



Prime Ministerial involvement in ecclesiastical appointments

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This note sets out the Government's proposals to reform the Prime Minister's involvement in senior ecclesiastical appointments and the response of the Church of England. It explains the current system, where the Prime Minister is given two names and puts one forward to the Monarch, and discusses whether the Prime Minister could be removed altogether from the process. It is often asserted that the Prime Minister cannot be a Roman Catholic. This paper explains why this is not the case.

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A. Ecclesiastical appointments: The current position

There is a constitutional relationship between the Church of England and the Executive. As a publication by the Constitution Unit at University College London has explained:

The constitutional relationship between the Church of England and the executive stems from the latter's position as advisers, and consequently conduit, to the Crown. Accordingly, all Crown patronage is exercised on the advice of ministers. The Queen, advised by the Prime Minister, is the apex of the system. It is partly in recognition of the Prime Minister's role that the current [now previous] Prime Minister normally meets with the Archbishop of Canterbury about twice a year. This relationship does not, of course, exclude contact with other religious leaders. However, the contact is less frequent and of a necessarily different character.¹

The *Governance of Britain* Green Paper explained the extent of the Prime Minister's involvement in appointments in the Church of England:

Because The Queen acts on the advice of Ministers, the Prime Minister as her First Minister has a role in advising The Queen on certain appointments within the Church. Diocesan and Suffragan Bishops, as well as 28 Cathedral Deans, a small number of Cathedral Canons, some 200 parish priests and a number of other post-holders in the Church of England are appointed by The Queen on the advice of the Prime Minister.²

1. The appointment of Archbishops and diocesan bishops

The *Governance of Britain* outlines the process for the appointment of archbishops and diocesan bishops:

In the case of Archbishops and Diocesan Bishops, reflecting the agreement reached between the Church and State in 1976, the Crown Nominations Commission (formerly the Crown Appointments Commission) passes two names to the Prime Minister, usually in order of preference, who may recommend either of them to The Queen, or reject both and ask for further nomination. The Crown Nominations Commission is a Church based body, with the Archbishop of Canterbury as Chair and the Archbishop of York as Vice-Chair. However, the Prime Minister's Secretary for Appointments is an ex-officio and non-voting member. The chair of the Crown Nominations Commission is taken by the Archbishop in whose province the vacancy has arisen.³

The book *Ecclesiastic Law* by Mark Hill explains the process for bishops in more detail:

A bishop is appointed by the Crown upon the advice of the Prime Minister. The manner of appointment reflects the delicate balance between the established nature of the Church of England and its autonomous self-governance. Each diocese is required to establish and maintain a Vacancy in See Committee. When a vacancy

¹ Frank Cranmer, John Lucas and Bob Morris, *Church and State: A mapping exercise*, Constitution Unit, April 2006, p 21.

² Ministry of Justice, *The Governance of Britain*, July 2007, Cm 7170, para 58

³ *Ibid.*, para 59

arises, it meets and after consultations prepares a Description of the Diocese and a Statement of Needs. On the basis of their own consultations, the appointments secretaries of the archbishops and the prime minister produce a Memorandum outlining their views on the requirements of the diocese and on the desired profile of the new bishop. The Crown Nominations Commission meets on two occasions, on the second of which it votes on the shortlisted names to produce two for submission to the Crown. The Archbishop of the Province then writes to the Prime Minister, submitting the two names and informing him of the number of members who supported each in the final ballot.

Once the prime minister has reached his decision he invites the candidate concerned to accept the nomination. The Crown then grants to the College of Canons a licence (congé d'elire) to proceed to elect a bishop and a letter missive naming the person to be elected. The fact of the election is communicated to the archbishop, who duly confirms the election by formal legal processes.⁴

The Crown Nominations Commission (formerly the Crown Appointments Commission) consists of both Archbishops, three elected members of the House of Clergy, three elected members lay members of the General Synod, and six members of the Vacancy in See Committee of the diocese whose bishopric is, or is to become, vacant. The Prime Minister's Appointments Secretary is a non-voting member of the Commission.

The last time a new Archbishop of Canterbury needed to be appointed (in 2002), the Church of England outlined the appointment process in the following terms:

- The Archbishop of Canterbury having informed the Queen of his intentions and Her Majesty having accepted the resignation, the Archbishop announces his decision and the date of his retirement; the Privy Council subsequently declares the See and Archbishopric of Canterbury vacant.
- The Prime Minister, after consultation, appoints a communicant lay member of the Church of England to chair the Crown Appointments Commission, which oversees the selection of a new Archbishop of Canterbury.
- The Vacancy-In-See Committee in the Diocese of Canterbury meets to:
 - produce a Statement of Needs (the diocese's assessment of the qualities and skills required of the next occupant).
 - choose four members to sit on the Crown Appointments Commission.
- The Crown Appointments Commission is formed, comprising the Chair, the four members from the diocese, the Archbishop of York, a bishop elected by the bishops to take the place of the retiring Archbishop and the three clergy and three lay members elected by General Synod as standing members. (In addition, the Secretary General of the Anglican Consultative Council, the Archbishops' Appointments Secretary and the Prime Minister's Appointments Secretary are non-voting members.)

⁴ Mark Hill, *Ecclesiastical Law*, Third Edition, 2007, paras 4.57-58

- Names are suggested to the members of the CAC, from a wide variety of sources including the general public. The members decide which names to put forward for formal consideration by the Commission.
- The Crown Appointments Commission meets, following an extensive consultation process. The gathering continues over two and a half days-in three phases:
 - Review of background material gathered from consultations in the diocese, the Church and the wider country, including the Vacancy-In-See Committee's Statement of Needs.
 - Consideration of candidates
 - Shortlisting and voting: through prayer, discussion and voting, two names are elected, each of which commands a two-thirds majority of the Commission.
- The Commission sends the two names to the Prime Minister for consideration.
- Assuming he is content with them, the Prime Minister commends one of those names to the Queen. (The Prime Minister may request a further name or names through the same Commission process). Once the chosen candidate has indicated a willingness to serve, 10 Downing Street announces the name of the Archbishop-designate.
- The Archbishop-designate is presented at a news conference.
- The Dean and Chapter of the diocese of Canterbury formally elect the new Archbishop of Canterbury. The election is confirmed in a legal ceremony.

The new Archbishop takes up office and is formally enthroned at Canterbury Cathedral.⁵

2. Suffragan bishops

Suffragan bishops are appointed by the bishop to assist him in his diocese. Suffragan bishops do not sit in the House of Lords. When a vacancy arises, two names are presented by the Prime Minister to the Sovereign. The *Governance of Britain* explains that:

For the appointment of Suffragan Bishops the relevant Diocesan Bishop is required by law to submit two names to the Crown. These are passed to the Prime Minister by the Archbishop of the Province concerned with a supportive letter. It has been the convention for more than a century that the Prime Minister advises the Monarch to nominate the person named first in the petition.⁶

3. Resignation of bishops and archbishops

Archbishops and bishops cannot resign without royal authority.⁷ Norman Doe's *The Legal Framework of the Church of England* states that:

⁵ http://www.cofe.anglican.org/news/canterbury_crown_appointments_commission_membership.html

⁶ Ministry of Justice, *The Governance of Britain*, July 2007, Cm 7170, para 60

⁷ Bogdanor p216

In the Church of England, a bishopric becomes vacant by the translation, retirement, resignation, death or deprivation of its holder. ... As for archbishops, not less than six months before the required date of vacating an archbishop must tender his resignation to the monarch who declares the archbishopric vacant. The monarch has statutory power to authorize an archbishop to continue in office after that date, for not more than one year, if she considers there are special circumstances, and as she may 'in her discretion determine'.

Bishops have a qualified legal right to resign their office before the age of seventy. An archbishop wishing to resign must tender resignation to the monarch, in a written instrument, who by Order in Council declares the archbishopric vacant. ...⁸

4. Further ecclesiastical appointments

The *Governance of Britain* explained that:

In the case of Deans appointed by the Crown, it is the practice for the Prime Minister to commend a name to the Queen, chosen from a shortlist provided by the Prime Minister's Secretary for Appointments and agreed with the Diocesan Bishop, and following consultations with the Cathedral, Bishop, Archbishop of the province concerned and others as appropriate. (The aim is to reach agreement with the Bishop on the preferred order of the list.) In the case of the Crown canonries and parishes, following consultations led by the Downing Street Appointments Secretariat, the Prime Minister recommends the appointment to The Queen.⁹

B. The Government proposals

The *Governance of Britain* Green Paper made proposals to reduce the role of the Prime Minister in ecclesiastical appointments. It stated that:

In considering the role which the Prime Minister and the Government should play in Church appointments, the Government is guided by four principles:

- the Government reaffirms its commitment to the position of the Church of England by law established, with the Sovereign as its Supreme Governor, and the relationship between the Church and State. The Government greatly values the role played by the Church in national life in a range of spheres;
- The Queen should continue to be advised on the exercise of her powers of appointment by one of her Ministers, which usually means the Prime Minister;
- In choosing how best to advise The Queen on such appointments, the Government believes in principle that the Prime Minister should not play an active role in the selection of individual candidates. Therefore, the Prime Minister should not use the royal prerogative to exercise choice in recommending appointments of senior ecclesiastical posts, including diocesan bishops, to The Queen; and
- The Church should be consulted as to how best arrangements can be put in place to select candidates for individual ecclesiastical appointments in line with the preceding principles.

⁸ Norman Doe, *The Legal Framework of the Church of England*, 1996, pp179-180

⁹ Ministry of Justice, *The Governance of Britain*, July 2007, Cm 7170, paras 58-61

To reflect the principle that, where possible, the Prime Minister should not have an active role in the selection of individual candidates, for diocesan bishoprics the Prime Minister proposes that from now on he should ask the Crown Nominations Commission to put only one name to him, a recommendation he would then convey to The Queen. The Government will discuss with the Church any necessary consequential changes to procedures. The current convention for appointing bishops will continue.¹⁰

It should be noted that, although the Green Paper concentrated upon the Prime Minister's current involvement in the appointment of bishops and other senior posts, the consultation initiated by the *Governance of Britain* Green Paper was not confined merely to senior appointments. In fact, as is explained in paragraphs 64-66 of the Green Paper, with the exception of the Royal Peculiars like Westminster Abbey and St George's Windsor, it extended to all ecclesiastical appointments in which government ministers are currently involved down to parish level. Included, therefore, were not only the approximately 200 parishes where the Prime Minister advises the Crown by also some 450 parishes and a few canonries to which the Lord Chancellor currently appoints – in his case under arrangements operated in practice by the same civil service staff that support the Prime Minister's Appointments Secretary. This paper is concerned primarily with Prime Ministerial involvement in senior ecclesiastical appointments.

C. The Church of England's response to the *Governance of Britain*

1. Initial Synod response July 2007

As a result of the Government's proposals in the *Governance of Britain Green Paper*, the General Synod meeting of 9 July 2007 passed a motion which "welcome[d] the prospect of the Church achieving the 'decisive voice in the appointment of bishops' for which the Synod voted for in 1974".¹¹ This meeting of the Synod was already due to consider a report on senior ecclesiastical appointments: *Talent and Calling: A review of the law and practice regarding appointments to the officers of suffragan bishop, dean, archdeacon and residentiary canon*.¹² Commenting at the opening of the debate Sir Joseph Pilling, the chair of the working group which produced the report, said that it was unusual for one third of a report's recommendations to be overtaken before the report had been considered.

Particular points of issue included the role of the Prime Minister's Appointments Secretary. The *Church Times* reported that, if the PM's Appointments Secretary ceased to be a non-voting member of the Crown Nominations Committee as the Government's proposals suggest:

Some would be disappointed that the Secretary's widely appreciated role would no longer be available to the Church. They would have to decide in due course whether

¹⁰ Ministry of Justice, *The Governance of Britain*, July 2007, Cm 7170, para 62.

¹¹ General Synod, *Summary of Business Conducted on Monday 9 July 2007 pm*,

¹² General Synod, *Talent and Calling: Report of the Senior Church Appointments Review Group*, GS1650, 2007.

some external professional reference could be available to the Church if this important link to the Prime Minister's office was to disappear.¹³

2. Archbishops' consultation paper on Crown Appointments

On 15 October 2007 the Archbishops published a consultation paper on Crown appointments in the Church of England in response to the Government's proposals in the *Governance of Britain* Green Paper. The Paper identified two particular issues for consideration:

- i. the "nature of establishment and the continuing relationship between the Church and State";¹⁴ and
- ii. "the balance to be struck between uniformity and diversity and the opportunity that the new arrangements provide for the Church to take a more synoptic overview of the talent available for all of its senior appointments".¹⁵

The Archbishops argued that if two names were no longer to be put forward for archbishop and diocesan bishops, it would be "curious" to continue to put forward two names for suffragan appointments. The convention for more than a century has been that the Prime Minister submits to the Queen the first of the two names submitted by the diocesan bishop, after consultation with the Archbishop, to fill a suffragan bishop vacancy. The requirement to submit two names is statutory under the *Suffragan Bishops Act 1534*. The paper recommended that "When a suitable legislative opportunity presents itself... the 1534 Act should be amended to remove the requirement for the submission of two names to the Crown".¹⁶ The Church has already been considering reforms to the process of drawing up these names following the Pilling Report, *Talent and Calling*.

The Archbishops' consultation paper asks for responses to the following questions:

- i. the general considerations that the Church should keep in mind in helping to develop new processes in the light of the Green paper and the Synod motion (outlined below);
- ii. the nature of the Crown's future involvement in the Church's selection processes for senior Crown appointments;
- iii. whether the requirement under the *Suffragan Bishops Act 1534* to submit two names to the Crown should be repealed;
- iv. whether in relation to the 18 non-academic Crown cathedral canonries the diocesan bishop should in future take the lead role;

¹³ 'On 'decisive voice' over diocesan bishops, Synod seeks to extend reform to deans and canons', *Church Times*, 13 July 2007, p19.

¹⁴ *Crown Appointments in the Church of England: A Consultation Paper from the Archbishops*, 15 October 2007, <http://www.cofe.anglican.org/news/pr9807.html> (last viewed 7 November 2007), para 10.

¹⁵ *Ibid.*, para 14

¹⁶ *Ibid.*, para 25. This implies that the Archbishops would prefer the change to be made by government promoted statute rather than, as the Constitution Unit recommend, Measure initiated by the Church of England under the *Church Assembly (Powers) Act*.

- v. the new process for selecting the deaneries in the gift of the Crown and whether the process for selecting non-Crown deans should in future be arranged along similar lines;
- vi. whether the Patronage (Benefice) Measure 1986 should be amended to remove the present Crown exemption from the normal requirements concerning parochial appointments.

3. Report to General Synod from the Archbishops

In January 2008 the Archbishops published the results of their consultation and their recommendations for the way forward. The consultation document had produced 224 responses. The paper set the proposals within the context of the wider relationship between the Church and the state before considering the proposals in detail. The Archbishops wrote that:

...it is important to recognise that the Government does not see its proposals as representing a change in its commitment to the relationship between Church and State and to the position of the Church of England by law established, with the Sovereign as its Supreme Governor. Nor do we.

a. General Issues and Future Role of the Crown

The Archbishops considered the continued role for the Crown's advisors on Church appointments. They reported that "The clear weight of the representations received is that it would be for the benefit for the Church if someone appointed by the Crown could participate in the selection process in an advisory capacity".¹⁷ The Archbishops believed that:

...it will be in the interests of the Church if someone appointed by the Crown can continue to add value to the process in this way albeit in a new context where the decisive choice to nominate a person to the Crown rests with the Church.¹⁸

The Archbishops set out how they would envisage such a post:

...the change that we have in mind could best be summarised as moving away from the idea of someone who has advised the Prime Minister on the use of the prerogative in diocesan bishop appointments, has taken the lead role in many cathedral and other appointments and has had direct dealings with clergy seeking preferment. Instead, there would be a Crown appointments adviser. He or she would work with our Appointments Secretary in carrying out public consultations at the beginning of the process, contribute to the production of the detailed memorandum of needs for the post and then participate as a non-voting member in the two meetings of the Crown Nominations Commission.

In addition he or she would work with our Appointments Secretary in supporting the new arrangements for the appointment of Crown Deans. Again there would be involvement in local consultation on the needs of the cathedral with a view to producing a confidential memorandum for the selection panel on the particular

¹⁷ *Crown Appointments: Report to the General Synod from the Archbishops*, GS 1680, 21 January 2008

¹⁸ *Ibid.*, para 12

qualities, skills and experience likely to be needed in the new dean. Both the Crown appointments adviser and our Appointments Secretary would be non-voting members of the selection panel for deans.¹⁹

However, as they themselves point out, it would be for the Government to decide how best this role would be discharged on behalf of the Crown, and what the title of the post should be. The Archbishops also set out their view that someone fulfilling this role would need to be a communicant Anglican.²⁰

b. Episcopal Appointments

The consultation exercise revealed that there was strong support for removing the statutory requirement for the submission of two names by the diocesan bishop to the Prime Minister. In practice, it has long been the convention that the Prime Minister always submits the first name to the Monarch. The Archbishops again pointed out that it would seem odd if only one name was provided for the appointment of diocesan bishops, “it would be curious to continue to submit two names for suffragan bishops”.²¹ This change would require amending the *Suffragan Bishops Act 1534*.

The Archbishops considered that, in the case of diocesan bishops, the Crown Nominations Commission should continue to choose two names, in case the first choice is unable or unwilling to take up the appointment. However, they would need to have some mechanism for deciding which candidate should be put forward first, if there was a tie within the Commission. The Archbishops suggested that Standing Order 122 should be amended to provide for the Archbishop of the Province to have the casting vote.²²

c. Cathedral Appointments, parochial patronage and other Crown Appointments

It is on the level of Cathedral appointments that the proposals in the Green Paper have the greatest impact. There are 28 deans and 23 cathedral canonries which are Crown Appointments. In practice, the Prime Minister’s Appointments Secretary consults widely on such appointments. However, the Church has no process of its own for deciding such appointments.

The Archbishops recommended that, other than for six ‘special cases’ (of the three academic canonries of Christ Church Oxford, sub-dean of Christ Church and two canonries elsewhere which are shared with archdeacon posts), it shall be for the diocesan bishop to take the lead role. He does this already for more than 80% of cathedral canonries where he has the right to appoint. In future, according to the Pilling Report’s recommendations which were agreed in the July 2007 Synod, the bishop and dean will draw up a job specification for such posts. Candidates for residentiary canonries should always be interviewed by a panel including the bishop and the dean. In future, this will also be good practice for the appointment of all residential canonries.

¹⁹ *Ibid.*, paras 14-15

²⁰ *Ibid.*, para 16

²¹ *Ibid.*, para 19

²² *Ibid.*, para 24

In respect of Crown Deans, the Archbishops recommended that the selection panel should be chaired by a layperson selected by the archbishop of the province after consultation with the diocesan bishop and with the proposed Crown appointments adviser. The Archbishops outlined the appointments processes in detail, and also considered those for the 'special cases' mentioned above.

4. Debate in General Synod February 2008

Ecclesiastical appointments were debated in the February 2008 sessions of the General Synod. The *Church Times* reported that:

The Synod has approved the Archbishops' Council's proposals for altering the procedures for Crown appointments for a new era when the Prime Minister no longer exercises any choice in the matter.

Although the decision will, it is planned, be the Church's, the Synod has approved the idea of a Crown appointments adviser who will, if Downing Street agrees, continue to bring the interests of the state to the Crown Nominations Commission's attention.²³

Following debate, the Archbishop of Canterbury moved a motion to approve the proposals set out in the final paragraph of the Archbishops' paper. The motion was carried by 290 votes to 16 (with 16 abstentions).

D. Background

1. Development of the current position

Before 1976 the Prime Minister had "an unfettered right to advise on appointments, and the Church had no formal role in the appointing process at all, although it was invariably consulted, as a matter of courtesy".²⁴

In 1974 the Synod had resolved that it:

Affirm[ed] the principle that the decisive voice in the appointment of diocesan bishops should be that of the Church; believes that, in arrangements to give effect to this, it would be desirable that a small body, representative of the vacant diocese and of the wider Church, should choose a suitable person for appointment to that diocese and for the name to be submitted to the Sovereign...

The Constitution Unit at UCL have stated that:

In 1976, after lengthy informal negotiations between the Church and Downing Street, it was agreed that a modified system of consultation should be introduced which would involve the Church more closely in Crown appointments. When a diocese fell vacant, a vacancy-in-see committee would be established... It would submit two

²³ 'Synod feels its way towards a greater self-determination', *Church Times*, 22 February 2008

²⁴ Vernon Bogdanor, *Monarchy and the Constitution*, 1995, p226.

names to the Prime Minister, who would be free to recommend *either* name to the Queen, or to ask for further names...²⁵

Professor Vernon Bogdanor has written that since 1976:

...appointments have been submitted to the prime minister through the Church of England's Crown Appointments Commission, a body of which a majority are members of the Synod. The Commission draws up a shortlist of two names for the prime minister which it may offer in order of preference. The prime minister is free to choose either of the two names, or indeed to seek other names from the Commission. Once the prime minister has made a decision, he or she submits it on to the sovereign, who, although required in the last resort to act on advice, can, nevertheless, through informal discussion at an earlier stage, secure some influence over the final choice. The advice given by the prime minister over Church appointments is personal advice, rather than advice on behalf of the government or the cabinet, and the prime minister cannot be questioned in parliament about the advice which he or she gives.

Although the Church of England was given a much enhanced role in the appointments process in 1976, there are still many in the Church who object to the role allotted to the prime minister, who, after all, need not be Anglican [*Footnote: However, under the Roman Catholic Relief Act of 1829, sect. 17, and the Jews' Relief Act of 1858, sec. 4, no Roman Catholic or Jew may advise the sovereign on ecclesiastical matters. Were the prime minister to be a Roman Catholic or a Jew, advice would presumably be given by the Lord Chancellor.*]²⁶

2. The case for reform

In respect of the appointment of bishops, it is argued that the ability for the Prime Minister to pick one of two candidates to put forward for appointment by The Queen allows the possibility of active involvement of a Prime Minister, and that this might not be appropriate. Professor Bogdanor gives examples from the period after 1976 where it has been suggested that advice was given by the Prime Minister on political rather than ecclesiastical grounds:

...on three occasions Margaret Thatcher overrode the wishes of the Church and appointed the name that was second amongst the preferences of the church rather than its first choice – in 1981 when she recommended Graham Leonard rather than John Habgood as Bishop of London, in 1987, when she recommended Mark Santer rather than Jim Thompson as Bishop of Birmingham, and in 1990, when she recommended George Carey rather than John Habgood as Archbishop of Canterbury. In 1987 it was alleged that Conservative MPs had lobbied against Thompson.²⁷

More recently, it is said that in 1997 Tony Blair rejected both of the candidates put forward by the Church of England to succeed David Shephard as Bishop of Liverpool.²⁸ *The Sunday Times* reported that "While the workings of the [Crown Appointments Commission] are

²⁵ Frank Cranmer, John Lucas and Bob Morris, *Church and State: A mapping exercise*, The Constitution Unit, p29.

²⁶ Vernon Bogdanor, *Monarchy and the Constitution*, 1995, pp226-228.

²⁷ Vernon Bogdanor, *Monarchy and the Constitution*, 1995, p228

²⁸ 'Blair blocks church choice for bishop', *The Sunday Times* 14 September 1997.

shrouded in secrecy, it is thought to be the first time in its 20-year history that a prime minister has rejected its recommendations".²⁹

Iain McLean and Benjamin Linsley have argued:

While it is true that the Prime Minister is in practice restricted to choosing one of the two names presented to him by the Church of England for each Episcopal vacancy, this does not prevent both sides from playing games. If the Church really wants to select its favoured candidate, it can put up a hapless nonentity as its second name. If the Prime Minister really wants to make a point, s/he can choose the hapless nonentity.³⁰

The Van Straubenzee working party, which had been set up by the Standing Committee of the General Synod, reported in 1992. Their report, *Senior Church Appointments* (1992), made recommendations that would have removed the Prime Minister from the process altogether. They concluded that as the Prime Minister could not be questioned in Parliament about the advice given to The Queen on ecclesiastical appointments, the advice could be divested from him. It would therefore be perfectly proper constitutionally for advice to be given directly to the sovereign by the Archbishops of Canterbury and York, who as privy counsellors, enjoy a right of audience with the sovereign. Frank Field MP entered a Memorandum of Dissent in which he argued strongly for the Prime Minister's continued involvement in the process, on the grounds that any attempt to diminish the involvement of the Crown in Church appointments would lead to disestablishment by default. The recommendations of the working party were not implemented.

After the rejection of both names put forward to Tony Blair for the Bishop of Liverpool in 1997 the Synod agreed to set up a working party to review the workings of the Crown Appointments Committee.³¹ The report of the Crown Appointments Commission Review Group, *Working with the spirit: choosing diocesan bishops*, was published in May 2001.³² The Group was chaired by Baroness Perry of Southwark who explained at the launch of the report that the evidence they heard had:

...revealed widespread unease about important aspects of the operation of the system, and as a result we cannot say from the evidence which we received that there is general confidence that the system is demonstrably fair, robust and effective. It is important to stress that we are not saying that the system is unfair, weak or ineffective. What we are saying is that it needs to be seen to be fair, robust and effective, and that in order to increase confidence in it, the system must be made more open and transparent...³³

However, more generally, they concluded that "the overall shape of the Church of England's processes both for choosing diocesan bishops and for conferring the office on the person

²⁹ *Ibid.*

³⁰ Iain MacLean and Benjamin Linsley, *The Church of England and the State: Reforming establishment for a multi-faith Britain*, New Politics Network, 2004, p 19.

³¹ 'Church to review how bishops are shortlisted', *The Guardian*, 8 July 1998.

³² *Working with Spirit: Choosing diocesan bishops*, 9 May 2001, <http://www.cofe.anglican.org/about/gensynod/agendas/gs1405.pdf> (last viewed 8 November 2007)

³³ Press Notice, *Changes proposed by Crown Appointments Commission Review Group*, 9 May 2001.

nominated is right. In each case, the process is one in which both the diocese and the wider Church need to be involved".³⁴ In a vote in July 2002 the Synod rejected proposals to remove the Prime Minister and the Queen from the appointments process.³⁵

3. The need for a continued role for the Prime Minister

The current proposals do give the Prime Minister a continued role in senior ecclesiastical appointments, even if it is just, as the Constitution Unit describes it, that of a "postbox". It has been argued that it would not be possible to completely remove the involvement of the Prime Minister in ecclesiastical appointments. At the time of the 1976 settlement, the then Prime Minister, James Callaghan, explained:

There are... cogent reasons why the State cannot divest itself from a concern with these appointments of the Established Church. The Sovereign must be able to look for advice on a matter of this kind and that must mean, for a constitutional Sovereign, advice from Ministers. The Archbishops and some of the bishops sit by right in the House of Lords, and their nomination must therefore remain a matter for the Prime Minister's concern.³⁶

Professor Bogdanor puts forward a further argument – that the Monarch should not be in a position where choice is a matter of her own personal preference:

There are, of course, some matters where the sovereign can act without advice, while on legal matters he or she can be advised by the Judicial Committee of the Privy Council. But there are no non-legal matters on which he or she can be advised by anyone other than a responsible minister. The reason for this is clear. It is that the sovereign shall not be embarrassed by appearing to have made decisions based upon his or her own personal preferences. In the case of the appointment of archbishops and bishops, there is an even more powerful reason why the prime minister must be the person to proffer advice. It is that the archbishops and the senior bishops sit as of right in the House of Lords. Therefore, for as long as the Church of England remains established and remains an Episcopal church whose archbishops and senior bishops sit in parliament, the State cannot divest itself from its concern with senior appointments...³⁷

Iain McLean and Benjamin Linsley writing for the New Politics Network, have argued that:

Prime Minister James Callaghan justified his involvement on the grounds that the 26 bishops sat in Parliament. If they go, this ground also for Prime Ministerial involvement in Church appointments goes too. We think that any outside interference in Church selection processes is unacceptable – for organizational reasons as well as theological ones. An organization cannot function smoothly if it cannot select its own leaders.³⁸

³⁴ *Ibid.*

³⁵ General Synod, 8 July 2002.

³⁶ HC Deb 2 June 1976 c613.

³⁷ Vernon Bogdanor, *Monarchy and the Constitution*, 1995, pp232-233

³⁸ Iain MacLean and Benjamin Linsley, *The Church of England and the State: Reforming establishment for a multi-faith Britain*, New Politics Network, 2004, p 19

However, the Constitution Unit has argued that “The purely formal involvement of the Prime Minister in future raises the question whether such an involvement is necessary at all. It offers none of the *real* protection to the Crown that the shield of responsible ministerial advice is there for in the first place”.³⁹ They stated that it would be better, instead, to remove the appointing responsibility of the monarch herself by repealing the *Appointment of Bishops Act 1533* and the *Suffragan Bishops Act 1534*. They argued that this would not require primary legislation, but a Church of England Measure. They continued:

...It might be said that proceeding thus is unprecedented, that it would lead to disestablishment, or that the Supreme Headship of the Church would be imperiled. None of these objections holds water if the political will is there. The 1919 Act [the Church Assembly (Powers) Act which allows for Church of England Measures] specifically allows that Measures may amend or repeal public statutes. The established position of the Church would be amended but not terminated. The sovereign would remain Supreme Governor and none of the other measures linking the sovereign with the Church would be affected. The sovereign could continue to express a real interest in the affairs of the Church and in appointments such as the Royal Peculiars which are of particular personal interest.

The government’s intentions seem timely and wholly right. So far it has identified the objects but not quite the means. In the Unit’s view it should take the further steps to produce a more complete and honest ministerial disengagement which would also protect the position of the sovereign. No significant change would be made to the established position of the Church. On the contrary, whilst the Church would become free of dependence on the *government*, it would remain a special part of the *state*.⁴⁰

E. The ability of a Roman Catholic to serve as Prime Minister of the UK

It is often suggested that the Prime Minister cannot be a Roman Catholic by law. This is not correct.⁴¹ Historically, non Anglicans were prevented from holding public office (including that of Member of Parliament) by the *Test Act 1672*, which provided that all office-holders should take oaths of allegiance and supremacy, declare against transubstantiation, and receive the sacrament of the Lord’s Supper (duly certified by Minister and Churchwarden) according to the usage of the Church of England. Within this framework, Roman Catholics were specifically prevented from sitting in either House of Parliament by the terms of the second *Test Act 1678*. While this Act did not specifically prevent the candidature of Catholics, nor actually prevent their sitting in Parliament, their exclusion was its clearly declared purpose, as stated in its preamble. It achieved its purpose by requiring that all Peers and Members of the House of Commons should, as often as the House required, not only take the oaths of supremacy and allegiance, but also make a declaration abjuring transubstantiation, worship

³⁹ Robert Hazell, *Constitution Unit Response to Cm7170: The Governance of Britain July 2007*, July 2007, <http://www.ucl.ac.uk/constitution-unit/files/publications/GovernanceResponse.pdf> (last viewed 8 November 2007)

⁴⁰ *Ibid.*

⁴¹ See also SN/PC/1493, *Parliament and Religious Disabilities*, http://pims.parliament.uk:81/PIMS/Static%20Files/Extended%20File%20Scan%20Files/LIBRARY_OTHER_PAPERS/STANDARD_NOTE/snpc-01493.pdf

of the Virgin Mary and the celebration of mass. Obviously, no Catholic would take such an oath. Members who refused to take it would automatically lose their seats.

The *Roman Catholic Relief Act 1829* provided, among other things, that Catholics could sit and vote in either House of Parliament provided that they took, instead of the oaths of supremacy, allegiance and abjuration, a new inoffensively phrased oath of allegiance. While there is no longer any statutory bar on Roman Catholics becoming Prime Minister, there are issues arising from advice on ecclesiastical preferment that is given by the Prime Minister to the Crown. Special arrangements would have to be made to ensure that he or she did not advise the Crown directly or indirectly on Church of England appointments, doing so under the *Roman Catholic Relief Act 1829* remains a “high misdemeanour”. This particular aspect of Prime Ministerial duties could be delegated to another minister not similarly barred.