

## PASTORAL SCHEMES – CONSEQUENTIAL EFFECTS

1. A Pastoral Scheme made by the Church Commissioners, or a Pastoral Order made by a Bishop, is a legal document, and has to be read and interpreted as any other legal document, with care and precision. But there are certain consequential effects which are generally unstated within the document. This guidance note will refer to Schemes or Orders as Scheme without differentiation, for ease of reference, despite the fact that some arrangements can be created by Schemes made by a Bishop, and that many Orders in Council were made by Her Majesty in Council in the past covering matters that are now dealt with by Commissioners' Schemes.
2. Most of the legal provisions applicable arise from the Mission and Pastoral Measure 2011, and in particular Schedule 3; but there are also important provisions within the Church Representation Rules.
3. A Scheme which provides for the union of two Benefices will, in legal terms, dissolve the Benefices which are thus united, and create a brand new Benefice. A Benefice is the collection of rights appurtenant to an office of Rector Team Rector or Vicar which has a cure of souls (but not that of a Team Vicar). A Parish, by contrast, is the geographical area comprised in the Parishes which belong to the Benefice. The Scheme may well also deal similarly with Parishes, or may provide for the Parishes to continue 'separate and distinct'.
4. It is possible for a Scheme to make provisions which affect Diocesan boundaries and transfer Parishes between Dioceses: this note is not intended to cover such unusual situations.
5. **Coming into Effect:** The Scheme may well state that it comes into effect on the date that it is made, or the first day of the month following the date that it is made, or on some other specified date. Frequently though, when there are Licensed stipendiary clergy in post, the Scheme will be made so as to come into operation at the expiration of 6 months, or sooner if the office of the Licensed person(s) vacate their posts. This enables practical arrangements to be made. Commonly the Bishop will confirm to the person concerned that they will (or will not) be Licensed to serve in the same Benefice on the same terms as before, in which event the resignation can be on a date agreed, with a Licence being issued to continue to serve with effect from the next date. But if there is no agreement then the Scheme will take effect at the end of the 6 month period of grace.
6. **Parish Church:** it is not essential, for the creation of a new Parish, for there to be a Parish Church. In such cases the Scheme will provide that if by the date the Scheme comes into effect, a building has been approved as being suitable as a Parish Church by the Bishop after consultation with the DAC and the Mission and Pastoral Committee, and is consecrated, then it would become the Parish Church of the new Parish; but it is often the case that that has not been achieved by that date, so the Scheme will say that it shall so become, only once it is both approved and consecrated. The new Incumbent or Minister ought to liaise with the DAC

initially, for many things have to be resolved before the Bishop's approval can be given. However, if the building intended to be the Parish Church has not been consecrated it would be as well to contact the Registry at an early stage, because it may be necessary to transfer legal ownerships to facilitate consecration. This is particularly important in the case of 'shared use' buildings, although in such cases, these days, the Registry is often happy to recommend consecration of buildings which are vested in the Diocesan Trust, because this avoids complicated cross-grants of easements and reservations of rights.

7. If the building is not identified in principle by the Scheme, then notification of the proposal to the Commissioners is necessary.
8. Until a Parish Church exists, the Bishop must License a building for public worship.
9. A Scheme may have the effect of leaving a Parish with more than one Parish Church. Parishioners the right to worship in each church in that event.
10. The Scheme will make provision for the transfer of Registers if such is required
11. **Designation of an Incumbent:** If at the point at which a Scheme is to be made, it is agreed that a particular person who is Licensed in the Benefice should be first Incumbent of the new Benefice, then the Scheme vests that person with the legal title to the incumbency. (Similar provision is made for a situation where the effect of the Scheme is to enable Benefices to be held in plurality, by a designated person). No presentation is required by the patron, and the Bishop does not formally Institute or Collate the new Incumbent to the Benefice; the person is deemed to be Admitted to the Benefice without any of those steps. (It is possible for the 'Admission' still to be required under the Scheme, though this is now rare) However, the final step of the process of putting a new Incumbent in place does still have to be conducted: this is the direction by the Bishop to the Archdeacon to induct the new Incumbent. The Incumbent only has to be inducted into one Parish, if the Bishop so directs.
12. Induction is not however required if the only effect of the Scheme is to substitute one church for another as Parish Church of the Benefice.
13. However, it is common for Parishes to want a service to recognise the new Incumbent and indeed to celebrate the Licensing of other clergy under the new arrangements, so that the Registry will produce a document much akin to a deed of Institution/Collation to be read out *confirming* the effect of the Scheme, and that the Incumbent has the cure of the souls of the Parish.
14. **Property within the Benefice:** Where Benefices are simply united, then the church, the churchyard, any burial ground, any parsonage house and any other property from each Benefice vest in the new Incumbent of the new Benefice, without any formal legal documentation, unless specific contrary provision is made in the Scheme
15. If the Scheme instead has the effect of adjusting boundaries and transferring any church, churchyard, burial ground, parsonage house or any other property from one Parish to another, then, again without any legal documentations, the property will vest in the Incumbent of that

other Benefice, as will all moveables within such property (which will usually vest in the churchwardens) unless specific contrary provision is made in the Scheme

16. However, Schemes need to be read carefully, because if specific provision is made, that provision will prevail.
17. It is common for property to be vested, without any legal documentation ('assurances') being required.
18. Where the vesting is of glebe land or a house then it will transfer free from any trust in favour of the stipends fund or Benefice, but subject to any specific apportionment of other charges and subject to any tenancies or endowments.
19. Some property is dealt with specifically by s76 of the Measure: this governs situations where a Scheme provides for *closure* of a church, with *demolition* or *appropriation* to another use. The Bishop can make directions as to the font communion table and Holy Communion plate to be dealt with, and the Diocesan Board of Finance has responsibility for their care in the meantime. This overrides the provisions set out below as to Trust and other property
20. The Scheme may make particular provision as to contents of churches *other than memorials etc.*
21. Where any contents are disposed of in this way, the Bishop may give directions as to the application of the proceeds of sale
22. **Church and Parochial Trusts:** The Measure provides that where a Benefice is dissolved, then the Incumbent of the new Benefice created (whether by union or otherwise) is substituted for the Incumbent of the old Benefice in *ecclesiastical charitable trusts*. This applies to trusts where the control or management is vested in the Incumbent, with or without other persons or where the Incumbent was a member of a corporation. It applies without any formal appointment document being required. Similarly, where the churchwardens of a Parish or the PCC are the *ex officio* trustees
23. The provision is slightly different where the Scheme creates a Team Ministry. This is because there is the possibility of a special cure of souls being created for a Team Vicar or where special responsibility for pastoral care is assigned to a Team Member (who does not have to be a Team Vicar) rather than being given to the Team Rector. That can be achieved either by the Scheme, or by the Licence given to a specific Team Vicar, whether immediately on the creation of the Team Ministry, or at a later date. Where such provision is made then that Team Vicar is constituted as the Trustee; if no provision is made from time to time, then the Bishop may nominate a Team Member.
24. If a Benefice or Parish is altered by a Scheme, where the Trusts involved related to a particular Benefice or Parish; in those circumstances the altered Benefice or Parish is substituted for the original reference.
25. The Charity Commission has power under s69 Charities Act to make special provisions, under Schemes, in difficult situations but under the Measure that power can be exercised by it on an

application made to it by Diocesan Board of Finance rather than by the Charity, and the Schemes made by it can be made so as to come into effect on the same date as the Scheme under the Measure.

26. Occasionally, property will be held by a PCC that is not covered by the provisions as to trusts above; if the original PCC ceases to exist then the Measure provides that the PCC of the (new) Parish where the Parish Church of the old Parish is situate (remembering of course that that old Parish Church may not now be a Parish Church any longer) would become the property owner holding the property for 'like purposes as nearly as may be' as it used to be held – with power to the Bishop to give directions in case of difficulty.
27. There are some situations where property is held subject to a condition of the original grant (or benefaction) that attendance at a church was an obligation. If that church is no longer used for regular public worship. The condition is deemed to be amended so that the Parish Church of the Parish in which the 'closed' church was physically situate is substituted.
28. **Parochial Governance:** When a new Parish is created, the minister of the Parish, or if there is no minister, a person directed by the Bishop, shall expeditiously convene a special parochial church meeting which will stand as the first Annual Meeting.
29. Where Parishes are united or joined together in different ways, various 'joint' PCC arrangements are possible under CRR Rules 18-21. However, such arrangements are not in any sense obligatory. A Team can exist, for example, without a Team Council.
30. It is possible for a Scheme to make a particular provision for ensuring due representation of the laity on the PCC of the new Parish created by a Scheme, or where a Scheme provides for two or more Parishes to be comprised in a single Benefice, or for the Benefices to be held in plurality; or the Scheme can provide that the Bishop may make an Instrument to that effect. However this is only rarely done. Where it is done the provision in the Scheme or the Instrument as the case may be lapses after 5 years from the date the Scheme comes into effect. It is very important to ensure that before that date a new scheme is made to replace it.
31. The type of provision made would be the same as the schemes made under CRR Rules 18-21.
32. In most cases Parishes are left to decide for themselves what kind of provision they would prefer, rather than having a scheme imposed on them. Many different types of provision exist within the Diocese as a result. A separate guidance note is available about these schemes, which unless made in a Scheme or Instrument as described above, have to be approved by Bishop's Council before they come into effect.
33. If there are two Parish Churches in a Parish, there is nonetheless only one PCC for that Parish.
34. **Electoral Roll:** Until a PCC exists, the electoral roll is kept by the Minister and the Churchwardens (if there are any). Thereafter it becomes the responsibility of the PCC. The PCC can only exist once the Annual Meeting has been held. If a new Parish is created by union under a Scheme then the names are simply combined from the old rolls.

35. If the new Parish is not simply a union of two old Parishes, then the position is more complicated. Those people who reside in the new Parish or who habitually within the new Parish area and who were on either of the old rolls will be deemed to be included on the new roll.
36. If an area is transferred into another Parish, then the 'old' Parish PCC has the task of asking those who live in that area whether they wish to be transferred onto the new Parish's roll. The old PCC must then delete the names of those who so wish from its roll, and tell the new Parish PCC that their names should be added to their roll, without any application having to be made.
37. Only those whose names are on the electoral roll may attend and vote at the Annual Meeting. Where the parish is new, it is a moot point as to whether the Minister should take steps to revise the roll (with a view to adding more names if possible than those which are transferred as above), or to call the Annual Meeting and put a PCC in place on the basis of just the transferred names; but given that the objective of the CRR is to ensure a democratic process, and since the procedures for revision do not take long to complete, it has been the advice of the Diocesan Registrar that the better course is to revise the roll and then hold the Annual Meeting. However neither process should be delayed.
38. **Marriages and Banns:** a Scheme may mean that a church which was previously a Parish Church ceases to be such, or is closed, or ceases to be Licensed for marriage. If at that point the calling of banns had commenced, the combined effect of the Measure and of the Marriage Act 1949 is that the banns can be completed either in the church where they started (for example if that church is no longer the Parish Church) or in a church which has been substituted as the Parish Church, or as directed by the Bishop to take the place of the 'lost' building. The marriage can take place in the 'new' building.
39. Where two or more Benefices are held in plurality, or where two or more Parishes are comprised within one Benefice, there is provision under the Measure and the Marriage Act to enable the Bishop to make directions to enable *any* church in the Benefice to be used for the publication of banns and the solemnisation of marriages. In effect therefore the Bishop can limit the number of churches used for that purpose or can broaden the number of places able to be used, to facilitate a person living in Parish A to marry in Parish B. But directions of this kind may not prevent the person from marrying in Parish A marrying there if they wish to. The minister can however call the Banns if s/he wishes in Parish B and then (if they so wish), marry the couple in Parish A. The provisions extend to any Common Licence issued.
40. If there is more than one Parish Church in a Parish, then Parishioners have the right to be married in either church
41. **Burial Rights:** Burial rights are given to Parishioners by ancient law. An Incumbent always has a discretion to allow a burial of a person in a churchyard. The notes here relate to rights rather than to discretion.

42. If Parish A and B are united to form C, then a Parishioner of Parish A or of Parish B will both have the right to be buried in any open churchyard in new Parish C.
43. If a new Parish is created without a union of Parishes (for example by being carved out of one or more Parishes) then A and B will probably continue exist in some reduced form or perhaps themselves be united to form C; but a new Parish D will also exist. Parish D may or may not have an open burial ground. In that situation, the Parishioners of D would continue to have the rights which they used to have in A or B until they attain rights in D, by the opening of a new burial ground, if and when that happens.
44. If Parish boundaries are changed, this may mean that a Parishioner from A now lives in B. The Parishioner would lose the rights in A but gain the rights in B, whatever those rights might be.
45. The provisions apply whether or not one is dealing with the burial of a body or of cremated mortal remains. It is not open to the Incumbent of a Parish to develop 'policies' to override these statutory rights.
46. **Pluralities:** it is not normally lawful for a clergy person to hold two parochial Benefices at the same time; subject to the formal designation of Benefices in a Scheme, as being able to be held 'in plurality'.
47. Where a person is appointed to an incumbency which is held in plurality, that person cannot resign one or more Benefice without also resigning from the others, unless the Bishop agrees; the Bishop can make an Instrument to cover the Benefices when giving such approval.
48. Once a designation is made, it will continue even after an incumbency has been vacated, unless either the Bishop or one of the PCCs involved gives notice to terminate the arrangement.
49. If the Bishop gives the notice, it will be done at the same time as the Bishop serves notice of the vacancy; it is served also on the Patrons and on the Commissioners. The PCC notice is given within 28 days *after* the service of a notice of vacancy, if the Bishop has not terminated the plurality but they wish to do so; the Bishop then notifies the other PCCs and the Commissioners and Patrons.
50. **Team Ministries:** in a Team Ministry the cure of souls is shared between the Team Rector and one or more Team Vicars. (The guidance notes on vacancies explain the provisions for the appointment of Team Rectors and Team Vicars). Pastoral care is then shared by those persons with any other Team Members who hold a Licence or PtO to serve in the place as Team Members.
51. The Team Rector and Team Vicars form a 'chapter', and they and the Team Members form the Team.
52. The Team is to meet to achieve a common mind on issues – the Team Rector presides and convenes such meetings but any Team Member may call for a meeting. An example of this is that if the Team Rector as formal Incumbent receives any statutory notice concerning

ecclesiastical property in the Benefice he must keep Team Members informed, and then consider and listen to their views before acting on the notice.

53. A *deacon* can be appointed to be a Team Member, and then has authority (but only to the extent of their office as deacon) to do all that an Incumbent could do.
54. Team Members can only be Licensed to the Benefice with the consent of the Team Rector, and of the majority of the other Team Members and of each PCC concerned.
55. A Team Vicar is said to have Incumbent status. They are publicly admitted to their office, under a Licence. Their office as an equivalent to an Incumbent extends across the whole Benefice. Whilst the cure of souls is normally shared generally with the Team Rector for the area as a whole, it is possible for the Licence or the Scheme to direct that the Team Vicar should have a *special cure of souls* for part of the area; and/or to be described as vicar of a church; or to be given *special pastoral responsibility* for a specified function; and this may be jointly with or independently of the Team Rector's responsibility. These arrangements may (unless the Scheme prevents it) be varied by the Bishop at any time, but only with the consent of the Team Rector and the Team Vicar concerned.
56. The Scheme or a Licence may provide that a Team Vicar should chair or share in the duties of the chairman for the APCM and of the PCC of a Parish, and to act as 'minister' under the CRR.
57. If the Benefice is vacant, the Bishop may appoint a Team Vicar to be acting team rector. This is only for the limited purposes of nominating and consenting to other appointments, leadership of the Team, and convening Team meetings
58. A Team Council is usually but not always created for the Benefice; this is under CRR Rule 20, but the provisions might also incorporate other types of arrangement under Rules 18-21. As noted above, if those arrangements are established in the Scheme itself, or by an Instrument of the Bishop, they lapse after 5 years so that specific provision should be made within that time, under the CRR
59. If two Benefices, one of which is a Team Ministry, are to be held in plurality, then the Scheme may direct that the areas of those Benefices should be treated as a single area for the purpose of the attendance of Team Members at APCMs of the Parishes in the Benefice

**Niall Blackie**

**Lichfield Diocesan Registrar**

**29 June 2017**