**NOTES ON DISPOSSESSION OF THE CLERGY AND PAYMENT OF COMPENSATION**

See **Chapter 4 of the Mission and Pastoral Measure 2011 Code of Recommended Practice** for a general introduction to this subject. Although the Incumbents (Vacation of Benefices) Amendment Measure 1993 changed the rules for the payment of compensation in pastoral breakdown and disability cases, Schedule 4 of the Mission and Pastoral Measure still applies in cases where an incumbent is dispossessed of his or her living by a pastoral scheme and is not being given another post. Schedule 4 also applies where an archdeacon or team vicar is dispossessed. Other holders of Common Tenure offices who receive a stipend or other emoluments of office (including accommodation) are also entitled to compensation if their offices cease to exist as a result of pastoral reorganisation but this arises under and its extent is limited by Regulation 30 of the Ecclesiastical Offices (Terms of Service) Regulations 2009. The detailed procedure for dealing with such cases under the Measure and Regulations is as follows:

 **PRELIMINARY STEPS**

1. Discussions with those affected

 As in the cases of all other proposals for unions, pluralities the incumbent of a benefice (and the holder of a team vicar's office) which is affected must be given, at the stage when his or her views are ascertained, an opportunity of meeting the DMPC (as distinct from a sub-committee or representative thereof) if (s)he so desires: archdeacons and other common tenure office holders may request a meeting with a sub-committee or representative of the Committee (*see ss.6(5 ) and 21(4)*). It will generally be helpful in the case of a priest who is to be dispossessed if at this stage an explanation is given of the main features (see paragraph 4 below) of schemes which result in the dispossession of clergy. It may also be helpful if the provisions of the Measure or the Terms of Service Regulations with respect to compensation are explained in outline, although it should be noted that an actual claim cannot arise until a scheme has become law and that the scheme itself will not refer to compensation.

2. Possibility of Appeal

 Proposals which would result in the dispossession of an incumbent, archdeacon, team vicar or other common tenure office holder without his or her assent cannot be effected by means of a pastoral order. A pastoral scheme is always required *(see s.51 proviso)*. If adverse representations are made following the publication of the draft scheme and the Commissioners decide that the draft should proceed notwithstanding the objections, it is, therefore, possible for an application for leave to appeal to be made to the Privy Council against the dispossession as well as any other provisions of the scheme.

3. Rural or Area deans

 It is not necessary for proposals which result in the abolition of a rural deanery and thereby deprive a priest of the office of rural dean to be implemented by a pastoral scheme, as distinct from a pastoral order. S.26 does not confer any rights of compensation upon rural deans so deprived.

4. Timing, etc., of effects of dispossession

 The following are special features of schemes which have the effect of dispossessing clergy of office *(see s.39(3))*:

 (1) The scheme must provide that the provision which results in the dispossession shall not come into operation until a date at least 6 months after the scheme has been made. This provision will not, however, be necessary if a sitting incumbent or team vicar whose office is dissolved is designated to become the first incumbent of a benefice created or otherwise affected by the scheme or the first holder of the office of team vicar in a team ministry established by the scheme.

 (2) If the coming into operation of the provision is dependent upon the occurrence of some other event (e.g. the vacation of another benefice), it cannot come into operation until a date at least 6 months after that event*.*

 (3) The scheme may provide that if the post held by the priest who would otherwise have been dispossessed is vacated, the provision shall come into operation upon the making of the scheme, or on the occurrence of the event referred to in (2), or upon the vacancy of the office, whichever last occurs.

 Attention is also drawn to the following provisions of the Measure:

 Agreement to resign

 If, when a scheme which will result in the dispossession of an incumbent, archdeacon team vicar or other relevant common tenure office holder has become law (i.e. when the scheme has been made by the Commissioners), and the priest or office holder affected so agrees with the DMPC, (s)he may resign his or her post in order to enable the scheme to come into operation, or to facilitate its coming into operation, and will remain entitled to claim compensation for any loss suffered in consequence of his or her resignation *(Sch. 4, para. 2)*.

 Possession of parsonage house

 The DBF is given the right to take proceedings, if necessary, to obtain possession of the official house of residence of a priest who is dispossessed of his or her office *(s.39(4))*.

5. Desirability of finding alternative post

 Where the dissolution of a benefice or other ecclesiastical office will result in the dispossession of the present office holder, the normal course (assuming the priest concerned is below pensionable age (currently 68) and wishes to continue in ecclesiastical employment) should always be for the bishop and his advisers to help him or her in every way possible to find another ecclesiastical post, at least comparable with his or her present office. If this is done and the priest takes up a new post, any question of his or her claiming compensation for the loss of former office may not arise. If, however, efforts to place him or her in a new post are unsuccessful, (s)he may be able to substantiate a claim for compensation and the succeeding paragraphs refer in detail to the procedure which then applies. *(See s.40 and Schedule 4.)*

 **COMPENSATION**

6. General

 The Measure confers a right to claim compensation on incumbents, archdeacons and team vicars whose benefices or offices are dissolved, vacated or resigned in the circumstances referred to in paragraphs 1-5 above. The detailed provisions affecting compensation are set out in Schedule 4 to the Measure and in the Compensation of Clergy Rules 1970 (Statutory Instrument 1970 No 1009), both of which should be carefully studied. There is no specific formula for calculating the amount of compensation and each case will need to be considered on its merits. The actual negotiation of compensation is entirely a matter between the DMPC and the priest concerned and the Commissioners make no attempt to suggest a fair rate for the various compensation elements. Broadly speaking, compensation must cover any loss suffered (primarily of course stipend and housing) up to the deemed retirement age and therefore the amount will vary with the age of the claimant. There has been little uniformity in the compensation amounts awarded to date: some feature a lump sum and periodic payments, some feature only one or the other; some take full account of benefits in kind, some do not; some award periodic payments that equate to a full stipend, while others award payments that, after the first year, equate only to a proportion. Compensation for other office holders is calculated on the same basis but by virtue of Regulation 30 is limited to one year’s loss.

7. Commissioners advise clergy about rights

 It is the practice of the Commissioners when sending to the priest concerned notice of a draft scheme under which (s)he would dispossessed of his or her post to send to him or her also copies of the Compensation of Clergy Rules and of notes prepared by them relating to compensation. They also explain that if the scheme becomes law it would be for him or her to make any formal claim to the DMPC in due course and that such a claim could be submitted at any time after the scheme had become law and not later than 13 weeks after the relevant provision had come into operation (unless the DMPC agreed to an extension of time). The Commissioners also draw attention to the fact that once the scheme had become law (s)he could, with the agreement of the DMPC, resign his or her post without prejudicing a claim for compensation, but that if (s)he should resign the benefice before the scheme has become law (s)he would not thereafter be eligible for compensation under the Measure. *(Compensation of Clergy Rule 3(2).)*

8. The main features of arrangements for compensation

 These are:

 (1) The basis of compensation is "for any loss suffered" by the claimant, including loss arising from ceasing to occupy the official residence and any expenses arising from his or her change of residence *(Sch. 4, paras. 1 & 3)*. The compensation can consist of periodical payments or a lump sum, or partly of one and partly of the other. Any periodical payment is not assignable *(Sch. 4, para 5(1))*.

 (2) The amount of compensation is to be determined in the first instance by the DMPC. If the claimant disagrees with what is offered (s)he can appeal to an Appeal Tribunal constituted for the appropriate province *(Sch. 4, paras. 4 & 13)*.

 (3) In determining loss suffered, account is to be taken of the claimant's emoluments from any ecclesiastical office held, or from other regular remunerated employment; account may also be taken of the emoluments of any reasonably comparable office which the claimant has, without good and sufficient reason, refused *(Sch. 4, para. 7)*.

 (4) The position of the claimant in relation to the Clergy Pensions Measure 1961 is as follows:

 (a) In general, any period after the loss of office and before retirement during which (s)he is not in pensionable service is treated as a period of pensionable service (but special provisions apply in the case of a person who executes a deed of relinquishment, becomes a member of another religious body or is disqualified from holding preferment in the Church of England) *(Sch. 4, para. 11(1))*;

 (b) on attaining the retiring age within the meaning of the Clergy Pensions Measure 1961 (currently 68), (s)he is deemed to retire for the purpose of the Measure (unless (s)he is then in actual pensionable service) even if (s)he would, but for dispossession, have been entitled to retain his or her freehold for as long as (s)he wished; (s)he then receives his or her pension and compensation ceases to be payable *(Sch. 4, paras. 11(1)(b) and (4))*;

 (c) if his or her total period of pensionable service is less than the qualifying period for the purpose of the 1961 Measure (currently 2 years), it is deemed to be increased to that period *(Sch. 4, para. 11(1)(b))*;

 (d) the DMPC has a discretion to add to his or her pension, and the pension (if any) of his or her widow(er) or dependant, periodical payments to raise the total to the amount of pension that would have been payable had his or her prescribed period of pensionable service *(Sch. 4, para. 11(1)(c));*

 (e) any benefit which a claimant may obtain under sub-paragraphs (a) to (d) above is to be disregarded in the determination of compensation payable in respect of any period before (s)he retires or is deemed to retire *(Sch. 4, para. 11(5))*.

 (5) Costs reasonably incurred in proceedings under Schedule 4 by persons entitled to compensation may be refunded out of the Legal Aid Fund set up under the Ecclesiastical Jurisdiction Measure 1963. The application for a refund should be made to the diocesan registrar *(Sch. 4, para. 14; Rule 12)*. Persons entitled to compensation may apply to the Legal Aid Commission established by the Church of England (Legal Aid and Miscellaneous Provisions) Measure 1986 for financial assistance in respect of costs incurred in connection with proceedings under Schedule 4 (including any interview by the DMPC).

 (6) Compensation awarded under the Schedule is payable by the DBF and is to be charged either on the capital or the income account of the DSF as may be agreed by the Commissioners and the DBF *(Sch. 4, para. 15)*.

9. Compensation claims: duties of DMPC secretary to provide assistance, etc.

When a scheme which may give rise to a claim for compensation has become law the Commissioners draw the attention of the DMPC to *Rule 13* which provides, inter alia, that the committee shall take steps to inform all persons who have or may have a right to compensation of the name of their secretary and the address to which claim documents should be sent and that it is the duty of the secretary to give assistance to such persons in connection with claims or other proceedings under the Rules. In particular it is suggested that the secretary should draw attention to the time within which any claim must be submitted and to the necessity for the applicant to give particulars of any ecclesiastical office to which (s)he has been appointed or which has been offered to him or her, and of any other remunerated employment in which (s)he is, or is to be, engaged *(Rule 4)*. The applicant should also state whether (s)he wishes to exercise the right to an interview with the DMPC *(Rule 5)*.

10. The duties of the DMPC

 When a claim for compensation has been submitted for consideration by the DMPC, the following should be noted:

 (1) The functions of the DMPC under Schedule 4 cannot be delegated to a sub-committee, and at any meeting of the committee at which a decision is made, or at which the person affected is interviewed, the members present must include (i) either the bishop or a suffragan bishop and (ii) the member representing the DBF (or if (s)he is not available another member of the DBF nominated by the DBF to act in his or her place) *(Sch. 4, para. 12)*.

 (2) In agreeing amounts of compensation, the DMPC will need to act in close consultation with the DBF.

 (3) If an interview with the DMPC is arranged a note of the meeting should be made as, in the event of an appeal, this and other documents relating to the claim will have to be produced *(Rule 10(4))*.

 (4) The DMPC must give their decision in writing within 28 days of the making of the claim, or within 28 days after they have interviewed the claimant *(Rule 6)*.

 (5) A copy of the decision must be sent forthwith to the claimant. The decision must state the reasons therefore and explain how the amount of compensation awarded is calculated *(Rule 6)*.

 (6) The claimant may appeal against the decision within 28 days by giving notice to the secretary of the Appeal Tribunal. A copy of any such notice is to be sent to the DMPC *(Rule 10 & Sch. 4, para. 15)*.

 (7) If the compensation (or part thereof) is to take the form of periodical payments, the recipient must give an Undertaking in the form given in the Appendix to the Rules *(Rule 7)*.

 (8) It will be helpful if a copy of the DMPC's decision, together with a note of the date on which it was sent to the claimant and of the date on which (s)he signed an Undertaking in the form appended to the Rules, is sent to the Commissioners' Pastoral Division.