

# Women bishops

## New proposal from the House of Bishops, 24 May 2013

The Working Group on women bishops this month reported to the House of Bishops suggesting four options for new legislation to enable the ordination of women as bishops. Option One offers the least provision for traditionalists; Option Four offers the most. On 24 May the Church of England published the Report (GS1886) with a covering paper from the House of Bishops, in which the Bishops recommend Option One.

The options will be debated at the General Synod in July and a vote will be taken on which basis the new legislation should be drawn up.

The Church of England website news announcement is here:

<http://www.churchofengland.org/media-centre/news/2013/05/new-legislative-proposals-to-enable-women-to-become-bishops-published.aspx>

I attach the report.

I would be grateful to receive your views on the Report. In the meantime, these are my initial thoughts.

The November 2012 draft women bishops legislation failed because more than a third of the members of the House of Laity (including myself) voted against. Less than a third of members of the House of Laity have theological objections to the ordination of women. The legislation failed because a significant number of those who are in favour of women bishops voted against, on the grounds that the draft legislation did not have enough provision for traditionalists.

The logical answer is therefore to offer new legislation that has more provision for traditionalists. However, the House of Bishops are recommending Option One, which would give less. In fact, Option One would give no legislative provision to traditionalists at all. All traditionalists would get would be a non-legislative statement by the House of Bishops (or General Synod) "setting out the arrangements that it expected to apply" (paragraph 26). The content of those "arrangements" is not specified.

In paragraph 6 the Bishops restate their December 2012 commitment that any new legislation needs "a broadly-based measure of agreement". The Bishops must know that Option One will be unacceptable to traditionalists. Perhaps by 'broadly based' the Bishops mean 'majority', and think that Option One can be forced through by the votes of the majority against the opposition of the traditionalist minority. The calculation may be that legislation that failed in 2012 because of insufficient provision for traditionalists, can pass in 2015 with even less provision for traditionalists, because it is hoped that the 2015 Synod elections will result in fewer traditionalists, or their sympathisers, being elected.

In paragraph 12, the Bishops set out five reasonable principles for any new legislation. The fourth principle states:

“Since those within the Church of England who, on grounds of theological conviction, are unable to receive the ministry of women bishops or priests will continue to be within the spectrum of teaching and tradition of the Anglican Communion, the Church of England will remain committed to enabling them to flourish within its life and structures;”

Option One does not comply with that principle, because it would not include legislation to give episcopal provision for traditionalists to enable them to stay in the Church of England. Traditionalists, for reasons of their reading of scripture (headship) and tradition (sacramental assurance) need oversight from a male bishop who is not under the headship of a woman bishop and who does not himself ordain women to the priesthood.

Paragraph 18 of the House of Bishops report states:

“It is vital that the 470 members of the General Synod now to have the chance to think through the various possibilities themselves, having listened to each other and to those they represent in their dioceses. The members of the House of Bishops also wish to listen intently as these conversations proceed and to let their own thinking develop further as the Spirit of God moves among us.”

I hope that the July Synod discussions will indeed result in a development of thinking; that the unsuitability of Option One will be recognised and a different path taken.

## GENERAL SYNOD

## WOMEN IN THE EPISCOPATE- NEW LEGISLATIVE PROPOSALS

## Report from the House of Bishops

1. The House of Bishops has met on three occasions since November's General Synod. At our first meeting in December we acknowledged the profound and widespread sense of anger, grief and disappointment felt by so many in the Church of England and beyond at the decision of the Synod not to give final approval to the proposed legislation to enable women to become bishops.
2. We shared their sadness at what had happened and their sense of frustration that legislation which had gained the support of 73% of the members of in the Synod and the overwhelming approval of the dioceses could nevertheless have failed to achieve the necessary two-third majorities in all three Houses of Synod.
3. In December we committed ourselves to bring the elements of a new legislative package to the Synod in July. To that end we established a working group drawn from all three Houses. We met in February to hear from the group and to receive an oral report of the intensive facilitated conversations that it had held earlier that week.
4. Earlier this month the group submitted its report to us. Several of its members were able to be present with us in York, on 20 May, when we met to consider it. We expressed to them then, and record now, our profound appreciation for the careful, thorough and measured piece of work that they have been able to produce in such a short space of time.
5. Its calm and thoughtful tone has greatly helped us in considering the way forward. While it was prepared as advice to the House, we concluded that the quality of its analysis would prove a valuable resource to Synod members and to others around the Church of England as we move towards fresh decisions. We are therefore publishing it as an annex to this report from the House.
6. In our discussions of the report we have found it helpful to remind ourselves of what we said when commissioning this work in December. We offered then the view that, to command assent, new proposals would need:
  - *Greater simplicity,*
  - *A clear embodiment of the principle articulated by the 1998 Lambeth Conference "that those who dissent from, as well as those who assent to, the ordination of women to the episcopate are both loyal Anglicans"*
  - *A broadly-based measure of agreement about the shape of the legislation in advance of the actual legislative process*

- *To enable the Church of England to resolve this unfinished business through its own processes as a matter of great urgency.*

7. The proposals of substance and process that we have now decided to bring to the Synod in July in the light of the working group's report reflect our conviction that the assessment we made then remains valid. The working group has itself placed emphasis on simplicity, reciprocity, mutuality and the need to make rapid progress.
8. In paragraphs 13-24 of its report the working group has rightly invited the House and the Synod more generally to consider whether the Church of England wishes to seek to remain a broad Church and what the acceptable limits of diversity should in future be.

### **A Shared Vision**

9. For its part, the House believes that the vision offered by the group at paragraph 24 is, subject to two points, something around which those who share its continuing commitment to the breadth of the Church of England can gather.
10. The two clarifications relate to the fourth element. First, the House believes that it would be more helpful and accurate to refer simply to '*those within the Church of England who, on grounds of theological conviction are unable to receive the ministry of women bishops or priests*' rather than singling out as the report does any particular groups.
11. More significantly, the House sees it as important that the reference to being '*within the spectrum of teaching and tradition of the Anglican Communion*' is read and understood alongside paragraph 15. There the group, referring to the Church of England's commitment to accommodating a wide range of theological conviction, observes: "As the preface to the Declaration of Assent makes clear, that is not an unbounded breadth. The Church of England professes '*the faith uniquely revealed in the Holy Scriptures and set forth in the catholic creeds.*' It sees its historic formularies as a witness to Christian truth."
12. With those clarifications the House endorses the group's view that the Church of England is at a moment where the way forward is likely to be one which makes it difficult for anyone to claim outright victory. The five elements of the vision need to be held together rather than used selectively. We set them out in full here for ease of reference:
  - **Once legislation has been passed to enable women to become bishops the Church of England will be fully and unequivocally committed to all orders of ministry being open equally to all, without reference to gender, and will hold that those whom it has duly ordained and appointed to office are the true and lawful holders of the office which they occupy and thus deserve due respect and canonical obedience;**
  - **Anyone who ministers within the Church of England must then be prepared to acknowledge that the Church of England has reached a clear decision on the matter;**

- **Since it will continue to share the historic episcopate with other Churches, including the Roman Catholic Church, the Orthodox Church and those provinces of the Anglican Communion which continue to ordain only men as priests or bishops, the Church of England will acknowledge that its own clear decision on ministry and gender is set within a broader process of discernment within the Anglican Communion and the whole Church of God;**
- **Since those within the Church of England who, on grounds of theological conviction, are unable to receive the ministry of women bishops or priests will continue to be within the spectrum of teaching and tradition of the Anglican Communion, the Church of England will remain committed to enabling them to flourish within its life and structures; and**
- **Pastoral and sacramental provision for the minority within the Church of England will be made without specifying a limit of time and in a way that maintains the highest possible degree of communion and contributes to mutual flourishing across the whole Church of England.**

### **Comparable and consistent arrangements**

13. The House has also reaffirmed its view, recorded at paragraph 48 of the report, that parishes in one part of the country should be able to expect broadly comparable and consistent arrangements to those provided in another, notwithstanding differences in the culture and ethos of the respective dioceses or the approach of the relevant diocesan bishop. The practical outworkings will, even as now, vary according to local circumstances. But the House is committed to seeking a way forward that will work and be honoured across the Church of England.
14. That means that the sort of arrangements set out by the group in paragraphs 52-62 will need to have some kind of national mandate. In particular it means that the House will need to be willing to operate a dispute resolution procedure in cases where churches that are unable on grounds of theological conviction to receive the priestly or episcopal ministry believe that they have not been treated consistently with the agreed national framework.
15. But what should the basis of that national mandate be? The working group explores various possibilities very carefully from paragraph 63 onwards. That part of its report merits close attention. The House agrees with the group that finding the right balance between law and grace so that trust can flourish is at the heart of the choice that now has to be made.
16. The group has helpfully sketched out a continuum of possibilities and identified four points along that continuum -options one to four- where that balance could be struck. They are not the only four possible options and even within some of them the group has identified possible variants.

## Consultation with the General Synod

17. The House has also warmly endorsed the group's recommendation that before the Synod comes to a formal debate, Synod members should have an extensive opportunity for facilitated conversations in small groups.
18. It is vital that the 470 members of the General Synod now to have the chance to think through the various possibilities themselves, having listened to each other and to those they represent in their dioceses. The members of the House of Bishops also wish to listen intently as these conversations proceed and to let their own thinking develop further as the Spirit of God moves among us.

## Options 1-4

19. The House is also mindful of its responsibility to offer clear leadership as this process moves forward. For that reason, the House has considered with some care what advice to offer the Synod on the choice set before it.
20. **The House could not commend to the Synod option four.** Some have argued that there would be nothing incompatible between this approach and the aim of simplicity since including all the necessary arrangements in legislation would create certainty. Nevertheless, the House does not believe that this degree of prescription would be wise.
21. The conviction of the House is that the Church of England should now commit itself fully and unequivocally to all orders of ministry being open to all, without reference to gender. It would, in the view of the House sit very uncomfortably with that if the Synod were to enshrine in legislation a series of rights, duties and definitions that would inevitably be seen as qualifying that commitment.
22. **In our discussions there was also only limited support for option three.** As explained in paragraph 96-109, this option would involve making arrangements in relation to episcopal ministry by way of a House of Bishops declaration (or possibly an Act of Synod), while preserving the right of parishes to pass resolutions A and B in relation to priestly ministry.
23. The working group has helpfully set out the case for and against this option in paragraphs 102-107 and the Synod will want to consider these arguments carefully. Nevertheless, within the House most bishops saw a good deal of difficulty in retaining in legislation the gender based difference of treatment which is the basis for the 1993 measure. That difference of treatment would remain enshrined in statute even if the modifications proposed by the group at paragraphs 97-100 were to be made.
24. Most members of the House believe, therefore, that the moment has come for demonstrating how the Church of England can manifest its commitment to remaining a broad church without having to rely on legislation to do so. In the light of November's decision a new approach is needed. **Option one would, in the view of most members of the House, have the advantage of clarity and offer the best way forward.**

25. It would mean that the draft measure and amending canon could be very simple indeed. They would make it lawful for women to become bishops as well as priests and would repeal the 1993 measure. In addition Synod would be invited to rescind the Episcopal Ministry Act of Synod 1993. The amending canon would also, as recommended in paragraph 54, provide new canons C 2 and C 4, so as to remove the need for separate, gender specific canons in relation to the three orders of ministry.
26. The working group identifies in paragraph 84 two possible ways in which the Church of England could set out its commitment to maintaining diversity and making arrangements for those whose theological conviction does not enable them to receive the ministry of women as bishops or priests. These are:
- For the House of Bishops to make a formal declaration setting out the arrangements that it expected to apply; or
  - For the whole Synod to take ownership of the arrangements and expectations by making a new Act of Synod.
27. The House of Bishops stands ready to prepare a formal declaration and bring it to the Synod in draft form, once the new legislation has started its passage through the Synod. It would be for the Synod to decide whether it preferred to proceed by way of Act of Synod. As explained by the working group, there would be no difference of legal effect between the two approaches. And the content of the document could be the same in each case.
28. As noted above, the House attaches importance to including in a declaration or Act of Synod a mediation process for addressing grievances from parishes which believed that they had not been treated consistently with the principles and arrangements agreed nationally. Such a process, to which all bishops would be expected to commit themselves, would be a necessary part of creating and sustaining the trust that would be required under option one.
29. In paragraphs 89-95 of its report the working group describes- as **option two**- what it characterizes as a development of the approach embodied in option one. It would take the Act of Synod approach of option one and develop it in two respects:
- The measure, which would lift the prohibition on women becoming bishops, would include a commencement provision that would say that the measure could come into force only when the Act of Synod (which that Synod would already have agreed before final approval of the measure) came into force
  - The measure would also include a special majority requirement so that the Act of Synod, as well as the measure, could not be amended or repealed without two thirds majorities in each House.
30. The working group notes that, *'for the minority, it [option two] has the advantage over option one that it enshrines in the law of the land a commitment to the acceptance of legitimate diversity in relation to ordained women's ministry.'* For most members of the

House that also draws out a possible disadvantage in that it qualifies the legislative simplicity of option one.

31. The House has, therefore, decided that the motion which it wishes to bring to the Synod in July is as follows:

**‘That this Synod:**

- (a) reaffirm its commitment to admitting women to the episcopate as a matter of urgency;**
- (b) instruct the Appointments Committee to appoint this month a Steering Committee to be in charge of the draft legislation required to that end;**
- (c) instruct the Business Committee to arrange for the First Consideration stage for that draft legislation to be taken at the November 2013 group of sessions, so that the subsequent stages can follow the timetable set out in paragraph 141 of the annex to GS 1886; and**
- (d) instruct the Steering Committee to prepare the draft legislation on the basis described in paragraphs 79-88 of the annex to GS 1886 as ‘option one’ and invite the House of Bishops to bring to the Synod for consideration at the February 2014 group of sessions a draft Act of Synod or draft declaration to be made by the House to accompany the draft legislation.’**

33. This motion reflects both what the House believes to be the natural starting point for the debate and what most of its members currently favour as the most desirable outcome.

34. We commend this process to the prayers of the whole Church as we seek the guidance of the Holy Spirit in the months to come.

✠ Justin Cantuar:

✠ Sentamu Ebor:

24 May 2013



## Women in the episcopate – new legislative proposals

### Consultation exercise

1. Shortly after the General Synod's vote of 20 November the House of Bishops established a Working Group to advise it on the preparation of fresh legislative proposals to enable women to become bishops in the Church of England as soon as possible. The Working Group issued a consultation document on 8 February following facilitated conversations earlier that week with people drawn from a wide range of viewpoints.
2. By the deadline on 28 February, 376 responses to the document had been received. Of these, 10 were from campaign groups or other organisations, 3 from bishops. Of the rest, 154 were from members of the Synod and 209 from others. The submissions received from Synod members were almost evenly divided between clergy and laity. A significant number of the contributions reflected and endorsed the lines taken by one or other of the various campaigning groups.
3. **There was almost universal support for the proposition that it would not be sensible to try and tweak the defeated legislation.** A new approach was needed.
4. There was also **very widespread support for the proposition that a complete package needed to be available before a new measure reached final approval stage.** Uncertainties over the possible contents of other instruments that might be made subsequently were as unattractive to supporters of women's ordination as to opponents.
5. There was, however, a greater diversity of views over the other two propositions in the consultation document.
6. From the supporters of women's ordination there was strong support for the proposition that *“any new approach should not seek to reopen questions over jurisdiction and the position of the diocesan bishop, in law, as the Ordinary and chief pastor of everyone in the diocese.”* By contrast, many of those who had opposed the defeated legislation argued that it was unhelpful to block off further exploration of these issues.
7. The latter questioned whether arrangements acceptable to them could be found unless the relationship between the diocesan bishop and the bishop providing pastoral and sacramental care for them was defined differently from the way proposed in the defeated legislation.
8. Comments on the last of the four propositions in the consultation document also revealed a sharp divergence of views.
9. Those strongly in favour of all three orders of ministry being equally open to men and women expressed strong support for legislation that was short and simple. They did not accept the thesis that this needed to be balanced by providing, through the totality of the elements in the package, a greater sense of security for the minority than had been offered in the earlier package.
10. By contrast, those opposed to the ordination of women as bishops stressed their need for a greater sense of security and of affirmation that they would have a continuing and valued place in the Church of England. While not opposed to simpler legislation if that was

compatible with providing more security, they attached less weight to the legislation being short and simple.

11. The consultation exercise, the facilitated conversations that preceded it and the further discussions that we had with invited participants on 8 April have all greatly helped us as we have sought to identify possible ways forward. As we said in the consultation document of the conversations of early February “*it was recognised...that a different mode of discourse was now needed, to avoid the mistake of expecting the Synodical processes to be able to carry all the weight...the experience of listening to and engaging with those of differing convictions was essential if a solution that worked for the whole of the Church of England was to be identified and accepted.*”
12. We believe that the Synod, guided by the House of Bishops, needs in July to come to a clear decision about the proposals and options laid before it and give a mandate for the introduction of a draft measure and amending canon in November. But that decision-making process will, in our view, be greatly assisted if all Synod members have first the opportunity in York for facilitated listening and engagement of the kind that we have found so helpful.

### **The limits of diversity**

13. The mandate given to the Working Group in December reflected the House of Bishops’ view that, to command assent, new proposals would need both greater simplicity and a clear embodiment of the principle articulated by the 1998 Lambeth Conference that “*those who dissent from, as well as those who assent to, the ordination of women to the priesthood and episcopate are both loyal Anglicans*”.
14. This mandate did not simply reflect the House of Bishops’ assessment of what was achievable. It also reflected its considered view of what was desirable, namely that **the Church of England should retain its defining characteristic of being a broad Church, capable of accommodating a wide range of theological conviction.**
15. As the preface to the Declaration of Assent makes clear, that is not an unbounded breadth. The Church of England professes ‘*the faith uniquely revealed in the Holy Scriptures and set forth in the catholic creeds.*’ It sees its historic formularies as a witness to Christian truth. But within these limits it has sought, over the centuries, to maintain wide limits to diversity. This approach has itself derived from a doctrinal conviction concerning the limits to what may be required ‘*as an article of the Faith*’ (see Article VI of the 39 Articles).
16. The decision by the Synod in 1992 both to admit women to the priesthood and leave space for those unable on grounds of theological conviction to welcome this development was an outworking of this historic approach to diversity.
17. In the light of the Synod vote in November 2012 a number of the responses to the consultation document - by no means the majority but not a negligible number – have questioned whether a solution that attempts to accommodate as wide a range of views as possible from the spectrum of Anglican teaching is any longer achievable or even desirable.
18. Those responses articulated such reservations in a number of different ways. For some, any difference of treatment between men and women is simply sexism. As such it is seen, like racism, as a form of discrimination which is to be resisted not accommodated.
19. Taken to its logical conclusion, this approach would necessarily narrow the present limits of diversity within the Church of England. It would involve the Church of England adopting a

single, unqualified approach under which differences related to gender could have no role in relation to ordained ministry, even though the Church of England would remain in communion with other provinces of the Anglican Communion (as of now, the majority) which did not have women as bishops.

20. Not all of those who have expressed support for simpler legislation have taken as clear cut a position as this. Some have indicated a willingness to accept transitional arrangements so long as the long term aim is to arrive at a single view. Others go further and are prepared for there to be open-ended arrangements for traditional catholics and headship evangelicals.
21. But for many of those prepared to countenance open-ended arrangements the sticking point is that they should not be enshrined in law. Their wish is for the arrangements to be framed in a way that signals their nature as pastoral provision for a dissenting minority. There must be no appearance of equivocation or half-heartedness on the part of the Church of England as an institution.
22. Given this range of views **it is essential, therefore, before framing fresh legislative proposals, to be clear on whether the Church of England is still willing to leave space for those who, as in 1992, dissent from its decision.** We have approached our task on the basis that the Church of England is so willing.
23. To expect unanimity on where the limits of diversity should be drawn may be unrealistic, given the variety of strongly held views which exist and are maintained with integrity. Nevertheless it is necessary to see whether there might be an approach which could command a sufficiently wide measure of assent to enable progress to be made.
24. After much thought and consultation the Working Group offers the following vision as something around which all those who aspire to keep the Church of England as a broad church might gather. From our own discussions we are clear that there are elements within this vision which will cause discomfort to those on various sides of the argument. But they need to be read one with the other and held together in tension. We are perhaps at a moment when the only way forward is one which makes it difficult for anyone to claim outright victory:
  - **Once legislation has been passed to enable women to become bishops the Church of England will be fully and unequivocally committed to all orders of ministry being open equally to all, without reference to gender, and will hold that those whom it has duly ordained and appointed to office are the true and lawful holders of the office which they occupy and thus deserve due respect and canonical obedience;**
  - **Anyone who ministers within the Church of England must then be prepared to acknowledge that the Church of England has reached a clear decision on the matter;**
  - **Since it will continue to share the historic episcopate with other Churches, including the Roman Catholic Church, the Orthodox Church and those provinces of the Anglican Communion which continue to ordain only men as priests or bishops, the Church of England will acknowledge that its own clear decision on ministry and gender is set within a broader process of discernment within the Anglican Communion and the whole Church of God;**

- **Since those Catholics and Evangelicals who, on grounds of theological conviction, are unable to receive the ministry of women bishops or priests will continue to be within the spectrum of teaching and tradition of the Anglican Communion, the Church of England will remain committed to enabling them to flourish within its life and structures; and**
- **Pastoral and sacramental provision for the minority within the Church of England will be made without specifying a limit of time and in a way that maintains the highest possible degree of communion and contributes to mutual flourishing across the whole Church of England.**

### **The outworking of the vision**

25. It is important to establish whether some shared vision of this kind can be achieved since it is clear that **any new process needs to start from a different place from where the Synod was in November**. Simply asking whether the way forward is to add to or subtract from the measure that was defeated then would be to engage in a zero-sum game. Given the inevitable polarisation caused by the defeat of that legislation the solution does not lie there.
26. Even if the proposals in the preceding paragraph have the potential to command some measure of support, it is probable that many people will hesitate to commit to them until they have a clearer idea of how these high level statements of principle would be worked through in practice.
27. For the majority the key question is to ensure that arrangements to enable traditional catholics and conservative evangelicals to flourish do not involve pain for those ordained women who, since 1994, have found it difficult to minister in a Church where some continue to retain doubts about their orders.
28. There is a determination among the majority to prevent any reappearance of the tendency shown in the past by some traditionalists to use the provisions of the 1993 Measure and the Act of Synod to create as much distance as possible from the rest of the Church of England. And there is a concern that whatever arrangements are made for the minority should not call into question the continuation of a single episcopate, the unity of which has traditionally been manifested visibly during episcopal consecrations.
29. For the minority the issue is whether the arrangements will in practice enable them to be part of the overall ministry and mission of the Church of England without the sense that their presence is permitted under sufferance and may at any time be called into question.
30. Without necessarily being part of alternative structures they want to be confident that appropriate pastoral and sacramental provision will be made for them. They also want to know that they can go on generating vocations to the ordained ministry and that clergy within their traditions will have a continuing role for the whole Church.
31. Is it possible, therefore, to describe a picture of how arrangements could operate in a way that was generous to the minority without involving unacceptable compromises on the part of the majority, or unacceptable theological or ecclesiological confusion for the whole Church of England?
32. Any such approach is likely to be dependent on a shared willingness to embrace three guiding principles, namely **simplicity; reciprocity; and mutuality**.

33. **Simplicity** will mean that the existing, already complex, structures of the Church of England will not be changed. **There will continue to be one General Synod, one House of Bishops and two provinces. There will be no additional dioceses. The position of each diocesan bishop as Ordinary will remain unaltered. All licensed ministers will continue to owe canonical obedience to the diocesan bishop in all things lawful and honest and take an oath to acknowledge this duty<sup>1</sup>.**
34. It will also mean, as the House of Bishops has already said, that **new arrangements should be simpler than those that were defeated last November.** What precisely this might mean - in terms of measure, canon and any other possible instruments - is explored later in this paper.
35. **Reciprocity** will mean that the majority and the minority, while each believing the other to be in error in relation to this particular issue, will nevertheless accept that they can rejoice in each other's partnership in the Gospel and remain within one Church despite differences of conviction about gender and holy orders. There will be a willingness to cooperate in mission and ministry.
36. In particular it will mean that both the majority and the minority will do all within their power to avoid giving offence to each other. **The majority will need to be sensitive to the feeling of vulnerability that the minority has and their concern that, over time, their position within the Church of England will gradually be eroded** (for example, through denying them access to senior leadership roles).
37. Equally **the minority will acknowledge that for many in the Church of England any difference of treatment between men and women is profoundly problematic, not because they are primarily guided by secular understandings of equality but because of their theological convictions about the nature of the Church and of baptism.**
38. The outworking of reciprocity will also mean that those who cannot receive the priestly or episcopal ministry of women should not be the only ones for whom special arrangements should, in some circumstances, be made. It is clear that, for some women, the experience of being in a diocese where the diocesan bishop does not ordain women to the priesthood, or indeed where no bishop ordains women, has been hard to bear.
39. Once the Church of England has admitted women to the episcopate either the diocesan bishop or a suffragan bishop of the diocese should therefore be willing to ordain women to the priesthood. **There should no longer be any dioceses where none of the serving bishops ordains women as priests.**
40. In dioceses where the diocesan bishop does not ordain women it will be particularly important that a bishop who is fully committed to the ordained ministry of women is given a role across the whole diocese for providing support for female clergy.

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1. Canon C 1.4 provides that "According to the ancient law and usage of this Church and Realm of England, the priests and deacons who have received authority to minister in any diocese owe canonical obedience in all things lawful and honest to the bishop of the same ...". By way of acknowledgement of that duty, under Canon C 14 clergy are required on various occasions to make or reaffirm the Oath of Canonical Obedience to their diocesan bishop. But the duty of obedience does not require the cleric to comply with any and every direction given by the bishop; rather, it requires the cleric to obey such directions as the diocesan bishop is authorised by law to give.

41. **Mutuality** will mean that the majority and the minority will be committed to making it possible for the other to flourish. **The minority will play a full part in the lives of the deaneries and dioceses, with traditionalist clergy as now, for example, serving as rural/area deans. The majority will treat the minority in the same way as everyone else, for example in relation to resource issues and the discerning of vocations to the ordained ministry.**
42. Once the Church of England has admitted women to the episcopate it will no longer be realistic, as in the 1993 Act of Synod, to treat views on the ordination of women as irrelevant to episcopal appointments (see paragraph 39 above). Many dioceses will want to insist that their diocesan bishop should be someone who ordains women and they will want to choose the best person for the role irrespective of their gender.
43. Nevertheless, mutuality means that there will be a continuing commitment to consecrating bishops within the Church of England who can minister to the minority.

### **From vision to legislation**

44. **There will on any basis need to be a draft measure and an amending canon to make it lawful for women, as well as men, to become bishops.** And because such legislation will be Article 7 and 8 business it will, under the Synod's Constitution, have to go through processes which cannot in practice take less than about eighteen months from the moment it is introduced into the Synod for first consideration.
45. But acceptance of the vision set out in the first part of this paper – or indeed of some alternative vision – does not resolve the key question whether the measure and/or amending canon should do more than that. It also leaves open whether the measure and canon should be supplemented by one or more of a set of regulations (whether made under the measure or canon), a code of practice, an Act of Synod or a statement from the House of Bishops.
46. As was explained in the annex to the consultation document **much turns on whether there is a commitment to securing broadly comparable and consistent arrangements across the whole Church of England, albeit with variations in the practical outworkings** in order to take account of the variety of local contexts.
47. Alongside the principles of simplicity, reciprocity and mutuality, therefore, a view needs to be taken on how much importance to attach to the concepts of **predictability, consistency, accountability** and **enforceability**.
48. During the last legislative process the House of Bishops gave a clear steer to the group working on the illustrative draft code of practice that, on the most important issues, it wished to see a broad consistency of approach across the Church of England. Thus a parish holding a particular view of women's ordained ministry in one part of the country could expect to be treated in a similar way to a parish of the same view in another part of the country, even though the ethos and culture of the two dioceses might be very different from each other.
49. **The Working Group's approach has, accordingly, been that there should be broadly comparable and consistent arrangements across the Church of England, based on the approach set out in paragraph 24 and the three principles in paragraph 32.** Such variations as occur would be in the practical outworkings rather than in the substance of the arrangements.

50. If the Synod and the House of Bishops disagree with that recommendation the next two sections of this paper fall away. The task would then simply be to try to get the necessary legislation through the Synod to enable women to become bishops. It would be up to each bishop and diocese to decide what pastoral arrangements they wished to make locally.

51. But if there is a desire to seek some degree of consistency across the Church of England decisions are needed on:

- The content of the arrangements; and (depending on what degree of assurance and predictability is desired)
- How they should be mandated.

### **Possible content of arrangements**

52. In any discussion of what provision should be made for those whose theological conviction does not enable them to receive the episcopal or priestly ministry of women there is an immediate presentational difficulty.

53. The inevitable consequence of making such provision is that attention appears to shift to the needs of the minority in a way that can be perceived as implying that their concerns are of greater significance than those of the majority. This is particularly difficult given that the majority's strong support for removing gender distinctions in relation to ordained ministry is just as rooted in theological conviction as are the beliefs of the minority.

54. It is for this reason that any arrangements need to be set clearly in the context of the first two statements in paragraph 24. It will help to reinforce these if the necessary amending canon can go further than the one drafted as part of the defeated legislation and can deliver new Canons C 2 and C 4 which deal with the episcopate, presbyterate and diaconate **without the need for separate canons which are gender specific** (as at present in the case of Canons 4A and B).

55. Granted, however, that some provision for the minority is integral to the vision set out in paragraph 24, of what might it consist in practice?

56. The key elements would be as follows:

- A means by which PCCs can signal that they wish to take advantage of the arrangements available to those who, on grounds of theological conviction, are unable to receive the priestly or episcopal ministry of women;
- An encouragement/expectation/requirement (the choice is bound up with the legal status of the delivery mechanism- see below) that diocesan bishops and patrons will provide and respect such arrangements;
- A dispute resolution procedure that a PCC can invoke if it believes that the bishop/patron has not made arrangements consistent with what the House of Bishops/Synod has called for (whether this would be binding on bishops would again be dependent on the delivery mechanism – see below);
- Arrangements which deliver pastoral and sacramental care for and within parishes in a manner that both reflects their needs and is consistent with the position of the diocesan bishop as ordinary;

- A commitment by the Archbishops and the House of Bishops to seek to ensure that male bishops and priests would continue to be available to minister to such parishes.
57. As was evident from the debates on the defeated legislation and the work on the illustrative draft code of practice, there are a number of questions that arise in connection with each of the elements set out in the preceding paragraph.
  58. In relation to the first element, for example, there will be choices over the level of support required within the PCC if a parish is to take advantage of the arrangements. Should it be, as under the 1993 Measure, a simple majority of the PCC at a meeting of which at least half of the members of the council are present or should it require, as under the defeated legislation, a resolution passed either at a meeting at which at least two-thirds of the PCC members are present, or by a majority of those who are entitled to attend?
  59. As regards the fourth element, one issue for decision would be how prescriptive the provision should be about the nature of the episcopal functions that would be undertaken by the male bishop who would be undertaking such functions in relation to the parish.
  60. Under that element of the provision a view would also need to be taken on how the male bishop concerned was to be identified. It would be possible, for example, to indicate that the male bishop should be chosen by the diocesan bishop from among those identified from time to time by the archbishop of the province as being available to undertake functions in relation to parishes which had so requested. Doing so would mean it would not be necessary to define the characteristics of the bishop, so avoiding some of the difficulties encountered over clause 5(1)(c) of the failed Measure.
  61. The final element set out in paragraph 56 touches on issues concerning non-discrimination in relation to ordinations to the priesthood, the way in which male bishops would be selected to exercise pastoral and sacramental care for some parishes and also the possible use of particular sees.
  62. Answers to each of these various issues can be identified, and indeed the ground has already been extensively mapped in the earlier work. But first it is necessary to be clearer about the overall approach and framework.

### **How arrangements should be mandated- the key choices**

63. If, as we recommend, the aim is to have consistent and broadly comparable arrangements across the Church of England it follows that they need to be agreed at national level and embodied in a document or documents of some kind or another.
64. The key question is **whether it would be sufficient to set out clearly what the Synod or House of Bishops expected to happen or whether, in order to make predictability more than an aspiration, certain rights and obligations should be created.**
65. The former could be achieved through a declaration by the House of Bishops or by an Act of Synod. The latter would involve provision by way of measure or canon, or by regulations made under an enabling provision in a measure or canon.
66. Under the Synod's Standing Orders an Act of Synod represents "the embodiment of the declared will or opinion of the Church of England as expressed by the Synod" and can therefore give formal expression to the policy of the Church. Similarly, a declaration made



by the House of Bishops can give a commitment as to how the members of the House at the time of the declaration intend to act. But neither can create rights or duties. It is also very doubtful whether either could create a 'legitimate expectation' of a kind that would allow proceedings to be brought by way of judicial review if a particular policy was not followed in a particular case.

67. By contrast, measures, canons and regulations made under them are all forms of legislation and can create enforceable rights and duties (though provision made in or under a canon can only bind the clergy).
68. The central judgement therefore in relation to any particular combination of instruments **is what will most help to create the necessary climate of trust within which mutual flourishing can take place. Is it best to have as little law as possible to prevent people relying on law rather than grace? Or is some law needed to fertilise the soil within which trust may grow?**
69. Given the diverse membership of the Working Group it will come as no surprise that it does not have a single view on precisely where the balance should be struck. But we have been able to produce an agreed assessment of the range of possibilities and hope that this will be of value to the House of Bishops and the Synod as both now come to decide on the shape of the new legislative package.
70. At one end of the spectrum would be a more developed and substantial declaration of the kind agreed by the House of Bishops in December 2011 (and published in GS Misc 1007), when the House set out three principles. It would be possible for the House of Bishops to issue a much more detailed declaration which both set out how bishops committed themselves to act in relation to matters within their own control and how they expected others to behave.
71. Given the important role of the House of Bishops such a document would, no doubt carry significant weight. But its value would, in the long run, turn on the extent to which people around the Church of England chose to act in accordance with its recommendations. Such a document could not impose any legal obligations. PCCs, patrons, clergy or indeed present and future members of the House of Bishops would each be free to come to their own conclusions as to how far they wished to exercise their own discretion in accordance with the House of Bishops' declaration.
72. At the other end of the spectrum is an approach that would include all the elements of the new arrangements in a Measure (perhaps supplemented by regulations made under the Measure, which in law comes to the same thing.) This would be the maximal legislative approach. It would mean that arrangements made for those whose theological convictions did not enable them to receive the priestly or episcopal ministry of women would have statutory force.
73. Because measures of the General Synod have the same effect as Acts of Parliament the arrangements could incorporate a whole range of legally enforceable rights and duties. A high level of assurance could be provided, albeit at the price of a high level of prescription.
74. The Working Group has identified a number of intervening points along this spectrum. Moreover, even on the legislative side of the line there are choices whether to deal with certain matters by way of Measure- which require Parliamentary approval and are binding on everyone- or by way of canon- which requires the Royal Licence but not Parliamentary approval and can bind bishops and clergy but not, directly, the laity.

75. Nevertheless, it is important to be clear that there is a dividing line part way along the spectrum. On one side of it is territory which involves various types of legislation – Measure, regulations made under Measure, canon and regulations made under canon. On the other side are non-legislative documents, whether declarations made by the House of Bishops, motions passed by the General Synod or Acts of Synod.
76. It would be possible to construct a package which included elements from either side of the dividing line. Indeed, that is what happened 20 years ago when the provision relating to Resolutions A and B was contained in the Measure, while the arrangements relating to extended episcopal oversight were set out in the Episcopal Ministry Act of Synod 1993.
77. It is not evident from the experience of the past 20 years that the different status of these two types of provision has in fact led to the arrangements relating to extended episcopal oversight being less effective generally than the legally binding provision relating to the resolutions. Whether this high degree of compliance would have been the same had all the provision been contained in an Act of Synod or a non-binding declaration is, though, more difficult to assess.
78. What is clear is that the choice is not simply between a legislative and non-legislative basis for any new arrangements. There is, in principle, the possibility of a more eclectic approach. We have, therefore, explored a number of possibilities. The following paragraphs look at four possible ways of delivering the arrangements described above. They are not exhaustive but they do map out what seem to us to be the points along the spectrum from which the House and the Synod need to make a choice.

### *Option one*

79. Many responses to the consultation document called for ‘the simplest possible legislation’. What was meant by that was:
- A measure and amending canon that made it lawful for women to become bishops; and
  - The repeal of the statutory rights to pass Resolutions A and B under the 1993 Measure, plus the rescinding of the Episcopal Ministry Act of Synod.
80. It is important to note that, strictly speaking, the simplest possible new legislation would consist only of the first of these two elements since it is not necessary to repeal the 1993 Measure in order to enable women to become bishops. The simplest possible legislative approach would therefore leave in place the ability for parishes to pass Resolutions A and/or B.
81. Those who favour the ‘simplest possible legislation’ are, however, describing the state of the law that they would wish to result from the new legislation rather than describing the draft measure itself. So the simple approach described here as option one incorporates both of the elements in paragraph 79. And, for reasons discussed further under option three, it would not in any event be desirable to leave the 1993 Measure in place without making some amendments to it.
82. What then would the effect of this approach? Currently parishes know that if they pass Resolutions A or B under the 1993 Measure certain consequences must follow. If they pass Resolution A they know that a woman cannot preside at Holy Communion. If they pass Resolution B they know that a woman cannot be appointed as incumbent, priest in charge or

a team vicar. The effect of these resolutions is legally binding on everyone concerned, including bishops, clergy and patrons.

83. In the absence of statutory provision of this kind it would be for each of the various parties to reach their own view, within the framework of the general law and taking such account as they wished of any statements declarations or guidance that the House of Bishops or the Synod might have made nationally. The consequences in terms of the Equality Act are considered in the next section.
84. A decision to go for the simplest possible measure and canon – including repealing the 1993 Measure and rescinding the Act of Synod – could be accompanied by some kind of formal declaration by the House of Bishops or by the making of a new Act of Synod. Either form of instrument could include a preamble setting out the Church’s commitment to maintaining diversity and spelling out some expectations in relation to simplicity, reciprocity and mutuality.
85. Both an Act of Synod and a declaration by the House of Bishops could therefore provide a possible way of seeking to secure some degree of consistency across the Church of England. What they would have in common is that neither would be legally binding on anyone.
86. As between a declaration by the House of Bishops and an Act of Synod there would be a greater formality in embodying any national policy commitments and guidance in an Act of Synod since this would mean that the provisions would have the support of all three Houses.
87. To avoid uncertainty at the point of final approval of the measure and amending canon it would be possible for the Act of Synod to be made in advance of that point.
88. So, in summary, of the options discussed in this paper, this is the one that would rely least on law and place the greatest emphasis on trust. It would allow a diversity of belief about gender and ministry to continue in the Church of England but it would mean that how that was worked out in practice would be dependent on the discretionary decisions of individual bishops, clergy, PCCs, patrons and parish representatives.

### ***Option two***

89. A development of this approach, which would necessitate employing an Act of Synod rather than a declaration by the House, would be to include a provision in the Measure which linked its coming into force with the coming into force of the Act of Synod, which would have been agreed by the Synod before final approval of the Measure.
90. In addition the Measure could also include a special majority requirement so that the Act of Synod, as well as the Measure, could not be amended or repealed without two-thirds majorities in each House.
91. In all other respects this option would resemble option one in that the Measure would both repeal the 1993 Measure and remove the present obstacle to the consecration of women as bishops.
92. Like option three, this is an approach which incorporates elements from both sides of the legislative/non-legislative dividing line. For the minority it has the advantage over option one that it enshrines in the law of the land a commitment to the acceptance of legitimate diversity in relation to women’s ordained ministry. The removal of the legal obstacle to women becoming bishops would happen at the same moment as an Act of Synod came into

force setting out the arrangements which the Synod expected the whole Church of England to follow.

93. In addition, by inserting a requirement for two thirds majorities for any changes to the Act of Synod the Synod would be signalling its view of the importance of its provisions and the need for a high level of consensus for any subsequent changes to them.
94. For the majority it has the advantage of still placing much more of the emphasis on trust than on law. This is because, like option one, it proceeds by way of declaring policy and creating expectations rather than creating legally enforceable rights and duties. The statutory underpinning for the Act of Synod would not turn it into a form of legislation.
95. So, in terms of rights and duties within parishes and dioceses the position would be the same as under option one. It would remain for each of the various parties to reach their own view, within the framework of the general law and taking such account as they wished of the policy and expectations set out in the Act of Synod.

### *Option three*

96. Another option which draws on elements from each side of the dividing line would be to have a House of Bishops' declaration or Act of Synod in relation to episcopal ministry and in addition retain some elements of the 1993 Measure in relation to priestly ministry.
97. This possibility was included in the 8 February consultation document and many respondents expressed a good deal of caution about it. There was particular concern at the present requirement – inserted into the Patronage (Benefices) Measure 1986 by the 1993 Measure – that every time a parish vacancy arose the PCC had to consider whether to pass a resolution under the 1993 Measure.
98. This requirement to consider the question every time there is a vacancy may, perhaps, have been understandable in the new context created 20 years ago. But it does now look decidedly curious when more than 90% of parishes in the Church of England are fully open to the ministry of women and many of them are puzzled that there is any question about the matter.
99. It follows, therefore, that as a minimum, that requirement of the Patronage (Benefices) Measure ought to be repealed even if parts of the 1993 Measure were retained. The ability of cathedrals to pass Resolutions A and B once women become bishops would also be unsustainable given that the cathedral is the seat of the bishop, who has the right to officiate there in accordance with the cathedral's constitution and statutes.
100. It would also be unsustainable for Resolution A to have legal effect in relation to the diocesan bishop generally, on the ground that, the bishop has a general cure of souls throughout the diocese. There would be questions as well over whether to change the arrangements in relation to multi-parish benefices and whether any changes should be made to the procedural requirements that are required for the passing of a resolution.
101. So, the Working Group is clear that, even under this option, **significant elements of the 1993 Measure would need to change**. That said, there is an argument to be considered as to whether retaining Resolutions A and B in relation to priestly ministry would be a way of building pragmatically and incrementally on present arrangements.

102. One important consideration from that point of view is that retaining the provisions, albeit in a modified form, would avoid removing the statutory rights which are currently available to parishes and the corresponding duties that they involve for patrons, bishops and others.
103. It can also be argued that there is a greater need at parish level and in relation to priestly ministry for the level of clarity and assurance that can only be provided by statutory provisions than there is in relation to the provision of suitable episcopal ministry for all parishes. There would need to be reasonable confidence that bishops would act consistently with an Act of Synod or House of Bishops declaration. It would, however, be more difficult to avoid the much greater risk of widely diverging practice in relation to priestly ministry if there were no rights and duties in that connection.
104. The retention of the Resolutions would not provide all that some parishes would want since for them the issue would not solely be the gender of their incumbent and other clergy but the provenance of their orders. This is not something that we think should be addressed in the legislation. The need for the consent of the parish representatives would in any event provide a mechanism for the parish's concerns to be met in the appointment of an incumbent.
105. In the case of other parochial clergy appointments the Act of Synod or House of Bishops' declaration could specify that, where Resolution A had been passed, the bishop should seek to ascertain and meet the needs of the parish. The Act of Synod or declaration could also make provision for female clergy to seek pastoral care from a bishop who ordained women where the diocesan bishop did not do so.
106. There are two arguable disadvantages to option three which need to be weighed alongside its advantages. The first is that it would perpetuate what has been one of the somewhat untidy and perhaps not wholly intended features of the present arrangements whereby the Resolution A and B procedure in relation to priestly ministry in the parish derives from legislation whereas arrangements dealing with episcopal ministry, which are by definition no less important are set out in a document (whether as now an Act of Synod or a declaration from the House) which carries less weight.
107. The second is that for some the 1993 Measure has, like the 1993 Act of Synod, acquired a totemic significance. This, alongside the wish for as little legislation as possible, makes retaining any part of the 1993 legislation problematic for them.
108. The choice as between an Act of Synod or House of Bishops' declaration would be a further decision that the House and Synod would need to make if it were attracted to retaining some elements of the 1993 Measure. As already noted, the legal effect of each is the same in the sense that neither gives rise to legally enforceable rights or duties. But if it were desired, as under option two, to create some statutory underpinning in relation to the special episcopal arrangements, an Act of Synod would be necessary.
109. The Working Group's view is that if elements of the 1993 Measure are retained it would, for the sake of simplicity, be better to have a House of Bishops' declaration rather than adding further to the legislation by providing a statutory underpinning for an Act of Synod.

#### ***Option four***

110. As the consultation document of 8 February noted, it would be possible to include all the relevant provisions about the proposed new arrangements, in relation to both priestly and episcopal ministry, in the measure itself.
111. The Working Group has also considered the alternative possibility of keeping the measure simple while including more material in a canon or in regulations made under an enabling provision in a canon. Such an enabling provision could be as brief as something along the lines of: “*Regulations shall be made by the House of Bishops to give effect to, or in connection with, Canon C 2.1[i.e. the canon enabling men and women to be consecrated as bishops] and, in particular as to the exercise of episcopal ministry.*”
112. It has, however, concluded that the possibility of relying on provisions in canons or regulations made under canon should not be pursued, whether in relation to episcopal ministry alone or episcopal and priestly ministry. Canons are, in general, binding only on bishops and clergy and cannot override the general law. So there would be limitations to what could be achieved by canon rather than by measure. That difficulty could be overcome if the measure contained provision allowing the canon(s) made under it to do more than is normally possible but that would give rise to complications, including from the procedural point of view.
113. What this means, simply, is that in the absence of such provision it would not be possible to use the canonical route to bind the conduct of patrons and PCCs. That fact alone means that it would not be possible to produce a substitute for the resolutions under the 1993 Measure.
114. The Working Group has concluded, therefore, that if the House of Bishops and the Synod wanted to include arrangements in legislation it should do so by measure rather than by canon or regulations made under canon.
115. Such a measure could in some respects be simpler than the one rejected by the Synod in November in that it would not contain provision for diocesan schemes or a statutory code of practice. But it would be more substantial than the one that might be prepared under option three. This is because, even if it proceeded by way of amending rather than superseding the 1993 Measure, it would need to include provisions in relation to episcopal ministry which, under that option, would have been included in an Act of Synod or House of Bishops declaration.
116. Those provisions could in principle, be relatively concise, comprising procedures for PCCs to ask for episcopal ministry to be provided to the parish under the measure and a requirement in such circumstances for the diocesan bishop to select a bishop to undertake such ministry from among those identified from time to time by the archbishop of the province as being available to undertake such ministry.
117. It would be possible for some of the detail to appear in schedules to the measure rather than in clauses, but that is a distinction without any substantive difference since schedules and clauses have the same legal effect.
118. Provisions in a measure would provide greater legal certainty than any other approach and could, as required, create enforceable rights and duties. It is precisely because a measure forms part of the law of the land and has the same effect as an Act of Parliament that its provisions have to be drafted with a precision and in a register that is not required for an Act of Synod or a House of Bishops declaration of intent.

119. This is potentially both an advantage and a drawback. For example, a measure would not be the right vehicle for containing material setting out the Church of England's wider convictions in relation to opening all orders of ordained ministry equally to women and men and its desire to maintain a mixed economy and promote mutual flourishing.
120. The Church of England is familiar with legislating by way of Measure and if the overriding objective is to achieve as much clarity and predictability as possible then this is the option that will best deliver that. But there is a question whether an approach with this level of prescription is desirable or necessary. We also doubt whether it is the way forward given the stated preference of the House of Bishops in December for simplicity and the clear evidence from the consultation exercise that an approach that relied heavily on legislation would be unacceptable to very many people across the Church of England.

### **The Equality Act 2010**

121. What are the implications of the Equality Act 2010 for each of these four options - or indeed for the approach favoured by some under which there would be no nationally agreed arrangements at all but simply local pastoral provision made by the relevant diocesan bishop as he or she judged best?
122. It is important to distinguish here between two issues which frequently get confused. Those who hold the view summarised in paragraph 18 see any gender-related difference of treatment as discriminatory and something that, as a matter of principle, the Church of England should not tolerate.
123. But it is also sometimes asserted that such discrimination is contrary to the Equality Act. That is an oversimplification. The Equality Act proceeds by defining the circumstances in which particular actions constitute unlawful discrimination. And even where such circumstances apply it includes special provisions to cater for situations where differences of treatment are justified and proportionate to the meeting of certain legitimate objectives. The freedom to manifest religious belief is one such objective. Indeed it is an objective safeguarded by Article 9 of the European Convention on Human Rights.
124. For that reason, Schedule 9 of the Equality Act contains a provision (described below) in relation to organised religion which applies to the Church of England as to other denominations and faiths. Moreover, that provision does not apply only to a denomination which, like the Roman Catholic Church, maintains an absolute prohibition on women exercising certain roles.
125. The Church of England has lawfully enabled a diversity of conviction and practice to exist since 1993. Initially that was secured partly because of the exception provided for all organised religion under section 19 of the Sex Discrimination Act 1975 and partly because of section 6 of the 1993 Measure which was included because of doubts at the time as to whether section 19 was sufficiently broad. So it is true that for some years the Church of England benefitted from some provisions which were unique to it.
126. That, however, ceased in 2005 when, to give effect to a European Directive, Parliament passed fresh regulations which replaced section 19 of the Sex Discrimination Act and, with the consent of the Church of England, repealed section 6 of the 1993 Measure.

Because of the drafting approach adopted in the new provision in the general law there was no longer any need for any Church of England specific provision.

127. The Equality Act did not materially change the position save in one respect, which is not relevant to the priesthood (and not therefore to the appointment of certain Deans by the Crown) but is in relation to the episcopate. Under section 50 of the Equality Act it is unlawful to discriminate not only in making public appointments but in the terms in which appointments are offered. A ‘public appointment’ for this purpose includes one made ‘on the recommendation of or subject to the approval of a member of the executive.’
128. It is not entirely clear whether, under the arrangements for appointing bishops that have applied since 2007, the Prime Minister’s role in advising the Crown on episcopal appointments falls within the definition of ‘public appointment’. If it did (a question which is currently being discussed between Church and Government officials) and if the Church of England wished there to be an expectation, even if not a requirement, that diocesan bishops should in some circumstances invite other bishops to carry out some functions on their behalf in certain parishes, the new measure would need to amend section 50 so that such actions did not constitute unlawful gender or religious discrimination.
129. Such a provision, which could be more narrowly drawn than clause 7 of the defeated measure, would not be conferring a special exemption on the Church of England. Its effect would simply be, in relation to the episcopate, to leave the Church of England in the same position as all other denominations and faiths, to which the exceptions in Schedule 9 of the 2010 Act apply. It also has no bearing on which of options one to four is chosen or indeed whether everything is left to be determined by way of local, pastoral discretion.
130. Paragraph 2 of Schedule 9 to the Equality Act does, however, have some potential bearing on this choice since the position of PCCs, patrons and parish representatives could be different depending which option is chosen. Its effect is that it is lawful to impose a requirement that the person to be appointed be male, so long as that is done in order to avoid conflicting with the strongly held religious convictions of a significant number of worshipping members of the Church of England to whom the person would be ministering.
131. This safeguard to avoid conflict with religious conviction would be available under any of the four options. The difference, however, is that under options three and four there would be virtually no risk of legal challenge being brought because patrons, bishops, PCC members and parochial representatives would be bound to act in accordance with the relevant statutory provisions (whether the retained parts of the 1993 Measure or, under option four, the new provisions) which are designed so that the body which largely consists of elected representatives of the worshipping laity of the parish is able to express its view on the matter.
132. In the case of options one or two the position would be different because those concerned would be exercising their own discretion taking account of such policy statements as were included in an Act of Synod or House of Bishops’ declaration. A patron would be under no duty to accede to the declared wish of a PCC when deciding whom to present to the living. Difficulty could therefore arise either because a traditionalist patron was unwilling to present a female priest for appointment despite the PCC’s support for such an appointment or because a patron was unwilling to meet the request of a traditionalist PCC.
133. In the latter case, it would be open to the parish representatives to exercise their power of veto. But were they to do so they would, if a discrimination claim were brought under the Equality Act, be personally exposed to having to defend (at their own cost) their



decision. The chances of such litigation may well be small, and the chances of its success even smaller, assuming that the parish representatives were able to justify what they had done by demonstrating that a significant number of the worshipping community held a traditionalist position. But if there were a claim the matter would have to be argued out in a way that is not currently necessary when a resolution has been passed by the PCC under the 1993 Measure.

134. Similar issues would arise under options one and two were an incumbent to decline to nominate a female curate if Resolution A or an equivalent no longer existed. Again the risk of challenge might be small and the risk of successful challenge even smaller but he would be in a similar position under the Equality Act to the parish representatives who exercised their veto under the Patronage (Benefices) Measure.
135. In relation to episcopal ministry it would (subject to paragraphs 127-129 above) remain open in law to the Crown Nominations Commission (and diocesan bishops making suffragan appointments) to decide whether to impose a gender requirement to avoid conflicting with the strongly held religious convictions of a significant number of the worshipping members of the Church of England to whom the bishop would be ministering.
136. In the absence of any statutory provisions of the kind that would exist only under option four it would then be for the person appointed to a diocesan see to determine what arrangements, if any, to make within the diocese to take account of diversities of convictions in relation to the ordained ministry of women. He or she would have to decide what account to take of such guidance or declarations as the House of Bishops or Synod might have made.

### **Conclusion- Process and timescale**

137. A choice needs to be made as to which of these four broad approaches should be adopted. All of the relevant legal documents could be drafted relatively quickly. What the lawyers need are clear policy instructions before they begin.
138. Given the wide range of views revealed by the consultation exercise the key challenge is for the Synod in July to take decisions in the light of such recommendations as the House of Bishops wishes to offer and to mandate the immediate establishment of a Steering Committee to bring a new draft measure and amending canon in November. As noted above, the Working Group is strongly of the view that members of Synod need to have a significant opportunity for extended, private conversation in groups at York before the debate in which decisions will have to be made.
139. The working group is aware that there is a range of views around the Church about whether it would be sensible to bring any new measure to final approval in the lifetime of this Synod or to aim for final approval in November 2015 immediately after Synod members with a fresh mandate have been elected that autumn. This is understandable given the variety of perspectives over what conclusions to draw from last November's decision.
140. Nevertheless the Working Group would urge the House and the Synod to bear the following points in mind:
- The present situation is unsustainable and needs to be resolved as early as is practicable for the good of the whole Church of England.

- Parliament is impatient. None of us on the Working Group believes Parliament should impose a solution on the Church of England but the risk of this will grow unless the Synod can show that it can make progress, and quickly.
- It would be intolerable not to start a fresh legislative process as soon as possible so that final approval can be achieved in 2015, whether at the end of this life of this Synod or at the beginning of the next Synod. Legislation must receive first consideration in November to keep open that timescale.
- That means that the legislation that goes out to the dioceses under the Article 8 procedure in 2014 must be in a form that is likely to command the support of the majority of dioceses and will not be such as to give rise to the possibility of the substance of the proposals embodied in it being changed later by the House of Bishops.

141. A possible timeline for the new draft measure and amending canon would, therefore, be as follows:

- **November 2013: First Consideration**
- **January – April 2014: Revision Committee considers draft legislation**
- **July 2014: Revision Stage in full Synod**
- **August – end of November 2014: Article 8 reference to the dioceses**
- **February 2015: Report back from the dioceses and Final Drafting Stage**
- **May 2015: Article 7 reference to the House of Bishops**
- **July 2015: Article 7 reference to the Convocations and House of Laity**

**Either July/ November 2015: Final Approval (followed by Parliamentary consideration and Royal Assent).**

142. Work on any Act of Synod or House of Bishops' declaration would need to be carried forward in parallel with the processes of consideration of the measure and canon so that, while not formally part of the Article 8 reference, they could be shared with the dioceses in August 2014.

143. If the additional instrument consisted of an Act of Synod it would first need to be considered under the preliminary motion procedure and then, at the same group of sessions, be open to amendment in full Synod under the 40 member procedure. Since it would constitute Article 7 business the Act of Synod would then need to be considered by the House of Bishops. That would be the final point at which the text could be amended.

144. A decision would need to be taken therefore, whether to bring any draft Act of Synod for consideration and amendment to the Synod in November 2013 alongside the draft measure and canon or whether to take that separately in February 2014. The latter is probably more realistic.

145. In either event it would be important for the Article 7 consideration in the House of Bishops not to occur until after the Revision Committee and Revision Stage of the draft measure and amending canon were concluded in case any amendments carried in the course of the revision process had a bearing on the Act of Synod. That means, therefore, that the House of Bishops would need to meet at the end of the Synod in July 2014 in order to keep the timetable on track.

**The Very Reverend Viv Faulk**

**10 May 2013**

**Dr Philip Giddings**

**Dr Paula Gooder**

**The Venerable Christine Hardman**

**The Right Reverend James Langstaff**

**The Reverend Doctor Rosemarie Mallett**

**The Right Reverend Nigel Stock (Chair)**

**Mrs Margaret Swinson**

**The Right Reverend Martin Warner**

In addition the **Right Reverend Christopher Cocksworth** contributed to most of the meetings of the group, departing on sabbatical before the final report was agreed.