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RESTRICTED - POLICY

**From the Secretary of State and Lord Chancellor
The Right Honourable Lord Falconer of Thoroton**



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PRIME MINISTER**THE LORD CHANCELLOR'S ECCLESIASTICAL PATRONAGE**

1. This minute seeks your agreement to my proposal that the Lord Chancellor's ecclesiastical patronage should be transferred to the Church, as part of our work to abolish the office of the Lord Chancellor. The remainder of Crown patronage (administered through the Ecclesiastical Office in No 10) would be unaffected. The transfer would be included in the forthcoming Constitutional Reform Bill.

Background

2. For historical reasons dating back to Edward III the Lord Chancellor exercises patronage on behalf of the Crown in relation to 157 livings in England where he is sole patron and in 285 livings where the patronage is shared with other patrons. He also appoints to 12 Canonries at 4 cathedrals. In addition, the Crown is also the patron in respect of a further 210 benefices and some 25 Canonries, where The Queen acts on your advice. In practice the work in relation to all these livings is carried out through the Ecclesiastical Office based in No 10.

3. With the decision to abolish the office of Lord Chancellor we need to settle how his patronage should be handled in the future. Our Consultation Document in September invited views on three options: that the patronage be carried out

- a/ by the Secretary of State for Constitutional Affairs (or another Minister);
- b/ in the same manner as other Crown livings (i.e. with the PM advising The Queen);
- c/ by transferring the patronage powers to the Church (with sub-options as to which part of the Church).

Outcome of Consultation

4. Opinion of respondents to the consultation was divided evenly between those who wish the patronage to be handled in the same way as other Crown livings and those who wish it to pass to the Church in some form (43% of respondents to this question supported each of the options). There was little support (8%) for it passing to another Minister (eg the Secretary of State for Constitutional Affairs). The Archbishops of Canterbury and York consulted the House of Bishops in Synod and the Archbishops' Council. They note that both options have their advocates, but ultimately left the

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decision to Ministers. Seven Bishops responded to the consultation separately, each advocating that the patronage remain with the Crown. However I understand that privately the Archbishop of Canterbury would welcome the Church taking on these appointments, but he is asking that no particular importance should be attached to his personal views.

My approach

5. I believe that we should take this unparalleled opportunity to transfer the Lord Chancellor's patronage to the Church. We would need to discuss the details with the Church itself, but in practice I would expect the transfer to be to the most appropriate Diocesan authority: either the Bishop himself, or the Diocesan Board of Patronage, where it is active and effective. I set out my reasons below.

6. It is scarcely appropriate or necessary in the modern world for any Government minister to deal with individual parish appointments, especially where there are arrangements to ensure that the Bishop's and the parish's views are taken into account. I do not believe that tradition or historical antecedents are sufficient justification. It is said that any move to alienate appointments from the Crown could be seen as a sign of disengagement of State from Church and could give rise to fears of disestablishment. This does not seem borne out by the consultation, where this is mentioned by only a handful of respondents. Questions of Establishment rest on far more than Crown appointments to a small proportion of all parishes. Nevertheless, in announcing any change I think we should make clear that the Government does not see this as disengagement from the Church or the thin end of the wedge on the way to disestablishment.

7. We are engaged in a programme of substantial constitutional reform to ensure that our national institutions are fit for purpose at the beginning of the 21st century. Those institutions must include the national Church, which should be able to make its own appointments and manage its own affairs at parish level, subject to the law. The point has been made to me by some Bishops that the existence of a parish where the Lord Chancellor is patron can interfere with sensible parish re-organisation. I think we should be seeking to remove such difficulties where we can sensibly do so. I am not persuaded by the argument that the, frankly serendipitous, historical pattern of patronage is essential to the balance of authority within the Church. That is not borne out by the divided views in the consultation and seems to be an argument simply for those who wish to maintain as far as possible the status quo.

8. I am aware of the argument that the Lord Chancellor's patronage is Crown patronage and that, if there is to be any change, then it should revert to the Crown. However, that is not a compelling argument. Put differently, it amounts to saying that because of its historical provenance we should not be considering a change which otherwise seems desirable as part of our reform agenda. We have refuted that argument in connection with the office of Lord Chancellor and we should similarly do so here. It would be a nonsense to say that we are intent on abolishing the office of Lord Chancellor with its quaint antiquities, only to shift them onto the Prime Minister.

9. Some will raise the question of why not transfer all Crown patronage to the Church, not simply that exercised by the Lord Chancellor. In practice this was not a major concern in the responses to the consultation. However, we are not engaged in a review of Crown patronage or of patronage in the Church more widely. We are seeking simply to abolish the office of the Lord Chancellor (and the historical

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anomalies he embodied). We are seeking to dispose of his functions in the most sensible and efficient ways to meet modern circumstances. We do not wish to perpetuate unjustified legacies of history, but nor do we want to raise wider questions by embarking on further reforms than those to be addressed in bringing to an end the office of the Lord Chancellor.

Canonries

10. I recognise that the case for the transfer of Lord Chancellor's 12 Canonries is arguably less clear cut. There was very little comment on these in the consultation responses. You advise The Queen on the appointment of some further 25 Canons, as well as more senior ecclesiastical appointments. However, I think the principles are the same as for parish appointments and I see no reason not to transfer the Lord Chancellor's rights to appoint Canons to the Church as well.

Other patronage issues

11. The Lord Chancellor has powers to exercise the rights of a patron of unsound mind under the Mental Health Act 1983. I propose that these powers should pass to the Secretary of State for Constitutional Affairs (who would act on advice from the Ecclesiastical Patronage Office in No 10). The Secretary of State already has responsibilities for the affairs of those of unsound mind. I would not propose any shift in the default arrangements for exercising the patronage of the Duchy of Cornwall where the Duchy is vacant or held by a minor. With the abolition of the office of Lord Chancellor all this patronage would ultimately be exercisable by the Crown acting on your advice.

Means of transfer

12. Our lawyers advise that, under existing legislation relating to the transfer of advowsons, it may be possible to transfer the Lord Chancellor's patronage to the Church by means of an instrument under the Great Seal. However, I believe that we should make use of the forthcoming Constitutional Reform Bill to do so. Such an important change should be the subject of proper scrutiny and (if required) debate in Parliament. The size and antiquity of the Lord Chancellor's patronage, its provenance from the Crown and the obscurity of the nature of the original delegation from the Crown all point to the certainty which primary legislation would provide. In any event there are a number of references to the Lord Chancellor's patronage in statute which would need consequential amendment even if transfer were to be accomplished in some other way.

Next steps

13. Subject to your views, I will include provisions relating to the transfer of the Lord Chancellor's ecclesiastical patronage, with my other proposals for the Bill when I seek formal DA approval shortly. When I have your views and those of DA, I will provide formal advice to The Queen on how we intend to proceed before the Bill is published. I expect to be announcing the outcome of consultation in relation to the office of Lord Chancellor and other constitutional changes when the Bill is introduced. That would include our proposals in relation to the Lord Chancellor's ecclesiastical patronage and would allow us to make clear the Government's view that such a change would not affect the fundamental status of the Church of England.

14. I am sending a copy of the minute to the Chancellor of the Duchy of Lancaster because of his responsibility for the Crown patronage in relation to the Duchy. I am

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also sending a copy of this minute to Sir Robin Janvrin for information, so that he is aware of the advice being offered.