
The Dioceses, Pastoral and Mission Measure 2007

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The Dioceses, Pastoral and Mission Measure 2007 is the longest and widest-ranging piece of legislation to come before the General Synod since the early 1980s. Like the recommendations of the Review Group under Professor Peter Toyne, to which it gives effect, the Measure focuses on the twin themes of mission and ministry. The Review Group's remit was 'to ensure flexible and cost effective procedures which fully meet changing pastoral and mission needs', and the Measure extends to areas of the life and legislation of the Church of England as diverse as the Church's provincial and diocesan structure, the delegation of episcopal functions, diocesan administration, and the processes for making changes to local church organisation and closing churches for regular public worship. The Measure also establishes a single central Church source of information and advice on church buildings. Finally, it provides a very practical example of the concept of a 'mixed-economy church' by laying down the legal framework for the new bishops' mission orders, which are intended to provide endorsement, supervision and support for a wide and growing variety of new mission initiatives, but without undermining the traditional parochial structures. The article sets out to provide an overview of the legislation, and to highlight the provisions that are likely to be of particular importance in practice or of particular interest for the study of ecclesiastical law.

INTRODUCTION

The Dioceses, Pastoral and Mission Measure 2007¹ forms the central part of the most substantial legislative 'package' to come before the General Synod since the 1980s. The 2007 Measure itself, with its 66 sections, divided into eight Parts, and its seven fairly lengthy Schedules, has to be read with a new Canon (Amending Canon No 27), amendments to the Vacancy in See Committees Regulation, and the House of Bishops' Code of Practice on Bishops' Mission Orders.

However, the sheer length of the 2007 Measure is by no means its most significant feature. Its importance lies in the fact that it sets out to support and enhance the most fundamental aspects of the work of the Church of England – the Church's mission and ministry to the whole nation – in ways that will affect a very wide spectrum of different aspects of the Church's life, and many different areas of its legal framework. The changes that the Measure has made to existing legislation range from detailed amendments on the one

1 2007 No 1, referred to throughout this article as 'the 2007 Measure' or, for repeated references, 'the Measure'.

hand to the complete replacement of some long-standing provisions on the other, as well as introducing a wholly new concept in the form of bishops' mission orders. Although it involved some substantial issues of principle, the Measure commanded a broad consensus of support throughout its passage through the Synod – so much so that there was only a single vote against it on Final Approval – and the same was true of its consideration by the Ecclesiastical Committee of Parliament and the two Houses of Parliament.

The work of putting the Measure and its accompanying provisions into effect is now beginning, and it will certainly take several years before the Church is in a position to assess its full significance and to review how successful it has been in achieving its objectives. Even an attempt to summarise all the detailed provisions of the Measure would be far beyond the scope of an article of this kind.² Thus what this article sets out to provide is a brief overview of the broad objectives of the Measure and of some of the provisions that attracted particular interest during the legislative process or that are likely to be of particular importance in practice, together with suggestions for some sources of further information.

'A MEASURE FOR MEASURE: IN MISSION AND MINISTRY' AND 'A MISSION-SHAPED CHURCH'

The origins of the 2007 Measure lay in reports by two Working Groups that were considered, and welcomed, by the General Synod in July 2004. The first of these was *A Measure for Measures: in mission and ministry*,³ the Report of a Review Group chaired by Professor Peter Toyne, which had been set up by the Archbishops' Council in 2000 to review the Dioceses Measure 1978 ('the 1978 Measure'), the Pastoral Measure 1983 ('the 1983 Measure') and related legislation. The second was *Mission-shaped Church: church planting and fresh expressions of church in a changing context*, the report of a Working Group chaired by the Bishop of Maidstone (the Rt Revd Graham Cray).⁴

The Toyne Group's terms of reference made it clear that the purpose of the review was 'to ensure flexible and cost effective procedures which fully meet changing pastoral and mission needs'. That was one of the core principles underlying the Group's recommendations, and the twin imperatives of mission and ministry were of course echoed in the title to its Report and later in the short title of the 2007 Measure. In particular, the recommendations were directed towards helping the Church to relate to present-day society,

2 For that, the reader may find it helpful to consult the full text of the report on the Measure which the Legislative Committee of the General Synod submitted to the Ecclesiastical Committee of Parliament in April 2007. (This can be obtained from the Legal Office of the National Institutions of the Church of England.)

3 GS 1528, published London, 2004.

4 GS 1523, published London, 2004.

given that it is increasingly mobile and characterised by continuing rapid change, that its understanding of community is often based less on a common geographic location than on networks linked by common interests or other common factors, and that a large proportion of its members have no experience of or any real contact with the Church. All these features present new challenges to the Church, and the Group recognised that the Church's legal structures had to facilitate the changes needed in order to meet them.

Nonetheless, the Toyne Group saw it as equally essential to preserve and support some fundamental features of the Church's historic structures, without which it could not continue to fulfil its mission and ministry to the nation. Moreover, the Group accepted that, if the new provisions were to be effective in helping the Church to develop and revitalise itself without losing all that is valuable in this inheritance from the past, they must be set within an overall framework of order, including fair consultation processes and proper checks and balances.

Dioceses

The Group's work was divided into three sections, dealing with dioceses, 'neighbourhood and network' and church buildings, although some of the main themes of the report spanned two or all three of those sections. So far as dioceses were concerned, one of the Group's main concerns was that the 1978 Measure had not provided effective machinery for keeping the Church's diocesan structure under active review and in line with present-day conditions. Thus the Group recommended that it should be completely replaced by new procedures spearheaded by a proactive central body. At the same time, the Group wished to see functions that were carried out or controlled by the central Church devolved to dioceses where that could be done efficiently and cost-effectively. It also wished to empower dioceses to simplify and streamline their own committee structures, and to encourage joint administrative arrangements between neighbouring dioceses.

Church Buildings

Turning to church buildings, one of the main groups of issues that the Toyne Group addressed related to what the 1983 Measure termed 'redundancy' (an expression that the Group itself saw as unhelpful and wished to see replaced by 'closure of a church for public worship'). In part, the Group's recommendations were intended to simplify and streamline the process for taking decisions about the future of those church buildings that had to be closed. However, it also saw the need for another concept, that of 'extended use', where regular public worship continued in part of the church building while part was leased for other purposes, but without the need to go through the formal process of closing the church or even part of it. A further set of

recommendations was directed to rationalising the central Church's specialist advisory functions in relation to church buildings.

Neighbourhood and Network

The third area of the Group's work, 'neighbourhood and network', covered the parish, benefice and 'pastoral reorganisation' aspects of the 1983 Measure, although it went well beyond them. One aspect of the 1983 Measure that the Group emphasised was the factors that those who had responsibilities under that Measure should take into account in discharging them. The Group recognised that making better provision for the cure of souls must, of course, continue to be one of those factors, but it recommended that the legislation should at the same time make explicit the need to have regard both to mission and to financial considerations.

A second main theme of the 'neighbourhood and network' part of the Group's report, flowing from the demands of mission, was that the national Church needed to develop what the Archbishop of Canterbury has described as a 'mixed economy'.⁵ This involves preserving and supporting the parochial system as an essential and central part of the Church's strategy for fulfilling its role. Indeed, it helps to support the sense of neighbourhood and local attachment that many value as providing stability and continuity, however mobile their lifestyle. However, the concept of a 'mixed economy' also involves developing new ways of being church that collaborate with and complement the parochial system, to bring the Church's mission to the people and the parts of the national life that the parochial system alone cannot reach.

That was very much an area of common ground with *Mission-shaped Church*, which dealt in particular with the concept of 'fresh expressions of church'. This term covers the increasingly wide variety of new forms of church mission that are emerging and being put into practice in the Church in an equally wide variety of contexts. As well as experimenting with new ways of reaching out to those who have no experience of 'traditional' churchgoing, or who have simply found little in it of relevance to their own lives, the 'fresh expressions' cater for communities based on networks linked by common interests or other common factors, rather than on geographical location. Many of them can and do operate within the legal structures that the Church has inherited from the past. However, others operate across existing geographical boundaries, and there may be deanery, archdeaconry and even diocesan boundaries as well

5 This expression has been used by the Archbishop on a number of occasions, but originally, so far as the General Synod was concerned, in his first Presidential Address 14 July 2003. See (2003) 34(2) *Report of Proceedings of the General Synod*, 235–240, also available at <<http://www.cofe.anglican.org/about/gensynod/proceedings/2003jul/rp2003julday4.pdf>>, accessed 25 June 2008.

as those of parishes. Some 'fresh expressions' are not, and are simply not intended to be, defined in geographical terms. The Toyne Group recognised that, for this and other reasons, there were a substantial number of 'mission initiatives' for which a new legal structure was needed, providing support, recognition and accountability, and capable of undergirding new and imaginative ventures as they made their appearance in the future. Thus it was this recommendation that gave rise to some of the most innovative provisions in the 2007 Measure.

The Legislative Programme

On any footing, the Toyne Group's report amounted to an ambitious legislative programme. One item that was seen as particularly urgent was a new power to lease part of a church for other purposes, without the need to close the whole church or the part in question for regular public worship, and this was taken forward separately in the Pastoral (Amendment) Measure 2006. There was one major aspect of the Group's recommendations (namely consolidation of the whole of the legislation on the main subjects covered by the 2007 Measure) that had to be left for the future in order to complete the bulk of the work on the substantive changes as rapidly as possible. However, the 2007 Measure was able to implement, and in some cases develop, most of the Toyne Review's main recommendations. The paragraphs that follow provide a brief account of how it did so, highlighting some of most important features of the Measure.

THE SHORT TITLE AND PART I OF THE 2007 MEASURE: THE GENERAL PRINCIPLE

Although Part 1 of the Measure contains only one section, that section was the product of a great deal of careful thought, and attracted a fair amount of discussion and debate during the Measure's passage through the Synod. It evolved from the Toyne Review's recommendation in favour of an express provision setting out relevant considerations for decisions in the area of 'neighbourhood and network'.

As the thinking on the Measure developed, it was decided that, to some extent, that recommendation could and should be dealt with in Part VI of the Measure. However, the importance of mission was such that there should also be a 'signpost' to it in the short title, along with 'Dioceses' (from the 1978 Measure) and 'Pastoral' (from the 1983 Measure). In addition, an introductory section 1 was included; applying not merely to the 'neighbourhood and network' provisions but to the whole of the 2007 Measure and the 1983 Measure, it imposed a duty on 'any person or body carrying out functions under this

Measure or the Pastoral Measure 1983 to have due regard to the furtherance of the mission of the Church of England’.

One can find forerunners for this approach in the introductory sections to the Care of Cathedrals Measure 1990, the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 and the Clergy Discipline Measure 2003. The drafting of those earlier sections also provided at least a partial model for framing a general duty that was to span a very wide range of functions, ranging from those of the new Church Buildings Council in relation to the Church’s built heritage under Part VII to those of the bishop and others in relation to the new bishops’ mission orders under Part V. The particular value of the expression ‘have due regard to’ here is that it requires the person or body concerned to take the furtherance of mission into account alongside the other relevant factors in relation to any given function, and to give each of them whatever is the appropriate weight in that particular context. It is also essential to the proper understanding of section 1 to recognise that ‘mission’ in that section does not simply refer to evangelism. This is because the term ‘mission’ itself is given a broad statutory definition, in section 62(1), referring to ‘the whole mission of the Church of England, pastoral, evangelistic, social and ecumenical’, which again echoes earlier legislation.⁶

Thus the use of the ‘have due regard to’ formula, and an appropriately wide definition for ‘mission’, made it possible for section 1 to do what the Toyne Group had wished, and more, without ‘unbalancing’ the proper consideration of the functions to which the section applies. Clearly, it has a ‘symbolic’ significance in underlining the importance of mission at the outset in the 2007 Measure; only the future will reveal how far it results in practice in substantially different decisions from those that would have been reached without it.

PART II OF THE 2007 MEASURE: DIOCESAN AND PROVINCIAL STRUCTURE

With more than twenty sections, together with two of the Schedules, this is the longest Part of the Measure. It replaces the 1978 Measure but also goes further, and it is made up of a number of different component groups of sections, linked by the general objectives of Part II as a whole. It contains a good deal that readers of this *Journal* may find of interest from the point of view of the ‘constitutional’ framework of the Church of England.

It may also be helpful to explain at the outset that although the new Dioceses Commission is expected to produce guidance, in particular for bishops and

6 Beginning with the new section 2 inserted into the Parochial Church Councils (Powers) Measure 1956 by the Synodical Government Measure 1969, s 6.

diocesan secretaries, on the operation of Part II, that guidance was not in existence at the time this article was written.

Reorganisation Schemes under the 1978 Measure

Sections 2–10 of the 2007 Measure need to be read against the background of sections 1–9 of the 1978 Measure. That Measure set out to allow for changes in diocesan structure – ranging from adjustments in diocesan boundaries to the creation or dissolution of a diocese – by means of ‘reorganisation schemes’, which had to be passed by the General Synod but did not require the full Measure procedure. It also established a wholly appointed Dioceses Commission, which had some advisory functions but whose main role was to deal with the reorganisation schemes and some other procedures under the 1978 Measure.

In order to begin the process for such a scheme, the diocesan bishop or bishops concerned had to prepare proposals and then, with the consent of the Archbishops’ Council,⁷ submit them to the Commission. It was then for the Commission to prepare a detailed assessment of the financial effects of the proposals, in consultation with the Church Commissioners and, if it decided to take the proposals further, to draft a scheme to give effect to them and carry out consultation with specified ‘interested parties’. Following that consultation, the Commission had a further opportunity to decide not to proceed with the proposed changes; otherwise, it submitted the draft scheme, with any amendments, to the diocesan synod of each diocese affected. The process could continue beyond that, by submission of the scheme to the General Synod, only if each of the diocesan synods consented. The sole exception to this rule was that, where more than one diocese was involved, the Archbishops’ Council⁸ could decide that the interest of one of them in the scheme was so small that its diocesan synod should not have such a veto. Assuming the process was to continue, the scheme then had to be submitted to and approved by the General Synod and finally receive formal confirmation by Order in Council before it could take effect.

The Dioceses Commission and Reorganisation Schemes under the 2007 Measure

Unfortunately, the 1978 provisions achieved very little in practice in the 20 or so years before the Toyne Review was set up, much to the frustration of the Dioceses Commission itself as well as of some who considered that a certain amount of diocesan reorganisation was urgently needed. The Toyne Group saw a new Dioceses Commission with a more proactive role as the key to

7 The Archbishops’ Council was given this function by the National Institutions of the Church of England (Transfer of Functions) Order 1998, SI 1998/1715. Previously, it had been exercised by the Standing Committee of the General Synod.

8 Again taking over a function of the Standing Committee of the General Synod under the Order referred to in the previous footnote.

progress. Section 2 of the 2007 Measure and Schedule 1 therefore establish the new Commission, including some members elected by the General Synod from among its own members, and section 3 places the new Commission under a duty to keep the provincial and diocesan structure of the Church under review and report to the General Synod with its findings and proposals. This role extends, in particular, to the size, boundaries and numbers of provinces and dioceses, and also to the number and distribution of episcopal offices and the arrangements for episcopal oversight. Moreover, in addition to acting on proposals from diocesan bishops for reorganisation schemes (which will no longer require initial approval from the Archbishops' Council), the Commission will be able to take the initiative in preparing schemes to implement its own proposals.⁹

From that point, the process is similar in many respects to that under the 1978 Measure, although there are enhanced consultation provisions, including a power for a diocesan synod to send representatives to make oral representations to the Commission. However, in addition to removing the functions of the Archbishops' Council, there was one other significant departure from the earlier Measure – a reduction, albeit a very limited one, in a diocesan synod's power of veto. If a diocesan synod does not consent to the submission to the General Synod of a scheme affecting the diocese, the archbishop of the relevant province may nevertheless authorise that to be done, either on the same ground as under the 1978 Measure (namely that the scheme affects more than one diocese and the interest of the relevant diocese is too small to allow its synod a veto) or on the new ground that there are wider considerations affecting the province or the Church of England as a whole that require the scheme to go before the General Synod.

On the other hand, what remained the same as under the 1978 Measure in the process from then on is perhaps even more important, namely that the scheme always requires the approval of the General Synod, followed by formal confirmation by Order in Council. Although the 2007 Measure gives the Dioceses Commission the power to initiate proposals, and it inherited its predecessor's power to decide at certain stages that proposals or a draft scheme should not go forward, the only body with the power to decide that the scheme should be made, however the proposals originated, remains the General Synod.

It was clear from the definitions in the draft Measure of the two grounds for overriding a diocesan synod's veto that they would and could apply only in exceptional cases. However, the introduction of the new ground was questioned in principle in submissions to the Revision Committee, and also aroused strong objections from a group who saw it as a threat to the continued existence of one particular diocese.¹⁰ The Revision Committee gave these concerns careful

9 The Measure recognises that a reorganisation scheme could not be used to change the number of provinces.

10 The Diocese of Truro.

consideration, and also examined possible amendments to remove the power to override the diocesan veto completely, or to exclude it in cases where the diocese concerned was to be abolished, or to create further hurdles to its operation.

However, the Revision Committee finally rejected all of these suggested changes, and agreed that, in this respect, the draft Measure should remain in its original form. One of the arguments put forward in favour of the very limited overriding power was that a negative vote in a diocesan synod was not necessarily representative of views throughout the diocese, or even of the views of significant bodies and office holders in the diocese. However, a further and perhaps stronger argument was that, as explained above, the archbishop's only power is to authorise the submission of the scheme to the General Synod notwithstanding the objection. The final decision will always rest with the General Synod, on which the diocese or dioceses concerned will be represented and able to express any objections to the scheme, and it was thought to be unlikely that the General Synod would approve a scheme in the face of an objection from one of the dioceses concerned unless it was satisfied that there were very strong grounds for doing so. The issue of the power to override the diocesan synod's objection was raised again in debate in the full Synod but no further amendments were tabled, and the Synod thus accepted the Revision Committee's decision.

The 2007 Measure also introduced a number of detailed changes regarding the contents of reorganisation schemes. The provisions on this are to be found in Schedule 2, and perhaps the most innovative are those relating to cathedrals. In particular, they make it possible, in a case where dioceses are being amalgamated or partly amalgamated, for the resulting diocese to have more than one cathedral, so that the cathedrals of both the original dioceses can retain that status. Conversely, where the object of the scheme is to establish a new diocese, Schedule 2 does not require the diocese to have a full cathedral immediately but allows for it to be established with a pro-cathedral, which will be the seat of the bishop, and with a body to discharge the functions of the college of canons under the Appointment of Bishops Act 1533. That will be coupled with a provision enabling a full cathedral to be established later, subject to specified consents and consultation. This means that sensitive issues regarding cathedrals need not stand in the way of an appropriate diocesan restructuring.

Linked to the provisions on reorganisation schemes in the Measure is a completely new set of provisions in a separate instrument¹¹ amending the Vacancy in See Committees Regulation 1993. They will apply where there is a vacancy in a diocesan see at a time when the Dioceses Commission has decided to prepare a scheme that would abolish the diocese, or would affect it so significantly that the

11 The Vacancy in See Committees (Amendment) Regulation.

Commission thinks it desirable for the archbishop to give a direction in effect putting the steps toward filling the vacancy 'on hold'. In those circumstances, the archbishop has a discretion (although not a duty) to give such a direction. However, he does have a duty to revoke the direction in certain cases where the need for it has passed, for example because the scheme has been approved by the General Synod and confirmed by Order in Council, or because the General Synod has rejected it, or because the Dioceses Commission has decided not to proceed with it.

Changing the Name of a Diocesan or Suffragan See

Before the 2007 Measure, the requirements that a diocesan bishop had to satisfy before he petitioned Her Majesty in Council for approval of a change in the name of a diocesan or suffragan see were laid down by section 6 of the Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988. The procedure did not involve the Dioceses Commission, and the Toyne Group saw that as anomalous. It therefore recommended that this process should come within the same legislation as other processes relating to dioceses. Section 11 of the 2007 Measure gives effect to that recommendation; under it, the bishop must consult the new Dioceses Commission, which prepares a report on the proposal, before he goes on, as under the 1988 Measure, to seek the approval of the diocesan synod and the General Synod. If he obtains both, the petition can then be laid before Her Majesty in Council for approval.

Duty of the Diocesan Bishop to Keep Episcopal Ministry in the Diocese under Review

Section 12 of the 2007 Measure, the first of the group of sections on episcopal ministry, is a wholly new provision. It requires the diocesan bishop to 'keep under review the provision of episcopal ministry and oversight in his diocese' and, in doing so, to 'consult widely such persons or bodies as he thinks fit'. This is intended to provide the diocesan bishop both with a detailed understanding and a broad overall view of the current position and with ideas about future developments. These in turn will help to equip him to discharge his roles under the 2007 Measure regarding the delegation of episcopal functions and the appointment of suffragan and assistant bishops, as well as to contribute effectively to the reorganisation scheme process.

Delegation of Episcopal Functions

Turning to the exercise and delegation of episcopal functions themselves, the position before the 2007 Measure was a complex one. Section 8 of the Church of England (Miscellaneous Provisions) Measure 1983 provided for a 'temporary' (in the sense of short-term) delegation of a diocesan bishop's functions in certain circumstances where he had resigned or was unable to

discharge some or all of those functions, or where the see was vacant. Section 10 of the 1978 Measure also provided for ‘temporary’ delegation by a diocesan to a suffragan bishop. However, this was potentially for a longer term than under section 8, as the delegation would normally continue until the end of any period fixed by the instrument of delegation, or until two months after another diocesan bishop took up office, or until the suffragan bishop to whom the delegation was made ceased to hold office. The instrument of delegation normally required the consent of the diocesan synod, and could be varied or revoked by another instrument under the same section.

A separate set of sections, beginning with sections 11 and 12 of the 1978 Measure, provided for ‘area schemes’ that divided a diocese or part of it into areas, and gave functions to a suffragan bishop (known as the ‘area bishop’) in relation to a particular area. The Dioceses Commission was given a mandatory role in the process of framing the terms of the scheme, and the scheme had to be approved both by the diocesan synod and by the General Synod before it could take effect. These delegations were ‘permanent’ in the sense that they bound both the diocesan and suffragan bishops who held office when they were made and their successors. Moreover, subject to a procedure under section 13 for the Dioceses Commission to direct that the diocesan bishop could make certain types of minor alterations to a scheme merely with the consent of the diocesan synod, an existing scheme could be varied or revoked only by using the full procedure outlined earlier in this paragraph, which thus required the approval of both the diocesan synod and the General Synod.

The 2007 Measure has repealed all three sections or groups of sections (subject to transitional provisions in Schedule 6 that leave existing delegations in force but, in the case of an area scheme, make it possible for the diocesan bishop to vary or revoke the scheme with the consent of the diocesan synod and without the need for approval from the General Synod).¹² It has replaced them, in sections 13–16, with a simpler pair of provisions, which put the diocese (rather than the central Church) in control of delegations wherever possible. It has also placed assistant bishops on the same footing as suffragans for this purpose, so that the diocese has the freedom to decide how best to use its episcopal manpower. A further advantage of bringing in assistant bishops arises in cases under the Clergy Discipline Measure 2003 where it would not be right for the diocesan bishop to discharge his normal role because of a personal interest or previous involvement. Normally that problem could be overcome by delegating the role to a suffragan. However, where the diocese has no suffragan or where the suffragan is similarly unable to act, the delegation provisions of the 2007 Measure, reinforced by an amendment to rule 106 of

12 It has also repealed the provisions in the 1978 Measure and elsewhere for area synods, which were no longer being used in practice.

the Clergy Discipline Rules 2005 in section 63(7) of the Measure, open up the possibility of solving the problem by delegation to an assistant bishop.

One of the new pair of provisions in the 2007 Measure (to be found in section 14) is a somewhat revised version of section 8 of the 1983 Miscellaneous Provisions Measure. The other, and more important, provision (in section 13) is a broad power for the diocesan bishop to delegate any of his functions, subject to a very few exceptions, to a suffragan or assistant bishop, or to share them with the suffragan or assistant bishop, either for the whole diocese or for a particular area. This normally needs the approval of the diocesan synod, but if the bishop considers that it is not practicable to obtain the diocesan synod's consent because of the urgency of the matter, he may obtain the approval of the bishop's council and standing committee instead. The delegation may be for a fixed period, but whether or not that is the case, the bishop may revoke or vary the delegation by another instrument made using the same procedure. Subject to that, it will come to an end when any fixed period for which it is granted expires, or when the diocesan bishop who made the delegation or the suffragan bishop to whom it was made ceases to hold the office concerned. There is one exception to this in section 13(6), under which, provided the full diocesan synod agrees, the delegation can be made in terms that provide for it to continue for a specified period after either the diocesan or the suffragan concerned has ceased to hold office. In the case of the suffragan, this means that the delegation will continue in favour of his successor.

Suffragan Sees

One object of section 17 was to fulfil a recommendation by the Toyne Group that any proposal for filling a suffragan see should not be implemented until it had received appropriate consideration on behalf of the central Church and until the case for filling it had been adequately made out.¹³ This was a completely new requirement: under the 1978 Measure, there were no controls on filling a suffragan see except where it had been vacant for at least five years. In that case the same procedure applied as for a petition for the creation of a new suffragan see, requiring consultation with the archbishop of the relevant province and the consent of the Archbishops' Council, a report by the Dioceses Commission (after consultation with the Church Commissioners) on the financial effect of the proposal, and then approval by the diocesan synod and the General Synod.

Making all proposals to fill suffragan sees subject to central Church control might appear to run counter to the Group's normal policy of devolving as much as possible to the dioceses. However, the Toyne Group argued for the change on the basis that the suffragan bishop is a bishop of the whole

¹³ The exceptions are the See of Dover and the sees of the Provincial Episcopal Visitors under the Episcopal Ministry Act of Synod 1993.

Church, part of the national and provincial college of bishops, and has a key role in the mission of the whole Church as well as of the Church in his own diocese. The Group also drew attention to the concern that had often been expressed about the number and distribution of suffragan sees, although there were widely different and indeed inconsistent views on how to improve the position. The fact that stipends, staff costs and expenses of suffragans are paid by the Church Commissioners (on a discretionary basis) also gives the central Church a further interest. However, the financial aspects go further than this: because the corresponding costs of archdeacons are not met by a central Church body, there was an obvious incentive before the 2007 Measure for a diocese to keep any suffragan sees filled, as to do otherwise would reduce the level of financial support from the Church Commissioners for the diocese's ministry. Finally, the Toyne Group argued that replacing a set of controls that applied only to filling suffragan sees after they had been vacant for over five years with a common set of controls for filling all suffragan sees, irrespective of how long they had been vacant, would remove the incentive for a diocese to fill each suffragan see at once, even if the need to do so had not been clearly demonstrated at that stage, in order to avoid the statutory controls later.

In broad outline, the process under section 17 is that, where the diocesan bishop is aware that a suffragan see is or is about to become vacant, it is for him to form a view, taking account of his duty under section 12, on whether a proposal to fill the see should be considered. If so, he must consult the diocesan synod (or, if the urgency of the matter makes that impracticable, the bishop's council and standing committee). If he then decides that the vacancy should be filled, he must inform the archbishop of the province and the Dioceses Commission, giving his reasons. If either of them agrees, the bishop may proceed with the normal steps for filling the vacancy. If both the Commission and the archbishop take the view that the proposal to fill the vacancy requires further consideration, the Commission will prepare a report on the effect that the proposal would have on the mission of the Church and, in consultation with the Church Commissioners, on the financial effect of filling the vacancy. Assuming the diocesan bishop still wishes to proceed, the proposal will require the approval of both the diocesan synod and the General Synod, both of which will have the Dioceses Commission's report before them.

The process, under section 18 of the 2007 Measure, before a bishop is able to petition for the creation of a new suffragan see begins with consultation with the archbishop and then submission of the proposal to the Dioceses Commission. The provision requiring the consent of the Archbishops' Council that figured in the 1978 Measure has disappeared and, in keeping with the Toyne Group's general approach, the Dioceses Commission must prepare a report as under section 17, dealing with both the proposal's effect on the Church's mission and its financial effect. The proposal must then be approved by the diocesan

synod and the General Synod; if both of them do so, the bishop may then petition Her Majesty in Council for the creation of the new see.

Clearly, the impact of these provisions, and in particular the impact of section 17 and the way in which it will operate in practice, will depend to a considerable extent on how far it discourages diocesan bishops from asking for existing suffragan sees to be filled or new ones to be created, and on how the Dioceses Commission approaches proposals from diocesan bishops to fill vacant sees when it begins its task. If the Commission were to take a stringent approach in the early days of the 2007 Measure and decide that a substantial number of the proposals should undergo synodical consideration, and if the archbishops were to support the Commission in this, the section could clearly have a substantial effect in practice on suffragan appointments. However, one of the main factors at present in a bishop's decision must, as explained above, be a financial one, and the Dioceses Commission will presumably also take that into account even at the initial stage of deciding whether the proposal needs further scrutiny. If it proved possible to revise the arrangements for financial support from the Church Commissioners so as to 'decouple' the amount that the diocese receives from the Church Commissioners from the number of suffragan bishops (if any) in the diocese, that might simplify matters, and allow consideration of the number of suffragan sees in a diocese and appointments to them to focus on the need for specifically episcopal ministry in the diocese without the present distractions in terms of finance.

Shared Administration by Dioceses

The final major set of provisions in Part II of the 2007 Measure consists of sections 19 and 20, which replace the provisions in the 1978 Measure for two or more diocesan bishops, with the approval of their diocesan synods, to agree on schemes for shared administration between the dioceses concerned. There is increasing interest in setting up such arrangements in practice, and the Toyne Group wished to encourage them.

The 1978 Measure provided a fairly wide range of possible models for shared administration, which could apply to any diocesan bodies other than the diocesan synod and the bishop's council and standing committee. The possibilities included setting up a single body to discharge specific functions for two or more dioceses; authorising the relevant diocesan bodies to set up a joint committee; or giving the relevant body in one diocese power to arrange for its functions to be discharged by the corresponding body in another diocese, or by a committee or sub-committee of that body. In the event, these provisions were carried over without any substantial changes into the 2007 Measure, as were the basic provisions for schemes to be made by the diocesan bishops concerned, with the approval of their diocesan synods.

What was changed was that, on the one hand, the 2007 Measure removed the need for the dioceses to obtain the consent of the Archbishops' Council or to consult the Church Commissioners. On the other hand, it added a new provision ensuring that, where the scheme would affect a charitable body, the Charity Commission would be consulted and the scheme could not proceed in the face of an objection from it. After some discussion, a further requirement, to obtain the Dioceses Commission's consent, was also included. This was done in part because, since 1978, a number of new statutory diocesan bodies had been created, with very carefully drafted mandatory provisions regarding their constitutions, and especially as regards membership. It was therefore seen as important to ensure that the shared administration powers were not exercised in a way that undermined those provisions. In addition, the very fact that this area was growing increasingly important in practice made it all the more desirable to bring a national perspective to bear, rather than leaving the matter entirely to local decision by individual dioceses. In particular, the new requirement was intended to ensure that the dioceses did not enter into legally binding shared-administration arrangements that might (even if unintentionally) frustrate reorganisation proposals, based on different groupings, that the Dioceses Commission might wish to bring forward.

PARTS III, IV, VI AND VII OF THE 2007 MEASURE: THE PASTORAL MEASURE 1983, DIOCESAN MISSION AND PASTORAL COMMITTEES, AND THE CHURCH BUILDINGS COUNCIL

Unlike the 1978 Measure, the 1983 Measure has not been completely replaced by the 2007 Measure. However, it has been substantially amended, and there also are two sets of new 'free-standing' provisions that have an impact on the 1983 Measure and how it operates, as well as a wider significance. The following paragraphs concentrate on the broad outlines of the major changes; for those who need further details, the Church Commissioners have produced a 'marked up' copy of the 1983 Measure, showing all the amendments.¹⁴

Diocesan Mission and Pastoral Committees

Sections 1 and 2 of the 1983 Measure as originally enacted, together with Schedule 1, dealt with the constitution, functions and procedure of the diocesan pastoral committees, which had a major role in relation to the pastoral scheme and order procedures under that Measure. Very much further on in the 1983 Measure, section 42 and part of Schedule 5 provided for a diocesan redundant churches uses committee for each diocese (unless it was unlikely to have any

14 See <<http://www.ccpastoral.org>>, accessed 18 August 2008.

redundant churches); that committee's sole duty was to make every endeavour to find suitable alternative uses for redundant church buildings.

Part VI of the 2007 Measure (sections 52–53) and Schedule 3, implementing recommendations by the Toyne Group, set out to replace those two committees with a single new body with broader functions. Reversing the trend in some other fairly recent Church legislation, the 2007 Measure does not stipulate the membership of the new body in any great detail, but gives the individual dioceses greater flexibility than the original 1983 Measure in this respect. Indeed, so far as membership is concerned, the only mandatory provisions in the 2007 Measure are that all the archdeacons of the diocese must be members; that the diocesan bishop may be a member if he wishes and must either chair the committee himself or appoint the person to chair it; and that the diocesan synod is to decide how many other members there are to be and how they are to be chosen, although it must ensure that the number of clergy and laity are as near equal as possible. The committee is to have very wide powers to function through sub-committees and to make use of expert advisers, and there is also express power for the committee to carry out consultation. The diocesan synod may decide on the name by which the committee for the diocese concerned is to be known, although the legislation itself, in keeping with the general emphasis of the Toyne recommendations, refers to it as the 'mission and pastoral committee'.

The 2007 Measure is more prescriptive over the committee's functions, which fall into three main groups. The first includes making or assisting in making better provision for the cure of souls in the diocese, reviewing arrangements for pastoral supervision and care, and preparing strategies and proposals on these matters. It also includes the committee's functions in relation to schemes and orders under Part I of the 1983 Measure. The second main group begins with maintaining an overview of matters relating to church buildings, other than matters that are the responsibility of the consistory court or the Diocesan Advisory Committee. The 2007 Measure then goes on to functions in relation to buildings closed for regular public worship, which are explained in more detail below. The third group consists mainly of a variety of other statutory functions; these include functions in relation to bishops' mission orders, which again are discussed later in this article.

What is also significant is the list of matters to which the committee must have regard in carrying out its functions. In addition, of course, to the general duty under section 1 of the 2007 Measure to have regard to the furtherance of the mission of the Church, these include factors that had appeared in the original 1983 Measure as ones that the diocesan pastoral committee had to take into account, notably the traditions, needs and characteristics of individual parishes, and other aspects of diocesan policies that the diocesan synod has called on the committee to take into account. However, the new committee is also expressly required to have regard to the financial implications of its decisions, both for

the diocese and for the Church as a whole. This again was a specific recommendation by the Toyne Group, and the committees may need to give some thought to the relative weight to be given to each of the statutory factors in different contexts and different cases. One context where financial implications may be particularly relevant is in dealing with the new provisions, explained later in this article, on the future of churches that are not of particular 'heritage' value and have been closed for regular public worship.

Pastoral Schemes and Orders and Pastoral Church Buildings Schemes

As many readers will already be well aware, schemes made under Part I of the 1983 Measure are legal instruments that affect local church organisation, for example in relation to the status of parishes and benefices, team and group ministries, and church buildings. Under the 1983 Measure as originally enacted, the term 'pastoral scheme' was used for all schemes under Part I relating to these matters; for example, such a scheme could close a church that was no longer required for normal public worship by a 'declaration of redundancy'. On the other hand, pastoral orders dealt (and still deal) with less important matters, such as changes in parish names or boundaries; and they cannot be used to close a church.

The initial stages in the procedure under the 1983 Measure as originally enacted were that the proposals for the scheme or order originated in the diocese, but (with one exception explained below) the scheme or order itself was always drafted and published by the Church Commissioners. The Church Commissioners then served copies of the draft on the persons and bodies listed in the Measure as 'interested parties', who would already have been consulted at an earlier stage. Each of the 'interested parties' had the right to make written representations, which the Church Commissioners were required to consider. (In addition, the Church Commissioners have recently introduced a non-statutory procedure, under which those who have made written representations may seek an opportunity to make oral representations also.) It was then for the Church Commissioners to decide whether to make the scheme or order; if so, in the case of a scheme, anyone who had made written representations could apply for leave to appeal to the Privy Council.

The procedure for orders was 'lighter' in some respects, and there was no possibility of an appeal to the Privy Council. In some cases, where all concerned consented or could be regarded as consenting to the proposals for an order, it could be drafted by and dealt with in the diocese.

Some of the changes made by Part III of the 2007 Measure (sections 23–39) are essentially ones of terminology. In particular, there was a good deal of criticism of the expressions 'redundancy', 'declaration of redundancy' and 'redundant church', because they were seen as unduly negative and not a wholly accurate description of the outcome of the process. The 2007 Measure therefore

refers instead to 'closure for regular public worship'. Likewise, schemes that involve a proposal for closure of a church have been renamed 'pastoral church buildings schemes', so that, in practice, 'pastoral scheme or order' will now be confined to instruments that do not involve church closures.

The procedure for pastoral church buildings schemes remains broadly the same as the original 1983 Measure procedure for pastoral schemes. However, the 2007 Measure introduced substantial changes in the process for schemes and orders that do not involve the closure of a church. These will now be drafted and published by the dioceses, with the Church Commissioners checking that they are in the correct form and within the powers conferred by the 1983 Measure and that there has been full compliance with the procedural requirements up to that stage. After publication of the scheme or order and service of copies on the interested parties, the procedure remains substantially as in the original 1983 Measure. The special 'shortened procedure' for non-controversial orders also remains, with some detailed changes. All this has produced an interesting and unusual feature in the drafting of the amended 1983 Measure, in that there are now two separate and different versions of Part I of that Measure, one applying to pastoral schemes and orders and the other to pastoral church buildings schemes.

Church Buildings Closed for Regular Public Worship

The 1983 Measure in its original form distinguished between those cases where closing the church and deciding on the future of the building was a 'one stage procedure', so that the building's future could be dealt with at the same time and by the same legal instrument as the 'declaration of redundancy', and those where the two stages were dealt with separately, with a 'redundancy scheme' under Part III of the 1983 Measure to settle the future of the building as the second stage. In some cases, although not all, the two-stage procedure involved a minimum 'waiting period' of six months between the declaration of redundancy and preparing the redundancy scheme; the normal maximum period for settling the future of the building, although that again was subject to exceptions, was two years.

Here too, Part IV of the 2007 Measure (sections 40–46) makes changes in terminology. What the original 1983 Measure termed 'redundancy schemes' are now to be known as 'pastoral (church buildings disposal) schemes', and the 'waiting period' is renamed the 'use seeking period', again in the interests of providing a more accurate description. However, there are also a number of substantive changes, of considerable practical importance, which arise from recommendations by the Toyne Group for streamlining and speeding up the process while not removing any essential safeguards, in particular for buildings of significant 'heritage' value.

Among these are some significant relaxations of the restrictions in the original 1983 Measure on the use of the 'one stage procedure' in cases where the closed church will not be replaced by a new place of worship. The general prohibition on using the 'one stage procedure' in those circumstances for listed buildings or buildings within conservation areas has been removed by the 2007 Measure, and the prohibition on using it to provide for the demolition of a building will now apply only if the building is listed or within a conservation area. Thus, if suitable proposals for the future of the building have been worked out at the stage when it is closed, there will now be much greater scope for implementing them without delay.

Similarly, for the 'two stage procedure', the normal maximum 'use seeking period' has been reduced from three years to two, and the normal minimum period of six months will apply only to a proposal to demolish a listed building or one within a conservation area. Even there, it will not be necessary to wait for six months if the Church Commissioners are satisfied, after consulting the new Church Buildings Council, that there is no objection to the demolition.

One aspect of this, again recommended by the Toyne Group, is that if the closed building is not listed or in a conservation area, it will not be necessary to exhaust all possibilities for finding another suitable new use for the building before deciding that the best course is to demolish it. That is reflected in the functions of the new diocesan mission and pastoral committee, which (as already explained) will take over the old diocesan redundant churches uses committee's role of bringing forward proposals for the future of a closed building. Under the original 1983 Measure, that committee had to use every endeavour to find a suitable alternative use or uses for what were then termed 'redundant buildings', and it was only when and if the committee was satisfied that this was impossible that it could report to that effect to the Church Commissioners. The amended 1983 Measure still requires the diocesan mission and pastoral committee to use every endeavour to find a suitable alternative use or uses for a church building that has been closed or is proposed for closure if it is listed or within a conservation area. However, in other cases, its remit is now to find a suitable alternative use or uses or to develop proposals for demolishing the building and disposing of the site. Here, the new committee's duty under the 2007 Measure to have regard to the financial implications may be of particular importance.

Of course, none of this affects the other possibilities for the future of a closed church building. Quite apart from replacing it with another church or place of worship, or incorporating part or all of it into a new place of worship, these include the possibility of a building continuing in church ownership, with the diocesan board of finance as the owner. In addition, where a building is of such historic or archaeological interest or architectural quality that it ought to be preserved in the interests both of the nation and of the Church, and a suitable alternative use cannot be found for it, the 1983 Measure will continue to provide

the possibility of transferring it to the Churches Conservation Trust (which is funded in part from public funds) if the Trust will have the resources to meet the cost of repairing and maintaining it.¹⁵

The Church Buildings Council

This leads into the significant set of provisions in Part VII of the 2007 Measure (sections 54–57 and Schedule 4) that establish a new body, the Church Buildings Council, as the single unified central Church source of advice on church buildings, whether in use or closed, other than cathedrals.

Before the 2007 Measure, the Council for the Care of Churches was of course the central Church body responsible for advice on churches in use other than cathedrals. It also had an advisory function at a very early stage in a potential church closure when the diocese was considering whether to put forward draft closure proposals. After that, however, the 1983 Measure as originally enacted provided for a separate body, the Advisory Board for Redundant Churches, which had been set up under the Pastoral Measure 1968, to be the source of information and advice to the Church Commissioners on what might broadly be termed the heritage interest, quality and importance of a church. This applied both at the stage of deciding whether to close a church and when decisions were taken on its future if it was closed. The Board also advised the Churches Conservation Trust in a limited range of cases.

The Toyne Group recommended bringing these functions together in a single advisory body that would provide expert advice throughout the closure process and also on churches in use. One object was to improve the closure process itself, and to ensure that it produced the best-informed result in each case. Moreover, by the time the 2007 Measure was passed, the Toyne recommendations for ‘extended use’ that were embodied in the Pastoral (Amendment) Measure 2006 had already blurred the previous apparently rigid demarcation line between churches in use for regular worship and ancillary purposes on the one hand and former churches used in other ways on the other, and had built a connecting bridge between them. This too contributed to the logic of a unified source of advice.

It was also recognised from the outset that others outside the Church have an interest in ensuring that the Church receives expert and impartial advice on this area of its work. They include central and local government, amenity groups and the public at large, all of whom have an interest in the proper preservation of the churches that are so prominent among the gems of this country’s heritage. This obviously applies to churches in use, but also to what happens to the buildings that the Church is no longer able to use for their original purpose. Taking what

15 Schedule 5 to the 2007 Measure also makes some amendments to the provisions on the Trust in the 1983 Measure, so as to increase its powers and the possible membership of its governing body.

are no more than two examples, there is a clear government interest as well as a general public interest in ensuring that former churches for which no suitable alternative use can be found, but which ought to be preserved in the interests of the nation and the Church, are transferred into the care of the Churches Conservation Trust. On the other hand, there is also a government and public interest in ensuring that the Trust's financial resources, part of which are provided by central government, are not diluted by calling on it to care for buildings of lesser quality and importance. The second example is that when a church which is a listed building ceases to be used for worship, it comes within the scope of the statutory listed building controls operated by the local planning authority. Thus, if the plans for the building's future involve making alterations once that stage is reached, it is important that expert advice is provided to ensure that the proposals are ones that the local planning authority can properly accept under the listed buildings legislation and will also be acceptable to the relevant amenity bodies.

To ensure that the new arrangements not only provide but are seen to provide this expert and impartial source of advice, the 2007 Measure abolished both the existing bodies and replaced them by the Church Buildings Council, which is a permanent commission of the General Synod. A great deal of care was taken over the membership of the new body. Of the maximum membership of 24 people, the chair is to be appointed by the archbishops after consulting the Appointments Committee of the Church of England. In addition, four of the members are to be appointed by the archbishops on the nomination of the Secretary of State, and are to have between them special knowledge of or expertise in history, architecture, archaeology and aesthetics. They will form what the Toyne Group termed the 'independent strand' of membership; they are to be chosen by a person wholly outside the Church, and members or employees of the Church Commissioners, the Archbishops' Council or the Churches Conservation Trust, or members of any of the Commissioners' committees, are disqualified from appointment, as are member of the General Synod and diocesan bodies. The archbishops are to appoint 14 other members on the nomination of various bodies within the Church, and a number of them must have special knowledge of or expertise in specified matters. Of the remainder, three are to be elected by the General Synod from its members with knowledge of or expertise in matters relevant to the Council's work, and the Council is to have power to co-opt up to two members to reflect special interests that are not otherwise represented among its membership. In addition to the special disqualifications that apply to the 'independent strand' members, any member or employee of the Church Commissioners or the Churches Conservation Trust, and any member of any of the Commissioners' committees, is completely disqualified from membership of the Council.

In a further move to ensure that the work previously carried out by the Advisory Board for Redundant Churches is carried out in a way that is and is

seen to be impartial, the 2007 Measure assigns that work to a special statutory committee, which is to carry it out on the Council's behalf, as well as carrying out any other, delegated, functions or advising the Council if the Council wishes. The Chair of the Council is to be the non-voting Chair of the committee and, of the seven other members of the committee, four are to be the 'independent strand' members of the Council. Thus the independent strand members together will always be able to command a majority vote. Having said this, they are also to be very much members of the main Council and involved in its work on an equal footing with all the other members.

Part VII of the 2007 Measure provides (echoing section 1 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991) that, in carrying out its functions, the Council must have due regard to the role of the church as a local centre of worship and mission. Where appropriate, it must also have due regard to the provisions of the 1983 Measure. Part VII then goes on to set out the Council's functions at length and in detail, taking three sections in which to do so.

For those who wish for a fairly broad overview, section 55 relates to churches and places of worship in use (other than cathedrals), their contents and articles belonging to them, and their curtilage or churchyard, and also other parochial burial grounds. The Council's very broad functions under section 55 include a duty to advise the Archbishops' Council and the General Synod on such matters on request, to consider and respond so far as appropriate to consultation and requests for advice from the ecclesiastical courts and Diocesan Advisory Committees, and to maintain regular contact with the Diocesan Advisory Committees. Moreover, the Council's duties include promoting standards of good practice regarding the use, care, conservation, repair, planning, design and development of churches. It also has power to liaise, co-operate and exchange information with government departments, local authorities and others about those matters (in relation both to Church of England churches and to corresponding buildings of other Churches). One particularly noteworthy feature of this function is that it specifically extends to work in relation to formulating policy and proposed legislation, which is clearly of importance at a time when further government legislation about the built heritage is under consideration. Finally, there is another significant and far-reaching duty:

to promote the care and conservation of churches and greater knowledge, understanding and enjoyment of and artistic activity relating to churches both within the Church of England and more widely among the general public or sections of the public on its own or in conjunction with other persons or bodies.

Next, section 56 sets out the Council's functions in relation to the closure of churches, extending throughout the process from the stage when the diocese first considers putting forward formal proposals to the task of settling the

building's future, and including advice in relation to such buildings after closure. Again it includes the church's contents and churchyard or curtilage. In that context the section lists a number of statutory functions under the amended 1983 Measure, most of them taken over from the Advisory Board for Redundant Churches, as well as new (albeit limited) general advisory functions.

Finally, section 57 covers some other general functions, including collaboration with the Cathedrals Fabric Commission for England on matters of common concern and on the maintenance of their joint library,¹⁶ and making an annual report on the Council's activities to the General Synod (again with the possibility of combining this with the annual report of the Cathedrals Fabric Commission).

PART V OF THE 2007 MEASURE: BISHOPS' MISSION ORDERS

The Legislation's Objectives

Turning to Part V of the 2007 Measure, it contains only five sections (sections 47–51). However, those sections, with the new provisions in the Canons and the guidance material that accompany them, would be quite sufficient, taken on their own, to justify a separate article. Indeed, framing the legislation and the guidance on this subject presented what was probably the greatest challenge in developing the complete 'legislative package' to give effect to the Toyne Group's recommendations.

Part V is headed 'Mission' but sub-headed 'Mission initiatives', and the legislation uses the latter term rather than 'fresh expressions of church'. The two expressions are not wholly synonymous but they are clearly closely linked. Some mission initiatives can and do flourish within the parochial system, given the wide range of possibilities under the 1983 Measure, or operate on the basis of other concepts already embedded in the Church's legal framework.¹⁷ However, others cannot, and thus the Toyne recommendations called for a new legislative means of supporting a very wide variety of mission initiatives, existing and future, many of them radically different from the Church's existing institutions in important respects. They are often based on network rather than a common geographical location, and indeed they may have no fixed geographical base; they may well operate across existing boundaries or with no defined boundaries; and they often (although not invariably) tend to prefer experimental

¹⁶ Members of the Ecclesiastical Law Society, and other readers of this article, who wish to visit or consult this interesting and useful collection should contact enquiries.ccb@c-of-e.org.uk.

¹⁷ Appendix 1 to the Code of Practice on Part V, referred to below, outlines a number of the other possible legal structures that were available even before the 2007 Measure. One example is a chaplaincy under section 2 of the Extra-Parochial Ministry Measure 1967; however, this has as a pre-requisite the existence of a charitable institution with a base in premises that have a geographical location, and that limits its usefulness for some fresh expressions of church.

forms of worship to the more traditional ones. Indeed, the range and variety of these new developments within the Church, and the likelihood that they will be even greater in the future, made it a particular challenge to identify the essential features of what the new legislation should cover.

Moreover, the legislation had to support these varied initiatives in working alongside and supplementing the Church's well-established institutions, and particularly the parochial system, in the 'mixed-economy church' referred to near the beginning of this article. To succeed in that, the new legislation had to leave flexibility and space for innovation and experiment but at the same time provide a clear framework in which legal authority was affirmed and accepted, and which 'anchored' the initiative firmly within the Church of England. Other essential features of the new concept were proper and supportive supervision and review, and proper safeguards for those whose rights and existing ministries might be affected. Finally, the legislation had to help successful initiatives to move on to a more permanent base as and when the time was right, and also to provide for closure without a sense of failure where experiments that had been tried with enthusiasm had not prospered.

Measure, Canon and Code of Practice

It was recognised from the outset that the legislation must contain both provisions by Measure and some amendments to the existing Canon law. The latter were embodied in Amending Canon No 27. Moreover, it had to avoid being a straight-jacket for the initiative or enmeshing it in a mass of detail that would stultify its development. On that basis, the legislation itself could be only half the story, and full and very practical guidance would be needed to complement the Measure and Canon Law and to set out how they were to operate; that guidance would not in any way be an 'optional extra', but would have a vital role to play in helping the legislation to achieve its objectives. Thus, the 2007 Measure required the House of Bishops to issue guidance in the form of a Code of Practice on the exercise of the statutory functions, which would also need the approval of the General Synod. In addition, it gave the Code a degree of statutory authority by providing that certain of those with key roles – the bishop himself, the diocesan mission and pastoral committee, and also the leader and the Visitor (both referred to below) – must have regard to the Code in exercising their functions under Part V. The Code issued by the House of Bishops and approved by the General Synod in 2008 can be found at <<http://www.ccpastoral.org>>.

The Bishop's Mission Order and the Process for Making It

The concept that the 2007 Measure devised as the foundation on which to build all that is set out above is a 'bishop's mission order', accepted by those leading the initiative. It therefore makes episcopal authority and the acknowledgement of that authority the key to the structure as a whole. (Where more than one

diocese is involved, the order will be a ‘*bishops’ mission order*’, which will be made jointly by the bishops of all the dioceses concerned, and each of the bishops will need to comply with the requirements set out below. All that follows about Part V should be read in the light of this possibility, and on the basis that, where it applies, references to ‘the bishop’ will have to be read as ‘the bishops’.)

The bishop’s mission order (‘the order’) itself endorses the initiative and sets out the legal framework within which it is to operate. The 2007 Measure also stipulates that it is to contain some mandatory provisions – examples include provisions specifying the objectives of the initiative and the area within which it is being or is to be carried out (even if the only boundaries that can realistically be laid down are, say, those of a deanery or archdeaconry or the diocese itself). Others are mentioned below.

However, quite a number of the possible provisions referred to in the Measure are optional ones. The length of the provisions and the amount of detail needed for a particular initiative will vary widely, and the 2007 Measure therefore provides that the order may be accompanied by a ‘supplementary instrument’ containing some of the material. Where a supplementary instrument is used, it would seem to be the proper place for matters of detail, as opposed to the basic principles, which would be set out in the order. Thus it would bear something of the same relationship to the order as that of the articles of a company to its memorandum or that of the statutes of a cathedral to its constitution.

Beginning with the basic essentials for making an order, contained in section 47, the bishop must be satisfied that a person or group of people is carrying out an initiative in the diocese or any part of it, or proposes or wishes to do so, and that the initiative is likely to promote or further the mission of the Church – again, in the broad and inclusive sense explained in relation to section 1 of the 2007 Measure – through fostering or developing a form of Christian community. Within this set of requirements lie three essentials for the making of an order, namely an initiative; that the initiative is one that will build and work through a Christian community; and the likelihood that it will take forward the Church’s mission. The person or group already mentioned may request the order, as may any person or body exercising ecclesiastical functions within the diocese, although it is of course for the bishop to decide whether to accede to that request. Alternatively, the bishop himself may decide to make the order without any such request, and whether purely on his own initiative or as a result of suggestions or other input from any source he thinks fit.

What is necessary in all cases, irrespective of who if anyone requested an order, is that there must be full consultation before the order is made, carried out by the bishop or on his behalf. Because of their importance, not least in the context of developing a ‘mixed-economy church’, these consultation

requirements are set out in some detail. The diocesan mission and pastoral committee must always be consulted, in order to ensure that the impact that the initiative may have on the Church's existing work in the diocese is assessed and taken into account in deciding whether the order should be made. The consultation must also extend to such other Churches and religious organisations as the bishop thinks fit. Likewise, it must extend to those people or groups of people who, in the bishop's view, have a significant interest in the order or are likely to be significantly affected by it (although, instead of consulting some or all of them directly, it is possible to consult a body whom the bishop considers would adequately represent their interests). The 2007 Measure enlarges on this last requirement by specifying that certain people or groups are to be regarded as having an interest in the order – namely a person who has or shares in the cure of souls in a benefice affected by the order, and any other person or body, including a parochial church council or registered patron, who may have an interest in the cure of souls there. However, it is for the bishop to decide whether the interest is 'significant', in the light of the objectives of the initiative and any other circumstances that he thinks relevant, and the same applies to the bishop's task in deciding whether the potential effect of the initiative on a person or group is likely to be 'significant'. Depending on the terms of the order, other specific consultation requirements may also apply, and they are referred to later.

In addition to what appears in the Measure itself, the Code of Practice sets out to provide practical guidance on the process, including the initial steps when a request for an order reaches the bishop or he wishes to investigate that possibility; the consultation requirements; the decision whether to make an order; and the terms of the document itself. It also deals in some detail with a number of the provisions of the Measure that are mentioned in the following paragraphs, but for which this article can give no more than a very brief outline. Thus those who deal with bishop's mission orders in practice will find the Code essential reading. A 'skeleton' order is also being prepared to assist those who have the task of drafting the orders, although it may well need to be refined in the light of early experience with the new legislation.

The Leader or Leaders and Other Ministers Working in Support of the Initiative

The order must specify one or more persons, or a group of people, who are to lead the initiative and be responsible to the bishop for its conduct. The 2007 Measure refers to them as the 'leader or leaders', and they are key people in the initiative. The Measure lists a number of different types of provisions that it may be appropriate to include about them in the order or supplementary instrument – for example, regarding their stipend or remuneration, and how they are to be replaced if necessary. There may also be other clergy or lay people working in support of the initiative.

Another important provision in the 2007 Measure requires any member of the clergy, lay worker or reader who is to officiate in any place in accordance with the order, whether as a leader or in some other capacity, to have separate authority to do so from the bishop under Canon law. Assuming that the person concerned is not beneficed in the place in question, this will need to be by the bishop's licence or permission to officiate. Linked to that requirement is a new provision added to paragraph 1 of Canon C 12 by Amending Canon No 27, under which the bishop may license a minister to serve in the diocese for the purposes of or in connection with a mission initiative endorsed by a bishop's mission order. This adds a third option to the two possible forms of licence that were already specified in the Canon (namely a licence to perform a particular office, or a general licence to preach or minister in any parish or ecclesiastical district).

In addition to the bishop's authority, the other normal requirement under Canon law for a minister to exercise his or her ministry in any given place is that the minister must have the cure of souls there or to obtain the permission of the person who has the cure of souls. This is one of the reasons why some initiatives did not 'fit' within the law as it stood before the 2007 Measure and may need to make use of the new legal structure offered by the Measure. Even assuming that none of those who at present hold office as incumbent or priest-in-charge in the area that the initiative is to cover have any objection to it, the size of the area may be such that requiring express permission from each person with the cure of souls would make it impracticable or at least very difficult to establish the initiative. Even where the area concerned is less extensive, leaving open the risk that a single newly appointed incumbent or priest-in-charge who takes up office after the initiative is set up might object to it, and thus bring it to an end or require it to undergo substantial change, could make it impossible for the initiative to go forward with any sense of security.

The 2007 Measure therefore gives the bishop power to include in the order an express provision authorising a minister to exercise his or her ministry for the purposes of or in connection with the order, in any place and in any manner that the order specifies, without the permission of the person with the cure of souls there. This is clearly a significant power in principle as well as in practice, and it was never intended for use as a matter of course. Indeed, before the bishop makes an order including it, he must satisfy additional consultation requirements, in order to ensure that the incumbents and priests-in-charge concerned are consulted individually or, depending on the size of the area in which the initiative is to operate, through the House of Clergy of the deanery or diocesan synod.

However, even when this power needs to be and is used, it should not be looked at in isolation. In particular, the 2007 Measure gives the bishop power to include provisions in an order or supplementary instrument regarding the

relationships between those involved with the initiative and those who have the cure of souls in the area covered by the order. It is for the bishop to decide in each case whether and, if so, how to make use of this power, but where he decides to dispense with the normal requirement regarding permission from those with the cure of souls he may well wish to consider it as a possibility.

The Visitor

Another key role under Part V of the 2007 Measure is that of the Visitor for the initiative. The order must name him or her, and his or her role is laid down, in particular, by section 48. The Visitor is, in effect, to act as guide, counsellor and friend to the initiative, to advise and encourage it and, so far as is practicable, to provide support for it. At the same time, the Visitor is to exercise oversight of the initiative on the bishop's behalf and be the bishop's 'eyes and ears' in relation to it. He or she is also to be available for anyone who wishes to draw matters relating to the initiative to the Visitor's attention, although it is then for the Visitor to decide what action, if any, to take on the information. The Visitor is required to carry out reviews of the initiative at intervals of not more than 18 months and report to the bishop, although these regular reviews are in general intended to be fairly 'light-touch' exercises. A further duty is to conduct fuller reviews at longer intervals, under the provisions explained below in relation to the duration of the order. The leader or leaders must also consult the Visitor regularly about the general direction and development of the initiative, and the Visitor is to advise the leader or leaders and the bishop on setting up and developing appropriate methods of governance for the initiative, as well as ensuring that it keeps proper accounts.

All this amounts to a very wide-ranging role that, for at least some initiatives, is likely to be a time-consuming one. However, it was seen as essential in order to ensure that initiatives that had the bishop's endorsement, but lay outside the parochial system, would be subject to effective but also constructive oversight on a regular and consistent basis, and receive the support that they needed to achieve their objectives and their full potential.

Ecumenical Co-operation

Under the 2007 Measure, the order may provide for the initiative to participate in a local ecumenical project (now generally known as a 'local ecumenical partnership') under Canon B 44, or for other forms of ecumenical co-operation. Particularly in view of the existing initiatives that are working ecumenically, it was seen as important for the legislation to deal expressly with this possibility, even though it involved some fairly detailed provisions, notably those in Amending Canon No 27 which make it possible to use Canons B 43 and 44 in conjunction with bishops' mission orders.

Clearly such ecumenical co-operation can only succeed if there is full consultation with the other Churches or religious organisations concerned, and the Measure expressly provides for that.

Worship and the Administration of the Sacraments

Not least because the existence or development of a Christian community is to be one of the core requirements and central features of the initiative, the order must make such provision as the bishop thinks fit for the administration of the sacraments, in accordance with the legal rules that govern their administration within the Church of England. The reference to those legal requirements springs from the need to make clear that an initiative operating under a bishop's mission order has chosen to operate within the Church of England and must accept and abide by the legal rules to which the Church is subject. There are also some other non-mandatory provisions, which are nevertheless likely to be useful in practice, by which the bishop is able to authorise the performance of divine service, including Holy Communion if that is expressly mentioned, in any building. However, in the case of a parochial place of worship, the minister having the cure of souls there must consent.

Another provision that may also be important in practice makes it clear that the legislation does not authorise any contravention of resolutions A or B passed under the Priests (Ordination of Women) Measure 1993. During the 2007 Measure's progress through the General Synod questions arose as to the effect of Resolution A in relation to those acting under bishops' mission orders, and the legal position on this was explored in an opinion that is reproduced in Appendix 4 to the Code of Practice.

In addition, Appendix 3 to the Code contains a section on the ordering of worship in fresh expressions of church under bishops' mission orders, which builds on material on worship in *Mission-shaped Church*.

Organisation, Governance and Financing of the Initiative and Other Property Matters

The Measure deals only briefly with these matters, in particular by making it clear that the order or supplementary instrument may make provision for them, and also through the Visitor's duty to give advice on the initiative's governance. It seems likely that the initiative will almost always be set up as or as part of a charity, but it will still be necessary to obtain professional advice on which of the various forms of legal structure available for use by charities is the most appropriate one in any individual case.¹⁸

¹⁸ A limited amount of guidance on this will appear in the notes to the 'skeleton' order referred to above.

So far as finance is concerned, the Code of Practice also refers, albeit briefly, to the importance of establishing a discipline of giving as the initiative develops, and to the fact that the bishop will wish the initiative to be clear about his expectations regarding its financial planning and viability and its contribution to diocesan finances.

Representation on a Deanery Synod

This last point leads on to the possibility of synodical representation for the initiative, under the new rule 27A that the Measure adds to the Church Representation Rules. Under it, the bishop may request the diocesan synod to make a scheme for the representation on a particular deanery synod of specified persons to whom a bishop's mission order relates. The new rule therefore allows a good deal of flexibility in dealing with different types of initiative; however, it will, of course, be for the bishop to decide whether the particular initiative has reached the stage in its development when synodical representation would be appropriate.

Review and Duration of the Order

There is one final topic, namely the duration of an order and the system of formal reviews, that the 2007 Measure covers in much greater detail than some of the matters outlined in the previous paragraphs. These fairly elaborate provisions spring from the recognition that, during its early years, even a successful initiative needs careful evaluation at suitable intervals; indeed, its very success may suggest that the time is right to put it onto a more permanent footing, using one of the possibilities under the 1983 Measure or other pre-2007 legislation. The 2007 Measure also makes it clear that the series of stages in the potential life of an initiative under a bishop's mission order which are described in the following paragraphs nevertheless leave it open to the bishop to revoke or vary an order, after consultation, in accordance with the terms of the Measure itself.

The initial order made by the bishop for an initiative cannot continue for more than five years. Near the end of its life, the Visitor must conduct a full review, involving full consultation, and report to the bishop with his or her recommendations. It is then for the bishop to decide whether the initiative should continue; if so, following consultation, he may make a second order. This may take one or other of two possible forms: the first applies if the bishop decides that the initiative or its objectives should be continued but by some means other than a bishop's mission order. In that case he may make a temporary further order for up to 18 months to allow time for the necessary arrangements. The second possibility is for the initiative to continue on the basis of a second bishop's mission order for up to five years, again with a full review by the Visitor, involving full consultation, near the end of its life.

At the end of the life of the second order, even if the bishop decides that the initiative or its objectives should continue, he will need to move the initiative on to some other legal basis if possible. This is because he has power to make a third order for it only if he is satisfied, after consultation, that there is no other suitable means of achieving the initiative or its objectives. However, if that is the case and a third order is made, it will not be subject to a fixed expiry date but will continue indefinitely, subject to the bishop's general power to vary or revoke it.

All this means that, for most initiatives, the bishop's mission order will be a temporary legal structure for its early, formative years, and that only in exceptional cases will the initiative continue to operate on that basis beyond the lifetime of two orders, amounting a maximum of ten years. However, where an exceptional case arises and the bishop makes a further order, it can continue without limit of time.

Further Reading

A good deal has been published about fresh expressions of church, in addition to the material available on the websites at www.freshexpressions.org.uk and www.sharetheguide.org, and there is already some published material about bishops' mission orders under the 2007 Measure. The reader who would like to explore the subject further may wish to obtain a copy of *Bishops' Mission Orders: a beginners guide*¹⁹ and to consult the helpful bibliographies in that booklet and the House of Bishops' Code of Practice, as well as the resources referred to on the two websites.

PARTS VII AND VIII OF THE 2007 MEASURE: MISCELLANEOUS PROVISIONS

In addition to the provisions in Part VII on the Church Buildings Council, which are referred to above, sections 58–61 in Part VII, taken together with Part VIII (sections 62–66 and Schedules 5–7), contains a number of amendments to the 1983 Measure and other legislation on a variety of subjects. Some are linked to earlier parts of the 2007 Measure; some did not figure in the original Toyne proposals but were suggested later. To take only a few examples, these provisions include the quite complex amendments needed to make it clear beyond doubt that the bishop may re-suspend presentation to a benefice a second time during the same vacancy, a subject on which the law had been (or had appeared to be) sufficiently uncertain to engage a number of learned members of the bar in writing opinions to express differing conclusions. Other provisions add yet further refinements to the law on appointments to team ministries, and also

19 P Bayes and S Croft, *Bishops' Mission Orders: a beginners guide* (London, 2008).

give the bishop power, after consultation with those who have or share in the cure of souls in the benefice concerned, to authorise an office of assistant curate (a term that now carries less dignified overtones than in the past) to be known by some other description.

After a series of transitional provisions, laid down by section 64 and Schedule 6, and a fairly lengthy list of repeals in Schedule 7, introduced by section 65, section 66 deals with an important subject in practice, that of commencement dates. As is normal in Measures passed by the General Synod, it provides for the dates on which different provisions are to come into force to be fixed by the archbishops. After 1 September 2008, almost all of the legislation will have come into operation, leaving only a few provisions in Part II (sections 3(1)–(4), section 6(3) and sections 12 and 17), which it is thought may be brought into operation in the first quarter of 2009.

THE FUTURE

As indicated early on in this article, the task of consolidating the 1983 Measure (already much amended before 2007) and the other fields of legislation covered by the 2007 Measure remains to be carried out. It may be that, in the light of experience, some adjustments will be made to the more innovative parts of the 2007 Measure or at least to the Code of Practice on Bishops' Mission Initiatives. In any case, the framers of legislation inevitably have to await the judgment of those who have to use it on their efforts, even if what they produce escapes the attentions of the courts. However, the hope is that, in this case, they have achieved at least a good part of the vision of the Toyne Group, as encapsulated in Professor Peter Toyne's Preface to their report, when (quoting Timothy Dudley-Smith's hymn *Lord of the Years*) he said that the Group believed that their proposals 'will facilitate the development of our "mission-shaped" church, take us with confidence "for the future" and last effectively "for the years"'.