parish into a common understanding of the needs and possibilities. At most stages of the process as much information and help will be spread as far as possible and all parties will be kept as fully informed as is possible and will be able to put comment into the system. It may be summed up in the phrase: 'Let's work this out together'.

#### (c) *Consultation Model*

This and the next model are both somewhere between the first two. In the consultation model there is a sense in which the person driving the appointment process is genuinely seeking the opinion of those who are otherwise involved. However, the opinion is sought as a way of helping the patron to decide what will be his decision about the presentation. After the initial consultation the parish may not hear much news until a person is presented to them for approval. This may be summed up in the phrase: 'Tell me what you think before I decide'.

#### (d) *Competition Model*

In this model the idea of competitive interviews is the driving force. Only the patron may decide to advertise the post,<sup>37</sup> and it is a matter of some debate as to whether this is the best method.<sup>38</sup> It certainly creates a lot of paperwork for the patron, or who-

<sup>34</sup> Patronage (Benefices) Measure 1986, s 16.

<sup>35</sup> Parrott and Field, *Situations Vacant*, pp 8, 9.

<sup>36</sup> See Section 5(g) below.

<sup>37</sup> As has been stated, the PCC may request him to do so: Patronage (Benefices) Measure 1986, s 11(1)(c).

<sup>38</sup> There is a widespread assumption that the term 'advertise' here means advertise in the Church press. Many patrons would advertise a post through such forums as the Clergy Appointments Advisor's list, or the Evangelical Patronage Consultative Council (at CPAS), whether or not the parish has requested that the post be advertised. Generally the author would call this advertising, but it may not be what most people mean when they consider the Patronage (Benefices) Measure 1986, s 11(1)(c).

ever has to receive replies, issue papers, receive applications and shortlist candidates. The pattern would be, in this model, to shortlist a few candidates and see them next to one another in order to decide who is best for the job. The phrase that may sum it up is: 'The best applicant gets the job'.

*(e) Networking Model*

Some posts are filled, not on the basis of any public advertisement or notice, but by the use of one network or another. It may be that, by virtue of contacts made by the patron with friends or people of like mind, a name comes to the fore. This method was, for example, described to me by a private patron of a very high Anglo-Catholic church who contacted a number of like-minded bishops and a college principal to ask for names. It may be summed up as: 'Jobs for the boys'.

*(f) Ring-fencing Model*

The final model is a similar method to the last but with a different bias. In it the appointment is restricted to a person who meets certain criteria. It may be that in some circumstances this and the networking model are both proceeding at the same time. In the ring-fencing model a bishop may say that an appointment may only be made from within the diocese. Alternatively, membership of certain interest groups, or those who hold a certain theological position, may be fundamental to the whole process. This may be summed up as: 'Fish in this pond only!'

#### 4. REFLECTIONS ON THE MODELS OF THE APPOINTMENT PROCESS

It is clear that the Patronage (Benefices) Measure 1986 allows a degree of flexibility in its application and interpretation by those who have the various responsibilities. There can be a clear conflict between the needs of the bishop, who has responsibilities beyond those in this Measure, and the patron. Experience shows that bishops frequently feel caught between the needs of the parish, the needs of the diocese, the rights of the patron, and the requirements to operate within the law of this Measure. Each of the above models shows some degree of flexibility and some comply more with the letter of the law than others. If parishes come from a broadly congregational model of the church then the bishop is unlikely to succeed in taking the line suggested in the Presentation Model without some critical comment from the PCC or its representatives. Equally this model seems inappropriate and unlikely if the appointment is to be made to a team ministry where, by definition, a patronage board is in existence.

A brief reflection on how each of the models of the appointment process sits before the law may be helpful. It is quite possible that any of these models may be lawful if followed carefully and appropriately. However, each has its dangers. In the Presentation Model there is a grave danger that the bishop, particularly when he is not the patron, may act unlawfully in giving the impression that he is able to sort out the appointment. There are plenty of examples, cited by people such as David Field, of bishops moving the process forward well beyond the information gathering stage and even into the stage of an offer without fully involving the patron. Indeed, I am aware of one situation when the bishop made an offer to a priest and published the appointment before being told by his own diocesan board of patronage that it was the patron and that he had no right to make such an offer. A mistake of this nature is probably due to a bishop operating within this Presentation Model. It is however a simple case of the bishop acting illegally and in ignorance of the law and the facts.

The Collaboration Model has other dangers. The Measure seeks to establish a three-fold responsibility, described by Parrott and Field as the tripod of responsibilities.<sup>39</sup> Whilst collaboration is a good thing, it can lead to a blurring of the distinct legal roles of each party, and this may not always be helpful.

In the Consultation Model the patron seeks the advice of the parish and then acts within his or her own legal responsibility. The consultation may be with the PCC or its representatives. Generally there is little scope, if this model is being operated, to step outside the lawful roles. However, if a patron gives the impression that his decision is final he may undermine the lawful role of the parish representatives, who could be given the impression that the consultation is a substitute for their legal discretion to approve or refuse to approve a specific candidate. This would not be lawful.

The Competition Model is used more frequently than in the past, especially by those who take the view that open advertising of posts in the press is a good way of establishing shortlists for a post. The main legal danger here is once again a blurring of the lawful roles. It is common for an interview within this model of practice to be a joint interview with the patron, bishop and PCC representatives all present. It may work well. On the other hand, it may be open to abuse by bishop or patron and lead to the undermining of the role of the parish representatives.

The Networking Model is again rooted in the desire to gain a suitable list of candidates to shortlist, but can once more have its dangers. Whilst the parish is entitled to ask for the patron to consider advertising the post,<sup>40</sup> it is ultimately up to the patron whether this is done. A patron favouring this model of working may refuse to advertise and then shortlist from his own network of contacts. That would be lawful. It is for the patron to decide how he finds a candidate. It is necessary though for a proper account to be taken of the parish profile, and if this method seems to override the profile, and bring to the fore unsuitable candidates, it is likely that the patron will be the loser. I was told recently of a parish in which this model was operated by the patron. A series of candidates were presented and the parish representatives withheld their approval. Eventually the patronage lapsed, the Archbishop of Canterbury passed the matter back to the diocesan bishop who then came up with a suitable priest for the archbishop to present. The main loser was the patron.

Finally, the Ring Fencing Model has some distinct legal problems. It is unlawful for the bishop to seek to influence the patron in this way. However, it is not unusual. The only proper course for the bishop, if there are real diocesan issues, is to withhold his approval of a presented candidate or, at the beginning of the process to move, through the Pastoral Committee, for suspension under section 67 of the Pastoral Measure 1983. The current culture in the church seems to lead bishops towards this latter course all too easily, and that is not a good way of handling the rights of patrons as enshrined in the law. It may well be that suspension in such circumstances is not lawful in any event.<sup>41</sup>

It can be seen, therefore, that each Model has its pitfalls, but each can be a lawful way of interpreting the Measure. All are probably attempts to balance the needs of the parish and diocese with the requirements of the Measure and, when undertaken with

<sup>39</sup> Parrott and Field, *Situations Vacant*, p 4.

<sup>40</sup> Patronage (Benefices) Measure 1986, s 11 (1)(c).

<sup>41</sup> See *R v Bishop of Southwark, ex parte Churchwardens and PCC of St Luke's, Kingston upon Thames* (13th November 1995, Brooke J).

good grace and an understanding, the proper lawful roles of those involved can be an appropriate way of dealing with the appointment.

## 5. ISSUES

This section will seek to draw out some of the key themes which are raised in this article, particularly those which reflect legal issues in the practice of the appointment to incumbencies in the Church of England. I have identified seven areas within the current law and practice which raise legal issues to do with the Patronage (Benefices) Measure 1986, which may be said to be either controversial or in need of review.

### *(a) Types of law*

There is a great lack of understanding at ground level among those upon whom rights and duties are placed by the Measure, namely bishops, archdeacons, other clergy, PCC representatives and patrons, as to the distinction between primary legislation, secondary legislation and quasi-legislation. In this specific area of law there are three key documents which govern the way in which people practice. The first is the legislation, the Measure itself. Secondly, there is a piece of secondary legislation, the Patronage (Benefices) Rules 1987. These rules consist in a statutory instrument, pursuant to the Measure, and govern mainly the initial phase of the Measure's work, concerning registration of patron's rights and the forms which are to be used consequent on the Measure's provision. They were prepared by the Patronage (Procedure) Committee.<sup>42</sup> In addition there are guidelines which have been issued both by Church House<sup>43</sup> and by many dioceses. These are quasi-legislation. Because of a lack of understanding there are many instances where, for example, the Code of Practice issued by the General Synod in 1988 or diocesan guidelines are quoted as the authority for some action or another when they are not in fact authoritative. An example arose when I left my last benefice and was helping establish a procedure for the vacancy. The diocesan guidelines made no reference to the provisions for multi-parish benefices in the Measure.<sup>44</sup> There were in that benefice seven churches and six parishes. The archdeacon said that the parishes would have to appoint two representatives at the joint PCC meeting to represent all the PCCs of the benefice. Clearly this was not very satisfactory and on reference to the Code of Practice<sup>45</sup> his advice was changed. However, why should the Code have more force than the diocesan guidelines, since both are quasi-legislation?

### *(b) Confusion of roles*

The Measure makes clear that there are three key parties who have a role in the appointment process (four if the matter lapses to the archbishop). The bishop, the patron and the appointed PCC representatives all have well-defined roles in the process. However, when those roles are not properly understood confusion and tension enter the process. There is much anecdotal evidence, from the interviews and paperwork I have collated during my research, to suggest that many people do not rightly understand the extent and limits of their roles. This is perhaps most easily seen in the role of the bishop, who has to understand that his role may be different in each vacancy due to the various factors involved. In one case he may be patron and have a very wide-ranging role, while in another there may be an active and effective patron, whose rights need to be clearly understood.

<sup>42</sup> Patronage (Benefices) Measure 1986, s 38(2), (4)–(6).

<sup>43</sup> The authorship of these is not identified. They are copyrighted to the Central Board of Finance.

<sup>44</sup> Patronage (Benefices) Measure 1986, s 23, Sch 2.

<sup>45</sup> Patronage (Benefices) Measure 1986 Code of Practice 1988, s 74.

In my researches some bishops have complained that patrons have no responsibility for what happens after the appointment is made, and use this as a way of claiming that the patron needs to have more direction from the bishop. While this is understood, the historical perspective is that the patron was in some way protector of the parish and that the role should continue between vacancies; this is no longer the case in practice. There are certainly still examples of the patrons of a parish being involved as a helpful external agent, perhaps especially in places where one of the established trusts or a college is patron. However, there is now no formal role for the patron as a protector.

Nonetheless, I would suggest that bishops need to be cautious about their negativity towards patrons (and it is quite widespread). Most of the negative opinions given to me were based on a few poor examples of bad practice by patrons, and the bishops must learn to live with the tripod as it can be at its best and not be lured into any sort of abuse of their powerful role in the church.

*(c) The right to refuse approval*

Another area of misunderstanding is on the part of the PCC representatives. Some who are asked to take on this role see themselves in the 'employer' role, as if in a work situation, and become very frustrated at the lack of consultation with or control by the parish. PCC representatives need to know that they have only one function and that is to approve or refuse to approve the making of an offer to a candidate. It is worth noting that the Measure does indeed give them this responsibility in its positive form.<sup>46</sup> It is commonly referred to as the right of veto. This may seem a trivial point, but it does rather move their function from being those who affirm the offer to a person, into something more of a gatekeeper at the door of the benefice. The extent to which the PCC representatives are used in the process will depend on the same raft of variables, as in the models above. In some instances they will be willingly and fully consulted. At other times they will simply be invited to approve one name, having had no other part in the process at all. Wisdom is needed by those who have the authority in the church to make the process work and in setting up realistic expectations in those who are appointed to this role.

*(d) Time limits*

There is a widespread concern that the time limits in the Measure are too short. In days of instant electronic communication it is interesting that there is so much concern about this. It occurs mostly in the context of multi-parish benefices. In such situations there are often multiple patrons to consult, as well as many churchwardens and parish representatives. The time taken to bring all who are involved in a multi-parish benefice fully into the process can mean that the nine months lapse period<sup>47</sup> seems very short. This problem does not exhibit itself only in multi-parish benefices. In many dioceses there is concern that the time for lapse is too short. Sometimes this is due to the fact that dioceses are keen to see the appointment system work slowly since vacancies are a vital part of balancing the diocesan budget. If the diocese drags its feet for this reason then the patron may be the loser. All in all there is a desire abroad to see the time limits reviewed.

*(e) Section 12 meeting*

Yet another area of concern is over section 12 meetings. The provision in the Measure is presumably intended to ensure that a parish can call such a meeting if it needs

<sup>46</sup> Patronage (Benefices) Measure 1986, s 13(1)(b)(i).

<sup>47</sup> *Ibid*, s 16(1).

to find out more about the intentions of the diocese and the patron. However, there is a widespread view that if such a meeting happens at the time it is scheduled for in the Measure it is really too late. The preparatory work should all have been done before that meeting. In many dioceses there is a strong pressure from those in authority to ask PCCs not to call for such a meeting. In some dioceses this pressure is accompanied by a willingness to meet with the PCC at the very beginning of the process and it seems to me that such a meeting is far more satisfactory. One bishop said that if the informal meeting is handled correctly it should be possible always to avoid the need to have a section 12 meeting. Further, he takes the view that if a section 12 meeting is called the only lawful item on the agenda is the bishop's statement about the needs of the diocese and rarely is that what the parish really wants to discuss. It may be that it would have been far better to schedule a formal meeting of PCC, patron and bishop at the beginning of the process. In my own diocese this often happens and in this more informal meeting the archdeacon, and sometimes the rural dean, also attends to discuss arrangements for the interregnum.

*(f) Admission*

There are some significant legal issues and confusions concerning the step of admission. In the old system admission was the step by which the bishop, after examination, admitted the priest to the benefice, before instituting him. For many practical purposes this step of admission disappeared under the old system and rarely was a formal step actually taken. In practice, admission and institution were seen as one act. Under the new system the bishop now has to take a step equivalent to the old admission.<sup>48</sup> There is, however, a further provision left over from the previous legislation whereby the bishop can refuse to institute, even after he has admitted.<sup>49</sup> The grounds on which refusal at either stage is permitted are unclear. For a consideration of this see above. This anomaly is strange, and it may well be that there is no conceivable circumstance in which the 1898 Act would be used. It might be appropriate to consider whether an amendment is necessary to clarify this area of the law.

*(g) Traditions of the parish (section 11 statement)*

One final, but perhaps most important, area where review may be needed is to do with the preparation of a parish section 11 statement. The 1986 Measure states that the PCC must prepare a statement of the conditions, needs and traditions of the parish.<sup>50</sup> The Code of Practice produced in 1988 has a section in which it gives guidance as to what a PCC might include in such a statement,<sup>51</sup> and from my researches it appears that the majority of dioceses issue guidelines which broadly follow the pattern suggested in the Code. The terms of this guidance are almost exclusively factual in nature. This only partially addresses the threefold term: conditions, needs and traditions.

On the occasions when a parish, after receiving a new incumbent, goes into some sort of pastoral crisis, the seat of that crisis is unlikely to be to do with the facts as were revealed in the parish profile in its current common form. It is more likely that it was to do with one of two issues: the theology of the church or the theology of the ministry held by either the priest or the congregation.

<sup>48</sup> *Ibid.*, s 13(1)(b)(ii).

<sup>49</sup> Benefices Measure 1898, s 2(1)(b).

<sup>50</sup> Patronage (Benefices) Measure 1986, s 11 (1)(b).

<sup>51</sup> Patronage (Benefices) Measure 1986 Code of Practice 1988, s 47.

I have argued elsewhere that there is a need to review the practice of appointments under this Measure.<sup>52</sup> As well as the models of the appointment process considered above in this article, I have used models of the church and of the ministry to point out that there is a need for those involved in the appointment process to establish what is the understanding of the church and of the ministry held by the parish in question, and by the minister who might be appointed. It seems to me that the current Code of Practice and the majority of diocesan guidelines are in some degree defective in their interpretation of the Measure. The usual guidelines encourage a parish to describe the conditions and needs of a parish. If the word 'traditions' is also taken into account, then it is necessary to get some idea of the way the church is thinking about the nature of being the Church and the nature of the ministry they require for the future. Some better interpretation and practice of eliciting this threefold information about conditions, needs and traditions would mean the chances of poor or inappropriate appointments would be reduced.

## 6. CONCLUSION

I would suggest, therefore, that the time is right to reconsider the Code of Practice first published in 1988. Whilst a review of this Code could look at the legal issues raised above, it could also give guidance as to how to make the whole appointment more theologically appropriate. Such guidance could be the saving of many a parish.<sup>53</sup> It may also be appropriate to consider whether the Measure itself needs amending to take proper account of the process of admission, and to unravel the confusion as to whether admission takes place at the point of approval by the bishop under section 13(4), or at the point of presentation under section 13(6).

## APPENDIX

### The 39 steps A step by step guide to the Patronage (Benefices) Measure 1986

Step	Action	Form	Time limit	P(B)IV
1	The bishop is notified of a vacancy			
2	Bishop gives notice of vacancy to designated officer		If on death, as soon as practicable. If on resignation then such notice of vacancy as bishop considers reasonable.	s 7(1)
3	Designated officer sends notice of vacancy to the registered patron	31	as soon as practicable after step 1	s 7(4)
4	Registered patron decides who will be the named representative of the patron to act in this case			s 8 (1), (2), (3)
5	Presenting patron sends to designated officer declaration of actual communicant membership/ordination or names a representative to act who can make this declaration	15 or 16	within 2 months of step 3	ss 8 (1)(a) (b), 9(1)

<sup>52</sup> This was in an unpublished essay prepared for the Master of Laws degree in Canon Law at Cardiff University.

<sup>53</sup> The author expresses his thanks to Chancellor Mark Hill for his helpful critique of the first draft of this article.

Step	Action	Form	Time limit	P(B)IV
6	If patron fails to do so in time limit, designated officer notifies bishop and patron that presentation lapses to the diocesan bishop		at end of two months from step 3	s 14(1)
7	On receipt of declaration in step 5 designated officer sends name and address of patron to PCC secretaries if necessary	31 or 33	as soon as practicable	s 9(6)
8	Designated officer sends notice of vacancy to secretary of all PCCs involved	31	as soon as practicable step 3	s 7(4)
9	PCC secretary calls joint meeting of all PCCs involved to consider s11(1) agenda and resolutions under Priests (Ordination of Women) Measure 1993.		within 4 weeks of step 8	s 11(1)
10	PCC secretary sends to bishop and patron results of PCC in the six areas under step 9 <b>NB</b> If PCC secretary fails to send statement after a meeting held within 4 weeks then PCC representatives lose their right to refuse approval of priest chosen by patron under step 20	34	as soon as practicable after step 9	s 11(8)
11	Patron may request s 12 meeting	35	within 10 days of receipt of step 10	s 12(1), (3)
12	Bishop may request s 12 meeting	35	within 10 days of receipt of step 10	s 12(1), (3)
13	Bishop sends statement if requested in step 9		within 10 days of receipt of step 10	s 12(2)
14	If a s 12 meeting is requested by anyone then the PCC secretary must call a PCC meeting and give notice to PCC members, bishop, patron, rural dean and lay chairman of deanery. The bishop, and patron may send a representative.  <b>NB</b> If PCC secretary fails to convene a PCC within the period then the PCC representatives lose their right to refuse approval of a candidate under step 20		meeting must be held within 6 weeks of either resolution at step 8 or of step 11 or 12.  Notice of meeting must give 14 days' notice	
15	s 12 meeting is held			
16	If no s 12 meeting is requested then patron can proceed to step 17. If a s12 meeting is requested but is not called by the PCC secretary the patron cannot proceed as far as step 20 until 6 weeks from the notice, i.e. time limits in step 14 have passed			s 13(1)(a)(iii)
17	Patron selects a candidate. This can be by various methods—see main text		none but note step 26	
18	Patron seeks approval for one candidate from bishop	36		s 13(1)(b)
19	Patron seeks approval for one candidate from PCC representatives	37		s 13(1)(b)

Step	Action	Form	Time limit	P(B)IV
20	Each PCC representative gives approval to patron for his chosen candidate (go to step 24) or refuses approval (go to step 22)		within 2 weeks of request from patron or the reply is deemed to be approval.	s 13(3)
21	Bishop replies to patron giving approval of chosen candidate (go to step 24) or refuses approval (go to step 22)		within 4 weeks of request from patron or the reply is deemed to be approval	s 13(2), (4)
22	Patron, if refused approval for his chosen candidate, decides whether to ask the archbishop of the province for the refusal to be reviewed (go to step 23). Alternatively the patron may consider other candidates (go to step 17)			s 13(5)
23	If requested to do so, the archbishop investigates the matter and either overrides the refusal (go to step 24) or upholds the refusal (go to step 17)			s 13(5)
24	Patron makes formal offer to priest chosen			s 13(6)
25	Priest accepts offer			s 13(6)
26	Patron gives notice of presentation to bishop. If within time limit, go to step 33. If not, go to step 27	38	within 9 months of the benefice becoming vacant.	s 13(6),
27	If notice of presentation is not sent within nine months of the vacancy then the right of presentation lapses to the archbishop			s 16(1)
28	Archbishop requests the statement, and information he requires from bishop of diocese			s 16(3), (4)
29	Archbishop selects candidate. He might ask for help or advice from diocesan bishop in this matter			s 16(5)
30	Archbishop makes offer to priest			s 16(6)
31	Priest accepts offer			s 16(6)
32	Archbishop gives notice of presentation to diocesan bishop (go to step 33)			s 16(6)
33	Bishop may refuse to institute priest (go to step 34) or agree to do so (go to step 35)			
34	Patron or priest may appeal to archbishop and Dean of the Arches. If they allow the appeal, go to step 35. If they refuse the appeal, go to step 17. (This is a residual right from earlier legislation and it is suggested that if a bishop is not happy with the choice he is likely to use refusal under step 21 rather than wait to this late stage)			s 18 (amending Benefices Act 1898, s 3)
35	Bishop notifies proposed institution, with date if practicable, to designated officer, registrar, priest, archdeacon, and rural dean			s 19(1)
36	Designated officer notifies PCC secretary of date of institution	17		s 19(4)

Step	Action	Form	Time limit	P(B)IV
37	PCC secretary displays statutory notice of intention to institute or collate for two weeks. At the end of this period the secretary endorses the notice and returns it to the designated officer	17		s 19(2)
38	Bishop institutes or collates the priest			
39	A new ministry begins.			