

GENERAL SYNOD

**DRAFT ECCLESIASTICAL OFFICES (TERMS OF SERVICE)
(CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) ORDER 2010**

Explanatory Memorandum

Background

1. Section 11 of the Ecclesiastical Offices (Terms of Service) Measure 2009 (“the 2009 Measure”) empowers the Archbishops’ Council to make provision by Order for such amendments or repeals of any Measure or other enactment, and such transitional matters, as the Council may consider necessary or expedient in consequence of the Terms of Service legislation. Such an Order must be laid before the General Synod for approval in the same way as any Regulation made under the 2009 Measure.
2. The relevant sub-sections of s.11 have been brought into force with effect from 27th September 2010.
3. The draft Order now before Synod deals with a number of transitional and consequential matters.

Paragraph 1 (Citation coming into force and interpretation)

Paragraph 1 makes provision for the citation and commencement of the draft Order and contains a definition for the purpose of references within the body of the text

Paragraph 2 (Transitional provisions)

Paragraph 2 provides that the transitional provisions set out in Schedule 1 shall have effect.

Paragraph 3 (Consequential amendments and repeals)

Paragraph 3 provides that the consequential amendments and repeals set out in Schedule 2 shall have effect.

Schedule 1

Paragraph 1 of Schedule 1 protects the position of freeholders who choose not to opt in to Common Tenure and who are then transferred to a new freehold office by virtue of a pastoral scheme or order. Without such a provision, such office holders would, by virtue of s.1(i)(iii) of the 2009 Measure, hold the new office on Common Tenure. The Church Commissioners’ Pastoral Committee and the Terms of Service Implementation Panel accept that it is undesirable that pastoral reorganisation should,

albeit unintentionally, have the effect of forcing an office holder onto Common Tenure against his or her will.

Paragraph 1(1) of Schedule 1 therefore provides that, where the holder of a freehold office who is not subject to Common Tenure is appointed by virtue of a pastoral scheme or order to a new office which would have been a freehold office were it not for the operation of the 2009 Measure, he or she will not hold the new office on Common Tenure unless he or she elects so to do. Paragraph 1(2) makes similar provision in respect of Team Rectors but, to ensure parity with the position of Team Rectors generally under the legislation, only allows them to stay opted out of Common Tenure for a period equivalent to the unexpired residue of the office which they held at the date when the pastoral scheme or order took effect.

No transitional provision is made for freeholders who are transferred under a pastoral scheme or order to the office of Team Vicar. This is because the loss of freehold in such cases is not a consequence of the 2009 Measure. Those who are transferred to the office of Team Vicar under pastoral reorganisation already lose their freehold, but they retain full compensation rights should their term of office not be renewed. The Terms of Service legislation affords equivalent protection, because Team Vicar appointments on Common Tenure will no longer be made for a term of years and will attract full compensation under Schedule 4 of the Pastoral Measure 1983. Furthermore, to make special provision for those transferring to Team Vicar posts under pastoral reorganisation would be to create a disparity with Team Vicars in general, who will transfer automatically to Common Tenure when the legislation comes into effect.

Paragraph 2 of Schedule 1 preserves the effect of a notice to terminate a licence which is served before the legislation comes into force but does not take effect until after that date.

Paragraph 3 of Schedule 1 provides that the existing provisions relating to the resignation of deans, residentiary canons and archdeacons shall continue to apply to those holding these offices who choose not to opt in to Common Tenure

Schedule 2

Amending Canon 29 has made changes to the requirements in Canon C 25 relating to the residence of clergy on their benefices. **Paragraphs 1 to 11** of Schedule 2 repeal or amend various provisions of the Pluralities Act 1838 which would otherwise be inconsistent with Canon C 25 as amended.

Paragraph 12 of Schedule 2 repeals provisions in s.12 of the City of London (Guild Churches) Act 1952 which are inconsistent with the Terms of Service legislation. Vicars of guild churches, like team vicars, are licensed clergy of incumbent status who currently serve on fixed term appointments, and as such will transfer automatically to Common Tenure on the appointed day. Thereafter their terms of service will be governed by the 2009 Measure and the Regulations made under it.