

GENERAL SYNOD

ECCLESIASTICAL OFFICES (TERMS OF SERVICE) DIRECTIONS 2010

Explanatory Memorandum

Background

1. Under regulation 23 of the Ecclesiastical Offices (Terms of Service) Regulations 2009, the Archbishops' Council has a duty, in the exercise of its functions as the Central Stipends Authority, to make directions ("the Directions") prescribing the entitlement of office holders under Common Tenure to maternity, paternity, parental and adoption leave and time off work to care for dependants.
2. In making the Directions the Council is required to have regard to the corresponding rights of employees but is not obliged to ensure that office holders are placed in the same position as employees.
3. The Directions are subject to the approval of the General Synod. Because they affect the legal rights of individuals, they also fall within the provisions of Standing Order 46(a)(iii) and must accordingly take the form of a Statutory Instrument and be laid before both Houses of Parliament.

Policy

4. Because the law in this area is complex and fast-moving, the Council has sought advice from specialist employment solicitors, McGrigors, and has developed its policy on the basis of this advice.

Pay

5. Stipendiary office-holders are already entitled to statutory maternity, paternity and adoption pay in the same way as employees, by virtue of their payment of National Insurance contributions. These entitlements are set out in Annex 1. As these are existing entitlements in law, they are outwith the scope of the Directions.

Leave

6. However, office holders currently have no corresponding statutory entitlement to maternity, paternity, parental or adoption leave. The Council has determined that office-holders on Common Tenure should be given equivalent rights to those to which employees are legally entitled. These rights are described in Annex 2. There is nothing to prevent individual dioceses from making more generous provision if they choose to do so.

Time off to care for dependants

7. Employees have the right to request changes to their working arrangements ("flexible working") in order to care for children or adult relatives or dependants living at the same address. They also have the right to take unpaid time off work to take necessary action to deal with particular short-term

situations affecting their dependants, or when a dependant dies. Office holders currently have no corresponding statutory rights.

8. The statutory right of employees to request flexible working is subject to a number of qualifications and procedural requirements. The Archbishops' Council is satisfied that office holders under Common Tenure should not be placed at any disadvantage in this respect as compared to employees.
9. It has therefore decided that the Directions should confer on office holders under Common Tenure a broad general right to request either adjustments in working arrangements or time off to care for dependants. The Council has not sought to reproduce all the detailed conditions applicable to the employee rights. The essentially self-directed nature of parochial ministry and the fact that the office holder usually lives in the benefice where he or she serves affords greater scope for flexibility than is the case in most employment arrangements.
10. The Council also decided that there should be no obligation to accede to such a request, but rather to consider it and (if thought fit) to allow such time off or to make such adjustments as is considered reasonable in all the circumstances. This reflects the position in relation to employees.

Paragraph 1 (Citation, coming into force and interpretation)

Paragraph 1(1) makes provision for the citation of the Directions and their commencement.

Paragraph 1(2) provides that, where rights conferred by the Directions are expressed by reference to the rights of employees, they correspond to those enjoyed by employees as at the date on which the Directions come into force. This will allow the Council to assess the impact of any changes to the statutory entitlements that are made in the future before deciding whether they should be reflected in amending Directions and, if so, whether any adjustment is required to meet the particular needs and circumstances of office holders under Common Tenure.

Paragraph 2 (Entitlement to maternity, paternity, parental and adoption leave)

Paragraph 2(1) confers on office holders under Common Tenure rights equivalent to those to which employees are entitled in respect of maternity, paternity, parental and adoption leave.

Paragraph 2(2) imposes on an office holder who exercises any of these entitlements an obligation to use all reasonable endeavours, in consultation with a responsible person or authority (which might be, for example, the churchwardens or a rural dean or archdeacon) to make arrangements for cover during the period of leave.

Paragraph 3 (Time off work to care for dependants)

Paragraph 3(1) provides that an office holder under Common Tenure may request the appropriate authority (as defined in paragraph 3(4)) to allow him or her to take time off work or make adjustments to the duties of office to care for a dependant.

“Dependant”, as defined in paragraph 3(6) embraces a spouse or civil partner; a child; a parent; a person living in the same household as the office holder (other than a tenant, employee, lodger or boarder) or anyone who reasonably relies on the office holder for assistance or provision of care in the event of illness or injury. The provision therefore covers a wide range of possible arrangements, from a few days’

time off in an emergency to a longer term adjustment of duties to accommodate, for example, the need to care for an elderly parent or a disabled child.

Paragraph 3(2) provides that any request must be made in writing, and gives the Council power to impose such other conditions as it may think fit as to the manner in which the request is to be made. Staff are giving further consideration as to what, if any, conditions it might be appropriate for the Council to prescribe.

Paragraph 3(3) places the bishop or dean (in the case of an office holder in a cathedral) under a duty to consider the request, and empowers him or her to grant such time off work or adjustments to the duties of the office as appears to him or her to be reasonable, and to impose reasonable conditions including appropriate variations in stipend. Paragraph 3(5) obliges the bishop, where the person making the request holds office in a benefice, to consult the parochial church council or councils concerned.

The Legal Office

June 2010

Church House, Westminster

Annex 1

Summary of statutory rights in respect of pay to which stipendiary office holders are entitled

Statutory Maternity Pay (“SMP”)

SMP is payable for 39 weeks, at two different rates:

- for the first 6 weeks, 90% of normal weekly earnings;
- for the remaining 33 weeks £124.88 per week or 90% of normal weekly earnings, whichever is the lower.

For a woman to be eligible for SMP, the following conditions must be satisfied.

- (a) She must have been continuously employed for at least 26 weeks at the end of the Qualifying Week (the fifteenth week before the Expected Week of Childbirth (“EWC”). For office holders paid through NCIs’ Clergy Payroll Services the number of weeks on the payroll is, in practice, treated as continuous service for this purpose;
- (b) Her normal weekly earnings are at least the lower earnings limit (“LEL”) for National Insurance purposes (£97 from 6 April 2010);
- (c) She must give at least 28 days’ notice (or as much notice as is reasonably practicable) of the date she intends SMP to start;
- (d) She must still be pregnant 11 weeks before the start of her EWC, or have already given birth;
- (e) She must supply, no more than 3 weeks after the birth, a certificate from a midwife or doctor confirming the date of her EWC;
- (f) She must have ceased to work.

Statutory Adoption Pay

This mirrors SMP, except that the rate of pay is 39 weeks at the lower of the prescribed rate set by the Government each tax year and 90% of the individual's normal weekly earnings

The qualifications are the same as for statutory adoption leave (see Annex 2) with the addition that (a) over the eight weeks ending with the date on which the adopter is notified of the match, the individual must have had normal weekly earnings of at least the LEL and (b) the individual must have ceased to work.

Statutory Paternity Pay

Paid during periods of statutory paternity leave (see Annex 2 below) at the lower of the prescribed rate set by the Government each tax year and 90% of the individual's normal weekly earnings.

The eligibility conditions are the same as those for statutory paternity leave, plus a requirement that (a) the individual must have been continuously employed between the Qualifying Week and the child's birth; (b) he must have had normal weekly earnings of at least the LEL over the 8 weeks ending with the Qualifying Week and (c) he must have ceased to work.

Statutory paternity pay may also be claimed in cases of adoption, in which case the individual must have been continuously employed for the period between the end of the week in which the adopter is notified of being matched and ending with the day on which the child is placed for adoption.

Additional Paternity Pay (in respect of births or adoptions from 3 April 2011)

Paid during periods of additional paternity leave (see Annex 2) at the same rate as statutory paternity pay.

The eligibility conditions are the same as for additional paternity leave, plus a requirement that (a) the individual must have had normal weekly earnings of at least the LEL over the 8 weeks ending with the Qualifying Week ;(b) at least two weeks of the mother's maternity allowance period or maternity pay period is unexpired and (c) the individual must have ceased to work..

Annex 2

Summary of statutory rights in respect of leave, rights equivalent to which are conferred on office holders under Common Tenure by the Directions

Statutory maternity leave

Employees are entitled to a maximum of 52 weeks' leave provided that the following notifications are made before the end of the Qualifying Week:

- the fact of the pregnancy;
- the date of the EWC;
- the date the individual intends the maternity leave to start.

There is no length of service condition.

Statutory adoption leave

Employees are entitled to a maximum of 52 weeks' leave, subject to the following conditions:

- (a) the individual must be the child's adopter;
- (b) the individual must have continuous service for at least 26 weeks ending with the week the adopter is notified of being matched with a child;
- (c) the individual must have agreed the date of placement with the adoption agency.

Within 7 days' of being matched with a child, the adopter must notify the employer of the expected date of placement and the date the individual intends the adoption leave to start.

Statutory Paternity Leave

The individual is entitled to a maximum of 2 weeks within 56 days after the birth, subject to the following conditions:

- (a) the individual must have at least 26 weeks' continuous service at the end of the Qualifying Week;
- (b) the individual is the father of the child or is married to, the civil partner or the partner of the child's mother;
- (c) the individual has, or expects to have, responsibility for the child's upbringing or (if not the child's biological father) expects to have main responsibility other than that of the mother for the child's upbringing;
- (d) the individual's absence is for the purpose of caring for the child, or supporting the mother in her care of the child.

The individual must also notify the employer before the Qualifying Week of

- the date of the EWC
- the length of the period of statutory paternity leave that the individual intends to take
- the intended start date of the period of leave
- the date of birth, once the child is born.

Statutory paternity leave may also be claimed in cases of adoption, in which case

- (a) the references to the child's mother are to the child's adopter and the continuous service requirement must be satisfied before the week in which the adopter is notified of having been matched with an adoptive child; and
- (b) the notification must be made within 7 days of the adopter being notified of the match and, instead of the EWC, the individual must provide the date when the adopter was notified of the match and the expected placement date (which must then be confirmed following placement).

Additional Paternity Leave (in respect of births or adoptions from 3 April 2011)

Individuals are entitled to a minimum of 2 weeks and a maximum of 26 weeks, to be taken at least 20 weeks after the child's birth and before the child's first birthday. Also, where the mother has died, the individual may take a minimum of 2 weeks and a maximum of 12 months' leave.

The eligibility conditions are as follows:

- (a) the individual must have continuous service for at least 26 weeks at the end of the Qualifying Week;
- (b) the individual must also have continuous service from the 14th week before the EWC to the week before the start of the additional paternity leave;
- (c) the individual must be the father of the child or be married to or the civil partner of the child's mother;
- (d) the individual must have or expect to have responsibility for the child; and
- (e) the child's mother must be entitled to maternity leave, SMP and/or maternity allowance and she must have returned to work.

The individual must notify the employer, at least 8 weeks before the additional paternity leave, of

- the date of the EWC;
- the date of the child's birth;
- the date on which the individual intends leave to begin; and
- the date on which the individual intends the leave to end.

The individual must also provide to the employer, at least 8 weeks before the additional paternity leave begins, the following:

- a declaration that the purpose of his absence from work will be to care for the child, that he satisfies the eligibility conditions and that he is the only person exercising the right to additional paternity leave in respect of the child; and
- the name, address and NI number of the mother and a note of the date that she intends to return to work.

Additional paternity leave may be claimed in cases of adoption, in which case references to the child's mother are to the child's adopter, references to birth are to placing, references to maternity leave and pay are to adoption leave and pay, and references to the Qualifying Week means the week in which the adopter is notified of the match.

Statutory parental leave

Individuals are entitled to a maximum of 13 weeks unpaid leave (of which up to 4 weeks may be taken in any one year) before the child's 5th birthday or the 5th anniversary of the child's adoption. If the child is disabled, the entitlement is increased to a maximum of 18 weeks to be taken before the child's 18th birthday or the 18th anniversary of the child's adoption.

The eligibility conditions are as follows:

- (a) the individual must have at least one year's continuous service;
- (b) the individual must have, or expect to have, responsibility for the child;
- (c) the individual must have given at least 21 days' notice of intention to take leave and the employer must not have postponed the leave.