

**GENERAL SYNOD**

**CAPABILITY AND GRIEVANCE PROCEDURES**

**DRAFT CODES OF PRACTICE MADE UNDER THE ECCLESIASTICAL  
OFFICES (TERMS OF SERVICE) MEASURE 2009 AND THE  
ECCLESIASTICAL OFFICES (TERMS OF SERVICE) REGULATIONS 2009**

**Explanatory Memorandum**

Background

1. Under Section 8 of the Ecclesiastical Offices (Terms of Service) Measure 2009 (“the Measure”) it is the duty of the Archbishops’ Council to formulate guidance for the purposes of the Measure and to promulgate such guidance in the form of Codes of Practice, which must be laid before the General Synod for approval. Any person or body carrying out functions under the Measure or under the Ecclesiastical Offices (Terms of Service) Regulations 2009 (“the Regulations”) must have regard to any such Code of Practice.
2. By an Instrument dated 24<sup>th</sup> November 2009 the Archbishops of Canterbury and York appointed that section 8 of the Measure should come into force with effect from that date.
3. The Regulations have been laid before both Houses of Parliament and came into effect on 1<sup>st</sup> January 2010.
4. Regulations 31 and 32 require the Council to issue capability and grievance procedures in the form of Codes of Practice under section 8 of the Measure.
5. Illustrative drafts of these procedures have been made available to Synod members on two previous occasions – firstly at the Revision Stage for the Measure and the Regulations at the February 2008 Group of Sessions (GS 1637-9Y) and secondly when the Regulations were reintroduced into Synod and approved at the July 2009 Group of Sessions (GS Misc 922). Members of Synod and others were invited to comment on these drafts.
6. The draft procedures now submitted to Synod have been reviewed and amended, taking account, in particular, of the following:
  - the statutory Code of Practice for capability and grievance procedures in employment relationships, issued by ACAS in April 2009 (Regulations 31(5) and 32(4) provide that the Archbishops’ Council must endeavour to ensure that the procedures do not place office holders in a less favourable position than that in which an employee would be placed under the ACAS Code);
  - comments received from Synod members and others (including Unite and the English Clergy Association);
  - comments made by the House of Bishops;

- comments made by the Archbishops' Council.

#### Capability Procedure (GS 1774)

5. This procedure provides a mechanism for dealing with problems of serious underperformance by an office holder under Common Tenure in a particular role. Its primary emphasis is on providing support and assistance to enable the office holder's performance to improve.
6. The procedure has an informal stage and three formal stages (with time and opportunity for improvement allowed at each stage). At each formal stage provision is made for the issues to be heard by a panel. At such a hearing the office holder has the right to present his or her case and to be accompanied by a colleague or trade union representative. A right of appeal is provided at each formal stage and if, in the last resort, the office holder is removed from office, Regulation 33 confers a right to bring a claim of unfair dismissal in an Employment Tribunal.
7. The procedure also addresses issues that may arise in particular cases, especially those where ill-health is a contributory factor.

#### Grievance Procedure (GS 1775)

8. This procedure provides a mechanism whereby an office holder holding office under Common Tenure may seek redress for grievances relating to his or her terms and conditions of service. The procedure is based on the ACAS Code of Practice and puts a strong emphasis upon the desirability of resolving grievances informally wherever possible. Where this is not possible, or not successful, the Code provides a formal process for hearing the grievance, which includes a requirement that both parties should be allowed to put their case and to be accompanied.

#### Supporting advice (GS Misc 940)

8. Supporting advice issued by the Archbishops' Council accompanies each procedure. This advice has no formal status and does not require Synodical approval; but copies of it are being circulated for the information of members of the Synod (as GS Misc 940). It provides recommendations on good practice to supplement the procedures, and is intended to be revised from time to time as needed, in the light of experience and developments in practice in the employment field.