

**GENERAL SYNOD
LEGISLATIVE COMMITTEE**

Church Representation and Ministers Measure

Comments and explanations

The Church Representation and Ministers Measure replaces the Church Representation Rules contained in Schedule 3 to the Synodical Government Measure 1969 with a new set of Rules. It also makes a minor amendment to the law relating to ordination.

Introduction

1. The Legislative Committee of the General Synod, to which the Measure entitled Church Representation and Ministers Measure ('the Measure') has been referred, has the honour to submit the Measure to the Ecclesiastical Committee with these Comments and Explanations.

Background and summary

2. A Simplification Task Group was established by the Archbishops' Council in 2014 to consider constraints on the mission and growth of the Church of England arising from legislation and to bring forward proposals for simplification and deregulation. Its recommendations covered a range of matters, including the Church Representation Rules.
3. The Task Group recommended that there were three major ways in which the Church Representation Rules should be reformed. First, they needed to be made less burdensome to the clergy and laity in the parishes who have to operate them. Unnecessary provisions needed to be identified and removed; and other provisions needed to be streamlined. Secondly, parishes should be given much greater flexibility over their constitutional arrangements so that they can operate in the way that is most effective for the mission, life and work of the local church. Thirdly, the administrative burdens for those involved in running multi-parish benefices – especially in the rural context where the number of parishes in a benefice can be considerable – needed to be radically reduced. It should be possible to establish benefice-wide structures to take the place of the individual PCCs.
4. The Measure gives effect to the recommendations, replacing the Church Representation Rules contained in Schedule 3 to the Synodical Government Measure 1969 with a new set of Rules.
5. The Measure also makes a minor amendment to the law relating to ordination that also gives effect to a proposal from the Simplification Task Group.
6. The Measure was welcomed by the Synod and, save for the particular point mentioned in paragraph 53 below, was not controversial.

New Church Representation Rules

7. Schedule 1 to the Measure contains the new Church Representation Rules which are substituted for those currently contained in Schedule 3 to the Synodical Government Measure 1969.

8. Rules for the representation of the laity have existed since the creation of the National Assembly of the Church of England (“the Church Assembly”) in 1919. Those Rules, as amended or replaced at various times, provided for lay members of the Church of England to be represented in parochial church councils, ruri-decanal conferences (which related to rural deaneries), diocesan conferences, and the House of Laity of the Church Assembly itself.
9. The Synodical Government Measure 1969 renamed and reconstituted the Church Assembly as the General Synod. The General Synod became the legislative body of the Church of England not only in relation to statute law (in the form of Measures) but also for the making of Canons, a function which had formerly belonged to the Convocations of the Clergy. The 1969 Measure also made further provision for the synodical government of the Church of England providing for the establishment of diocesan and deanery synods (in place of diocesan and ruri-decanal conferences).
10. Schedule 3 to the 1969 Measure contains rules, known as “the Church Representation Rules” which provide for matters that were formerly provided for in the Rules for the Representation of the Laity. These include the formation and revision of church electoral rolls, the election of representatives of the laity to parochial church councils and rules for the proceedings of those councils, and the constitution of, and elections to, deanery and diocesan synods and the House of Laity of the General Synod.
11. Section 7 of the 1969 Measure contains a power for the General Synod to amend the Church Representation Rules by Statutory Instrument. The exercise of the power requires two-thirds majorities in each House of the Synod. Statutory Instruments made by the Synod under this power are subject to the negative procedure in Parliament. The Church Representation Rules have been amended on numerous occasions since 1969, in most cases by using this power, although they have occasionally been amended by Measure when it has been more convenient to do so.
12. The Measure replaces the existing Church Representation Rules with a completely new set of rules. Many of the concepts remain familiar: church electoral rolls, annual meetings, parochial church councils, deanery synods and diocesan synods. But there are significant changes to the way in which the Rules are presented and to their substance.
13. The new Rules have been completely redrafted and are great deal easier to understand. They are no longer characterised by overly-long sentences; provisions are broken down into more easily-digestible parts.
14. All the provisions relating to parish governance are now in a self-contained Part of the Rules. This should make navigation around the rules easier for those in parishes and others who need to refer to them.
15. In terms of substance, one of the most significant reforms is provided for in Part 2. The default position for parish governance is that the model rules set out in Part 9 apply to each parish. But the annual meeting of any parish can make a scheme to amend, supplement or replace the model rules. This will make it possible for a parish to make governance arrangements that are best suited to the mission and life of the church in that parish. There are some significant safeguards. A small number of essential provisions will be mandatory; and a scheme making rules for a parish will have to be approved by the bishop’s council who must be satisfied, among other things, that the scheme makes due provision for the representation of the laity and ensures the effective governance of the parish.
16. The new rules do not make any changes to the qualifications for being chosen to serve as a churchwarden set out in section 1 of the Churchwardens Measure 2001 or to the entitlement of parishioners to choose churchwardens that is provided for in sections 4 and 5 of that Measure.

17. Another major reform is the provision for joint councils. The existing Church Representation Rules do make provision for joint councils in multi-parish benefices and other special cases; but under the existing Rules, joint councils are in addition to the PCCs of the individual parishes – which means that they represent a further layer of synodical government and add to the total number of meetings which need to be held. Under the new Rules, joint councils can replace the individual PCCs. Where that happens the number of local bodies – and the number of meetings – will be reduced, in some cases very significantly, and should result in a significant reduction in the administrative burdens imposed on clergy and laity.
18. In addition, various provisions of the current rules that were thought to be unnecessary or unduly burdensome have been pruned away, anomalies have been addressed, and doubts as to meaning have been removed.

Proceedings in the General Synod

First Consideration

19. The Measure was introduced into the Synod for First Consideration (the equivalent of Second Reading for a Bill) in February 2017. It was favourably received and was committed to a Revision Committee.

Revision

20. The Revision Committee stage (the equivalent of the Committee Stage for a Bill) was undertaken in 2017 and 2018. Fifteen members of the General Synod submitted proposals for amendment of the draft Measure within the time allowed by the Standing Orders. Four other individuals also made submissions. The Revision Committee considered those proposals along with other possible amendments the need for which was raised with the Committee by officials.
21. The major issues considered by the Revision Committee were as follows.
22. The Revision Committee recommended that when the new Rules come to be published in booklet form they are printed with editorial notes to assist the user.
23. The Revision Committee took account of recent changes to the law contained in the General Data Protection Regulation and the Data Protection Act 2018. The Rules, as amended by the Revision Committee, are designed to avoid any need to obtain consent from individuals for processing their personal data for the purposes of the Rules, as that would have resulted in a heavy burden being imposed on parishes and others. The Revision Committee considered that personal data could be processed in the ways required by the Rules on the basis that doing so ‘is necessary for compliance with a legal obligation’ and because the processing of the data would be carried out in the course of its legitimate activities by a religious body. (See paragraphs 35 to 45 below for further consideration of this issue.)
24. The Rules now make comprehensive provision for the use of communication by email. The Revision Committee decided that providing an email address should be optional; but if one was provided, any communication under the Rules could be sent to that email address. An email would satisfy any requirements in the Rules for a communication to be in writing. Where in the past there was an obligation to pass on addresses (e.g. by the PCC secretary to the secretary of the deanery synod), any email address given by a person must also be passed on.
25. The Revision Committee inserted provision to facilitate the use of electronic voting methods in elections to diocesan synods and to the General Synod.

26. Amendments were made to simplify requirements relating to the revision of church electoral rolls and the preparation of new rolls. Amendments were made to avoid a person's name incorrectly being removed from a roll. An amendment provided for rolls to be published electronically instead of in paper form.
27. The Revision Committee made amendments so that the Rules now make mandatory provision for the representation of mission initiatives (i.e. initiatives – sometimes referred to as 'fresh expressions of church' – that are established by bishops' mission orders) on deanery synods where the bishop so directs. They also provide for persons who worship in mission initiatives to be eligible for election to diocesan synods and the General Synod.
28. In the light of the outcome of an informal ballot of members of the General Synod held in July 2017, the Revision Committee reinstated in the Rules provisions which provide that the members of the house of laity of each deanery synod are the electors in elections to the House of Laity of the General Synod. The Committee amended the Rules so that the apportionment of the number of members of the House of Laity between the provinces of Canterbury and York need not be 70:30 if the General Synod passes a resolution specifying some other proportion.
29. The Revision Committee made an amendment so that a person cannot be elected to represent the laity of a parish on a deanery synod for more than two successive terms. This is subject to a provision which enables the annual parochial church meeting to pass a resolution disapplying the rule. The result is that the number of terms which a person may serve on a deanery synod as an elected representative of the laity is limited in the same way as the number of terms which a person may serve as a churchwarden.
30. The Revision Committee made amendments that will ensure that the lay members of a parochial church council form a majority of its membership.
31. Another amendment enables parochial church councils to conduct business by correspondence (whether on paper or by email) where the chair of the council decides that particular business can properly be conducted in that way.
32. The Revision Committee made amendments to the provisions relating to joint councils so that connected parishes can – if they wish – create joint councils while also reserving some functions to the parochial church councils of the individual parishes. But connected parishes who are willing to go further than that will be able to transfer all of their functions to a joint council so that they no longer need to operate their individual parochial church councils.
33. The Revision Committee made some amendments to improve the drafting of provisions concerned with the granting of waivers from disqualification and with the suspension of the clergy and churchwardens on safeguarding grounds.
34. The Revision Committee removed provisions from the Measure that would have enabled a priest who had not yet been in holy orders for six years to be appointed a dean, archdeacon or residentiary canon. It did not consider that there were good policy grounds for removing the requirement.
35. The Revision Committee reported to the Synod in July 2018 when the Revision Stage (the equivalent of the Report Stage for a Bill) was taken in full Synod. A number of amendments were tabled by individual members at the Revision Stage.
36. One of the amendments was concerned with the number of meetings that must be held each year by a parochial church council. The Measure provided that each year, a parochial church council "must hold a sufficient number of meetings to enable the efficient transaction of its business". The amendment sought to impose a specified minimum number of meetings by providing that a "sufficient number" of meetings was at least three. The amendment was opposed by the Steering Committee on the basis that the test of sufficiency should not

depend on a particular number of meetings but on the effectiveness of the meetings that are held. The amendment lapsed as it was not supported by 40 members standing in their places.

37. Another amendment considered by the Synod at the Revision Stage was to leave out the provision (described at paragraph 29 above) which had been made by the Revision Committee limiting to two the number of successive terms that could be served on a deanery synod by an elected representative of the laity. It was argued that the rule would result in inexperienced members being elected to deanery synods and, in consequence, a lack of suitable or willing candidates to serve on the standing committee of a deanery synod. Additionally, as the lay members of deanery synods form the electorate for the House of Laity of the General Synod, the rule would be likely to produce an inexperienced electorate. The amendment was opposed by the Steering Committee on the basis that the rule mirrored an equivalent provision in the Churchwardens Measure 2001, that it encouraged new people to accept positions of leadership and that it was likely to assist with church growth. The amendment was put and was lost on a show of hands.

Final drafting

38. The Steering Committee considered the Measure in respect of its final drafting in the autumn of 2018.
39. One particular matter to which the Steering Committee gave further detailed consideration was the compatibility of certain aspects of the Rules with data protection legislation. Compiling, publishing and allowing the inspection of church electoral rolls involves processing personal data that reveals the religious beliefs of data subjects and which is therefore special category data for the purposes of the General Data Protection Regulation (GDPR).
40. As explained above, the Revision Committee, when it considered the issue, had decided not to rely on the provisions in data protection legislation that are based on obtaining the consent of data subjects to the processing of their data, as doing so would impose too onerous an obligation on electoral roll officers and others. Instead, it decided to rely on a combination of provisions that (a) permit the processing of personal data generally where the processing is required by law; and (b) permit the processing of ‘special category’ personal data (which includes data that reveals a person’s religious beliefs) where—
- processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects.
- (Article 9(2)(d), General Data Protection Regulation)
41. The processing of data on electoral rolls under the Rules would be required by law, because the Church Representation Rules are statutory and impose legal obligations.
42. As to the processing being carried out in accordance with article 9(2)(d) of the General Data Protection Regulation, the Church of England is a religious body, the processing of data contained on electoral rolls would a legitimate activity of the Church of England, and the processing would relate solely to its members or former members.
43. However, since the Revision Committee had reported, a difficulty with relying on article 9(2)(d) for the purpose of the publication and inspection of church electoral rolls had been identified. The difficulty arose from the provision at the end of article 9(2)(d) that prohibits

data being disclosed outside the religious body in question. If – as the Rules require – a church electoral roll is published by being displayed at the church, or on a parish website, and if it is open to inspection, the data it contains will potentially be disclosed outside the body of persons who are members of the Church of England.

44. The Steering Committee therefore sought legal advice on whether there were any other provisions in article 9 of the GDPR that could provide a lawful basis for the publication and inspection of church electoral rolls. The Committee was not prepared to accept that publication and inspection of church electoral rolls be abolished unless no lawful basis (leaving aside consent) existed which would enable publication and inspection to continue.
45. On the basis of legal advice it received the Steering Committee was satisfied that there was another lawful basis that would enable the publication and inspection of church electoral rolls and that it would be possible to rely on article 9(2)(e) of the GDPR for these purposes. Article 9(2)(e) permits the processing of special category data where “processing relates to personal data which are manifestly made public by the data subject”.
46. The Steering Committee was advised that there were no decided cases on article 9(2)(e) and the Office of the Information Commissioner had not issued any relevant guidance. However, the EU legislation which preceded the GDPR contained a provision that was in identical terms to article 9(2)(e) and that provision was given effect in the domestic law of the United Kingdom by paragraph 5 of Schedule 3 to the Data Protection Act 1998 (now repealed and replaced by the GDPR and the Data Protection Act 2018). In cases decided by the courts under the old legislation, it had been held that where it was a legal consequence of a particular act of the data subject that data was made public, that data could be processed on the basis that it had been made public “as a result of steps deliberately taken by the data subject”.
47. Because the cases in question were decided under the old UK legislation that used different language to implement the relevant provision of the 1995 Directive, they did not directly answer the question of whether article 9(2)(e) of the GDPR could be relied on in the circumstances with which the Steering Committee was concerned. However, the Committee was advised that as article 9(2)(e) of the GDPR is in identical terms to the relevant provision of article 8(2)(e) of the 1995 Directive, and as the High Court had in effect held that the relevant provision of the Data Protection Act 1998 was compatible with article 8(2)(e) of the 1995 Directive, the decided cases gave a satisfactory degree of support for the proposition that if a person takes an action, the consequence of which is that information relating to that action will become public, that person is deliberately making that information public.
48. Therefore, in the case of the church electoral roll, the Steering Committee was satisfied that there was a sound case for taking the view that where an individual applies to have his or her name enrolled on a church electoral roll, the automatic legal consequence of which is that certain data about that individual will be published and open to inspection, that individual is, by submitting his application form, manifestly making public that data.
49. On that basis the Steering Committee was content to retain in the new Church Representation Rules the long-established provision requiring the publication of church electoral rolls when they are revised or renewed, and the provision which makes the roll available for inspection. A note has been added to the application form for enrolment so that an applicant for enrolment is informed that the roll will be published.
50. Names only will be included in the published version of the roll; other personal data will be excluded.
51. A number of drafting amendments to clarify remaining uncertainties of meaning or to improve the drafting, and some non-controversial special amendments to facilitate electronic

voting in elections, were made to the Measure at the Final Drafting stage which was taken at the February 2019 group of sessions of the Synod.

Final approval

52. The Final Approval Stage (the equivalent of Third Reading for a Bill) took place at the February 2019 group of sessions of the Synod.
53. The generality of the Measure was strongly supported by members of all three Houses. There was, however, one issue which gave rise to concern among a number of members of the House of Laity. That issue concerned the provision (referred to at paragraphs 29 and 37 above) limiting to two the number of successive terms that could be served on a deanery synod by an elected representative of the laity. Some members of the House of Laity indicated that the inclusion of this provision might prevent them from voting in favour of final approval of the Measure.
54. The Chair of the General Synod's Business Committee, noting that the provision in question would not have the effect of disqualifying anyone from election to a deanery synod until 2026, indicated that she would, if the Measure were passed, ask the Business Committee to refer the issue to its Elections Review Group for detailed consideration. If, following consultation, it were considered that the two-term limit should be removed or altered, there would be ample time for a Statutory Instrument to be brought forward before 2026 to amend this aspect of the Rules. (The issue has now been referred to the Elections Review Group for consideration.)
55. On the motion that it be finally approved, the Measure received the approval of all three Houses.
56. The voting on the motion for the final approval of the Measure was as follows—

	In favour	Against
Bishops	26	0
Clergy	126	0
Laity	147	2

The provisions of the Measure

Section 1 Church Representation Rules

57. Section 1(1) introduces Schedule 1, substituting its content – the new Church Representation Rules – for the old Rules contained in Schedule 3 to the Synodical Government Measure 1969.
58. Section 1(2) inserts a new subsection (1B) into section 7 of the Synodical Government Measure 1969 so that subordinate legislation under that section amending the Church Representation Rules may include consequential provision relating to other ecclesiastical enactments. For example, the Synod might in the future amend the Church Representation Rules in a way that had implications for the dates set out in the Churchwardens Measure 2001 and which required consequential amendments to be made to that Measure. As section 7 of the Synodical Government Measure currently stands, those consequential amendments could not be made unless the Synod and Parliament passed a separate Measure. The new subsection (1B) will enable consequential amendments to be contained in the amending resolution made by the Synod which is then laid before Parliament and subject to the negative procedure for statutory instruments.

59. Section 1(3) and (4) introduce Schedules 2 (consequential amendments) and 3 (transitional provisions and savings).

Section 2 Admission to holy orders

60. Section 2 amends the law relating to the ‘titles’ of those of are to be admitted to holy orders. As the law currently stands, a bishop may ordain a person as a deacon or priest only if the bishop is satisfied that the person will be provided with an ecclesiastical office in the bishop’s diocese where he or she may assist in the cure of souls. That office is known as a ‘title’. The current rule is set out in paragraph 1 of Canon C 5. The General Synod’s Legal Advisory Commission has advised that this rule – which is a rule of the pre-Reformation Canon law which became part of the law of England – means that a person may only be ordained to serve as an assistant curate licensed to a parish.
61. The provision contained in section 2 enables the General Synod to provide by Canon for the range of title posts to which a person can be ordained to be expanded so that it includes any ecclesiastical office which is to be held under Common Tenure (i.e. the offices covered by the Ecclesiastical Offices (Terms of Service) Measure 2009). They include any office in which ordained ministry is exercised in accordance with a licence from the bishop issued under any Canon of the Church of England. The office of assistant curate is therefore an office under Common Tenure: see Canon C 12. Canon C 12 also provides for the bishop to grant a licence to a person to serve for the purposes of, or in connection with, a mission initiative endorsed by a bishop’s mission order. Provision made by Canon under clause 5 would therefore allow a person to be ordained to a title, for example, as a pioneer minister in connection with a mission initiative without the need for that person to be attached to a particular parish.

Section 3 Short title, commencement and extent

62. Section 3 makes provision for the short title of the Measure, its coming into force and the making of transitional, transitory or saving provision in that connection, and for the Measure to extend to the provinces of Canterbury and York except for the Channel Island and the Isle of Man (where the Measure will apply only so far as provided under the relevant local legislative procedures).

Schedule 1 New Schedule 3 to the Synodical Government Measure 1969

63. Schedule 1 contains the new Schedule 3 to the Synodical Government Measure 1969, i.e. the new Church Representation Rules.
64. Part 1 (church electoral roll) makes provision for the compilation and revision of church electoral rolls.
65. Part 2 (parish governance) provides for the model rules in part 9 to apply to each parish. But that is subject to the other provisions of Part 2 which enable a parish to make a scheme to amend, supplement, or to replace the model rules under the procedure set out in that Part.
66. Part 3 (deanery synods) makes provision for the composition of, and elections to, deanery synods.
67. Part 4 (diocesan synods) makes provision for the composition of, and elections to, diocesan synods.
68. Part 5 (House of Laity of the General Synod) makes provision for the membership of, and elections to, the House of Laity.

69. Part 6 (appeals) makes provision for appeals against decisions relating to enrolment on a church electoral roll and elections.
70. Part 7 (disqualification etc.) makes provision for persons to be disqualified from serving as a member of synodical bodies and for the vacation of a member's seat on such a body in specified circumstances.
71. Part 8 (miscellaneous) makes miscellaneous provisions for the purposes of the Rules, including provisions relating to the handling of personal data, casual vacancies, communication by email or post and interpretation.
72. Part 9 (parish governance: model rules) contains the model rules for parish governance. These provide for matters such as annual and other parochial church meetings, elections of members of parochial church councils and deanery synods, the composition and business of parochial church councils, and the making of schemes for joint councils for "connected parishes".
73. Part 10 (forms) contains the forms which are required to be used for the purposes of the Rules.
74. Part 11 (index) contains an index of defined terms for the purposes of the Rules.

Schedule 2 Church Representation Rules: consequential amendments

75. Schedule 2 contains amendments to other enactments that are consequential on the new Rules.

Schedule 3 Church Representation Rules: transitional provisions

76. Schedule 3 contains transitional provisions in connection with the new Rules.

Conclusion

77. The Legislative Committee invites the Ecclesiastical Committee to issue a favourable report on the Measure. Should the Ecclesiastical Committee require any further information or explanation, the Legislative Committee stands ready to provide it.

On behalf of the Legislative Committee

Geoffrey Tattersall

Deputy Chair

March 2019