

**GENERAL SYNOD**

**DRAFT ECCLESIASTICAL OFFICES (TERMS OF SERVICE)  
REGULATIONS**

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**EXPLANATORY MEMORANDUM**

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**Introduction**

1. The Ecclesiastical Offices (Terms of Service) Measure ('the Measure') received the Royal Assent on 2<sup>nd</sup> April 2009. By an Instrument dated 11<sup>th</sup> June 2009, the Archbishops of Canterbury and York appointed that (inter alia) Section 2 of the Measure should come into force on 1<sup>st</sup> July 2009.
2. Section 2 of the Measure provides that the Archbishops' Council should by Regulations make provision for the terms of service of persons holding office under Common Tenure, and that a draft of any such Regulations should be laid before the General Synod for approval.
3. The General Synod has already considered draft Regulations (GS 1638 and 1638A) which received first consideration at the February 2007 Group of Sessions and were revised in full Synod at the February 2008 Group of Sessions. Thereafter, the Deployment, Remuneration and Conditions of Service Committee of the Archbishops' Council ('DRASCS') appointed a Steering Group to oversee the future passage of the Regulations. The members of this Group are:
  - the Rt Reverend Stephen Venner (the Bishop of Dover), Chair of the Steering Committee for the Measure;
  - Mr Geoffrey Tattersall QC (Manchester), Chair of the Revision Committee for the Measure; and
  - The Venerable Ian Jagger (Archdeacon of Durham), a member of the Terms of Service Implementation Panel.
4. The Regulations now introduced into Synod under the One Motion Procedure in Standing Order 70 are based upon the text of the draft Regulations approved by the Synod at Revision Stage (GS 1638A). They incorporate only such changes as the Steering Group considers necessary. These changes fall into three categories:
  - minor textual corrections and improvements;

- amendments that are strictly consequential on amendments to the Measure made by the Synod at the Revision and Final Drafting stages; and
- some changes of greater substance.

Part A below gives a general overview of the Regulations and Part B explains in detail the changes of substance to the draft previously considered by the Synod.

## **A. Overview of the provisions of the Regulations**

### **Part I – Introductory**

5. **Regulations 1 and 2** deal with the citation and coming into force of the Regulations, and the interpretation of certain expressions used. Regulation 2(2) provides that, where an office holder becomes subject to Common Tenure in respect of an office which he or she already holds, the Regulations will apply as if he or she had taken up that office on the date when he or she became subject to Common Tenure.
6. Provision is made for the Regulations to come into force on 1<sup>st</sup> January 2010. It should be emphasised that this is not the date on which Section 1 of the Measure, which provides for certain office holders to transfer to Common Tenure, will be brought into effect. That will be a later date, which is expected to be towards the end of 2010. Bringing the Regulations into force on 1<sup>st</sup> January 2010 will enable the capability and grievance procedures and other instruments which are authorised by the Regulations to be brought to Synod for approval (where this is required) and issued before Common Tenure comes into effect. The other provisions of the Regulations will not have any application in practice until such time as there are persons holding office under Common Tenure.

### **Part II – Particulars of office**

#### *Right to statement of particulars of office*

7. **Regulations 3 to 7** introduce an entitlement on the part of every office holder to whom Common Tenure applies to receive within one month after taking up office a written statement of particulars of that office. This is in addition to any licence or other deed of appointment. The statement is provided by a person nominated in accordance with Regulation 3(1) and the matters it must contain are set out in Regulation 3(4)-(5) and Regulation 5. These include details of remuneration and pension; leave entitlement; accommodation; and the disciplinary, capability and grievance procedures which apply to the post. Where there is a material change in any of the particulars during the office holder's tenure of office, a supplementary statement setting out the change must be supplied.
8. **Regulation 8** provides that stipendiary office holders are also entitled to an itemised statement of stipend containing the information specified in Regulation 8(2).

### *Enforcement*

9. **Regulations 9 and 10** provide that, where a statement of particulars or an itemised statement of stipend either has not been given or is incomplete or incorrect, the office holder may apply to an employment tribunal to determine what particulars should have been included. Where un-notified deductions have been made from an office holder's stipend, the tribunal may order that these should be repaid.

### **Part III – Right to stipend and provision of accommodation**

#### *Entitlement to stipend*

10. **Regulation 11** gives full-time stipendiary office holders the right to receive an annual sum that is no less than the National Minimum Stipend specified by the Archbishops' Council as Central Stipends Authority. Part-time office holders are also given an entitlement to such stipend as is specified in their statement of particulars. There is at present no statutory right to receive any stipend, and this regulation therefore represents a significant improvement in conditions of service. The entitlement does not apply if the office holder is serving a custodial sentence.

#### *Provision of accommodation*

11. **Regulations 12 to 15** introduce a standard set of terms of occupation for accommodation provided by a relevant housing provider, which may only be varied by written agreement between both parties (Regulation 15(2)).
  - Regulation 12 sets out the duties of the housing provider, which include: a duty to have the property inspected by a qualified surveyor every five years; to keep the property in an appropriate state of repair (having regard to the matters specified in Regulation 12(3)); to insure it; and to pay Council Tax and other recurring charges.
  - Regulation 13 gives the relevant housing provider the right to enter the property for the purposes of carrying out its obligations, on giving reasonable notice (except in the case of emergency).
  - Regulation 14 sets out the duties of the office holder in occupation, which include: a duty to use all reasonable endeavours to keep the property clean and free from deterioration; only to use the property as a private residence and for other purposes agreed by the relevant housing provider; and not to make any repairs, alterations or additions without consent.
  - Regulation 14(2) entitles any member of the household of an office-holder on Common Tenure who dies in occupation to continue to occupy the property for a period of at least three months following the death.
  - Regulation 15 provides a mechanism for resolving any dispute concerning the terms of occupation.

### *Regulated transactions*

12. **Regulation 16** deals with the right of the office-holder in occupation and others to object to a regulated transaction relating to provided housing.

### *Service of notices*

13. **Regulation 17** prescribes the formalities for serving notices required by the legislation.

## **Part IV: Ministerial development review, education and training**

### *Ministerial development review and continuing ministerial education*

14. **Regulation 18** introduces a requirement for each diocesan bishop to make a scheme providing for a review of each office holder's ministry to be conducted on at least one occasion in each period of two years by a person nominated by the bishop. Archbishops are required to make arrangements for reviews of their own ministry and that of diocesan bishops. In every case, a written record of the outcome of the review will be agreed and signed by the participants. The Archbishops' Council is developing guidance on the conduct of ministerial development reviews and bishops and archbishops will be required to have regard to this guidance.
15. **Regulation 19** imposes a duty on archbishops and bishops to ensure, as far as reasonably possible, that all office holders are afforded opportunities to participate in continuing education and training to promote their ministerial development. Office holders are placed under a corresponding duty to participate in such continuing ministerial education.

### *Training*

16. **Regulation 20** imposes a duty on diocesan bishops to ensure that all office holders in training posts (that is, those who are required to undertake initial ministerial education) are provided with suitable training and given the necessary time off work to undertake it. A corresponding duty is imposed on the office holder to participate in and complete such training.

## **Part V: Time off work, time spent on other duties and sickness**

### *Time off and annual leave*

17. **Regulations 21 and 22** give office holders, for the first time, a legal right to a weekly rest period and to annual leave without loss of stipend. Regulation 21 entitles all office-holders to an uninterrupted rest period of at least 24 hours in every seven days, and, in addition, Regulation 22 gives an entitlement to those in full-time posts to at least 36 days' annual leave (excluding any discretionary special leave such as a sabbatical). Provision may be made in the statement of particulars that rest days and annual leave may not be taken on particular days, according to the requirements of the

post. In the case of annual leave, it is also permissible to specify days on which leave must be taken.

Regulation 22 also provides for the apportionment of annual leave in the first and final years of an appointment.

*Maternity, paternity, parental and adoption leave and time spent on public duties*

18. **Regulation 23** entitles office holders to maternity, paternity, parental and adoption leave and time off to care for dependants, in accordance with directions given by the Archbishops' Council. (The Council already issues recommendations in these areas, which will be reviewed before being reissued as directions.) In giving directions, the Council will be obliged to have regard to the corresponding rights given by law to employees. The directions will be subject to the approval of the General Synod and, as a statutory instrument, to the negative resolution procedure in Parliament.
19. **Regulation 24** gives office holders the right to spend a reasonable time (assessed with reference to the factors set out in Regulation 24(2)) on public duties, including trade union activities where the union represents the office holder or others of the same description.
20. **Regulation 25** gives an office holder who is pregnant an entitlement to time off for ante-natal care.
21. **Regulation 26** provides that stipendiary office holders will not suffer any loss of stipend on account of taking time off to which they are entitled under Regulations 23-25.

*Sickness*

22. **Regulations 27 and 28** address various issues that arise when an office holder is unable to perform the duties of his or her office as a result of illness.
  - Regulation 27(1) and (2) requires a stipendiary office holder to report any period of sick leave amounting to a day or longer, and to produce a medical certificate where he or she has been absent for a continuous period of more than seven days. These requirements are necessary to enable the Church Commissioners to obtain the information that they are obliged to hold in relation to the payment of statutory sick pay under the Social Security and Contributions and Benefits Act 1992.
  - Regulation 27 (4) and (6) provides for the payment of stipend during periods of absence due to ill-health. Stipend is payable in full during the period of entitlement to statutory sick pay (currently 28 weeks). Thereafter the position is subject to any guidance which the Archbishops' Council may issue, and the bishop is required to have regard to such guidance.

- Regulation 27(3) obliges all office holders to make reasonable endeavours to make arrangements for someone else to perform their duties when they are unwell.
- Regulation 27(5) gives power to a diocesan bishop or archbishop to grant to an office holder who is unable to perform his or her duties because of ill health leave of absence for such period as the bishop or archbishop thinks appropriate.
- Regulation 28 gives power to a diocesan bishop or archbishop who has reasonable grounds for concern about an office holder's health to direct that the office holder should undergo a medical examination. This provision replaces the similar power in section 7A Incumbents (Vacation of Benefices) Measure 1977.

## **Part VI: Duration and termination of appointments and compensation**

### *Limited appointments and termination of appointments*

23. **Regulation 29** deals with the circumstances in which an office holder under Common Tenure may be given a fixed or limited term appointment. One of the primary aims of the legislation is to remove the present very different security of tenure enjoyed by those in freehold and non-freehold posts. This regulation sets out particular circumstances in which appointments may be made on a fixed or limited term basis. Only if these circumstances apply may such an appointment be made. They may be summarised as follows:

- the post is created to cover another office holder's authorised absence from work, for example on maternity or long-term sick leave;
- the office holder is over the statutory retirement age;
- the office is designated as a training post in which the office holder is required to undertake initial ministerial education – that is, typically, a title post;
- the office is designated as a post subject to sponsorship funding, that is, it is dependent wholly or partly on external funds, as described in Regulation 29(4);
- the office is designated as a probationary post, which is an appointment intended to facilitate the office holder's return to ministry where that person has not held ecclesiastical office for a year or more, or where he or she has been subject to the capability procedure or disciplinary proceedings;
- the office is created by a bishop's mission order made under Part V of the Dioceses, Pastoral and Mission Measure 2007. (which must be of limited duration, initially not exceeding 5 years);

- the office is designated as a post which is held in connection or conjunction with another office or employment.

Where a fixed or limited term appointment is made in the circumstances described above, it comes to an end on the expiry of the fixed term (subject to any extension of that term) or the occurrence of the limiting event.

#### *Compensation for loss of certain offices*

24. **Regulation 30** introduces a new method of appointment to certain offices (as an alternative to suspending the benefice) where pastoral reorganisation is in hand, and also addresses the issue of compensation for those on Common Tenure who lose their office as a result of pastoral reorganisation. At present priests-in-charge and other licensed ministers do not receive any compensation in these circumstances. The regulation provides that:

- Where pastoral proposals have reached the initial consultation stage under Section 3 of the Pastoral Measure 1983 at the time an appointment is made to the office of archdeacon, incumbent, team vicar or deacon in a team ministry (or at the time when the office holder becomes subject to Common Tenure in respect of an office of this kind that he or she already holds) then, if the proposals might affect the office in question, the office may be designated by the diocesan bishop as being subject to potential pastoral reorganisation.
- If, during the period of designation, the office is abolished under a pastoral scheme or order, the office holder will be entitled to compensation, calculated in accordance with Schedule 4 of the Pastoral Measure 1983 but limited to a maximum of one year's loss of service.
- The designation has effect for a maximum of five years. If, at the end of that period, no pastoral scheme or order affecting the office in question has been made, the designation ceases to have effect. If the office is subsequently abolished by a pastoral scheme or order, the office holder will be entitled to full compensation under Schedule 4 of the Pastoral Measure.
- Any office holder who is not otherwise entitled to compensation under the Pastoral Measure (for example a priest-in-charge or an assistant curate) will also receive compensation limited to one year's loss of service if his or her office is abolished as a result of pastoral organisation. In the case of priests-in-charge, compensation on this basis is also payable if the office is terminated because the vacancy has been filled by the appointment of a new incumbent.

### **Part VII: Capability and grievance procedures**

#### *Capability procedures*

25. **Regulation 31** gives the diocesan bishop power to instigate an enquiry into the capability of an office holder and also gives the office holder in question the right to be informed in writing about the concerns and the process. Any such enquiry must be conducted in accordance with a Code of Practice made under section 8 of the Measure. An illustrative draft of the capability procedure is provided in the report of the Terms of Service Implementation Panel (GS Misc 922)

#### *Grievance procedures*

26. **Regulation 32** obliges the Archbishops' Council to issue procedures for enabling an office holder to seek redress for grievances, in the form of a Code of Practice made under section 8 of the Measure. An illustrative draft of a grievance procedure is provided in GS Misc 922.
27. The Council is required under both Regulations 31 and 32 to endeavour to ensure that the capability and grievance procedures that it issues give office holders at least the equivalent protection that they would have were they governed by the statutory requirements applicable to employees. These statutory provisions at present require that those operating such procedures should have regard to a Code of Practice issued by ACAS.

### **Part VIII: Unfair dismissal**

#### *Rights on unfair dismissal*

28. **Regulation 33** gives to an office holder under Common Tenure who is removed from office by a determination under the capability procedure the right to make a claim in an employment tribunal on grounds of unfair dismissal. This right does not extend to office holders who are over the statutory retirement age of 70.
29. An employee is not entitled to claim unfair dismissal unless he or she has been in continuous employment for at least one year. This qualification will not apply to office holders under Common Tenure.
30. Otherwise, for the purposes of the legislation governing claims for unfair dismissal (the Employment Rights Act 1996) any office holder making such a claim shall be treated as if he or she were an employee of the Diocesan Board of Finance or, in the case of office holders in a cathedral, an employee of the Chapter. If a tribunal finds that a dismissal was unfair, it may award compensation or, if practicable, make an order for the office holder to be reinstated in his or her post.

### **B. Substantive changes to the text since its consideration by Synod in February 2008**

#### *Regulation 3(5)(g)(iv)*

31. This new sub-paragraph has been introduced at the request of the Terms of Service Implementation Panel. It extends the list of matters that must be

contained in the statement of particulars of office to include details of entitlement to maternity, paternity, parental and adoption leave as provided under regulation 23. These matters are not part of the required particulars for secular employment contracts under section 1 of the Employment Rights Act 1996, upon which regulation 3(5) is closely based. However, the courts have held that the list of particulars in section 1 is not exhaustive and, given the importance of these entitlements, the Steering Group took the view that they should be included in the statement of particulars for office holders under Common Tenure.

*Regulation 11(4)*

32. This is a new provision, the effect of which is to disapply the entitlement to stipend conferred by regulation 11(1) in circumstances where the office holder is serving a custodial sentence following conviction for a criminal offence. Questions have been raised as to whether there is any obligation to pay stipend to an office holder who is serving a prison sentence, until such time as he or she is formally removed from office under the Clergy Discipline Measure 2003. At present, the diocesan bishop has power under section 5(2) of the Diocesan Stipends Measure 1954 to give a direction (with the concurrence of the Diocesan Board of Finance) that stipend should be withheld in these circumstances. This provision preserves that power, by removing the automatic entitlement to stipend where the office holder is serving a prison sentence.

*Regulation 23(3)-(6)*

33. These new sub-clauses arise from the Steering Group's consideration of the effect of Standing Order 46 in the context of directions made under this regulation. That Standing Order reads as follows:

*(a) Subject to any express statutory provision, no Measure as finally approved by the Synod shall contain any provision empowering an authority to make a subordinate instrument having the force of law of general, as distinct from local, application unless it also provides:*

*(i) that such instrument must be approved or deemed to be approved by the Synod;*

*(ii) that where provision is made for an instrument to be deemed to be approved any member may give such notice as shall be specified in these Standing Orders that he wishes the instrument to be debated on a motion for its approval; and*

*(iii) that such instrument (not being a scheme or part of a scheme to be approved by Her Majesty in Council), if it affects the legal rights of any person, shall be laid before both Houses of Parliament and be subject to approval or annulment in pursuance of a resolution of either House as may be determined by that Measure.*

*(b) In this Standing Order ‘subordinate instrument’ means any regulation, rule, order, scheme or other instrument that may be authorised by Measure, but does not include a Canon.*

34. The Group was advised that directions made under Regulation 23(1) would fall within the definition of a ‘subordinate instrument’ in Standing Order 46(b) and that, since they would confer legal entitlements and also have binding force in relation to all those holding office under Common Tenure, the provisions of Standing Order 46(a) would also apply. The new sub-paragraphs (3)-(6) therefore put into effect the requirements of Standing Order 46 in relation to directions made under this regulation.

*Regulation 27(6)*

35. This paragraph has been changed at the request of DRASCS, which considers that bishops and Diocesan Boards of Finance should continue to have a degree of discretion as to the payment of stipend in cases of long-term absence caused by illness, to allow the particular circumstances of each case to be taken into account. This paragraph now therefore provides for the Archbishops’ Council to issue non-binding guidance, to which the bishop need only ‘have regard’, rather than imposing an obligation upon the Council to issue binding directions.

*Regulation 29(1)(b)*

36. Paragraph (1)(b) originally provided that an office holder who had attained the age of 70 could only thereafter be appointed to a part-time post. The words ‘part-time’ have now been deleted. The Steering Group considered that such a restriction could not be objectively justified for the purposes of the Employment Equality (Age) Regulations 2006 and that those over 70 should be permitted to occupy a full-time post if appropriate in all the circumstances.

*Regulation 29(6)*

37. Paragraph (6) has been redrafted to make it clear that the office which may be designated as a probationary office in these circumstances is the first office to which the office holder is appointed following removal from the office that he or she held at the time of the relevant adjudication (which must be a final adjudication under the capability procedure).

*Regulation 30(1)(a)*

38. The reference to ‘priest-in-charge’ has been removed from regulation 30(1)(a). This change is intended to avoid confusion between the new form of appointment introduced by regulation 30 and the appointment of a priest-in-charge where the benefice is suspended under section 67 of the Pastoral Measure 1983. In so far as benefices are concerned, regulation 30(1) is designed to provide a means whereby a priest can be appointed as incumbent or team minister on a limited-term basis where firm proposals

for pastoral reorganisation are already in hand at the date of the appointment – so removing the need to suspend the benefice in these particular circumstances. However, there will be other situations where suspension and the appointment of a priest-in-charge may still be appropriate (for example, where there is an intention to replace the parsonage house). The Steering Group considered that it made sense to keep these two forms of appointment distinct. Neither a priest-in-charge nor his or her bishop is disadvantaged by the change. The bishop has power under section 3(4) of the Measure to terminate the licence of a priest-in-charge when the vacancy ends and the priest-in-charge is entitled in these circumstances to compensation on the same basis as a person appointed under regulation 30(1) – as to which see paragraph 39 below.

#### *Regulation 30(6)*

39. Regulation 30(6) is a new sub-paragraph, introduced to comply with the undertaking given to Synod by the Steering Committee for the Measure at Final Drafting Stage in July 2008. It provides that a priest-in-charge whose office is terminated at the end of the vacancy, under section 3(4) of the Measure, is entitled to compensation on the same basis as if he or she had been displaced as a consequence of pastoral reorganisation – that is, compensation calculated under Schedule 4 of the Pastoral Measure 1983, but limited to one year's loss of office.

#### *Regulations 31 and 32*

40. These regulations have been amended in response to recent changes to the statutory dispute resolution procedures in employment relations. As from 6<sup>th</sup> April 2009, the mandatory procedures established under the Employment Act 2002 have been replaced by a Code of Practice issued by ACAS. In resolving disputes, employers and employees must have regard to this Code. Employment Tribunals are also legally obliged to take the Code into account in deciding any claim and may adjust awards if either party has unreasonably failed to comply with it.
41. This change in employment law was driven by a concern that the mandatory procedures were compromising the fair resolution of disputes, in that cases were being decided on technical issues rather than on their merits. The Steering Group took the view that the Church's capability and grievance procedures should so far as possible reflect the equivalent provisions in the employment field. It therefore decided that the requirement for the capability and grievance procedures to take the form of directions should be amended, to provide instead for them to be embodied in a Code of Practice in each case. However, in the case of the capability procedure, the Group agreed that the fundamental entitlements of the bishop (to instigate an enquiry) and of the office holder (to be informed in writing of certain essential matters before the enquiry begins) should be incorporated in the regulation itself.

42. Any Code of Practice made under these regulations will be subject to section 8 of the Measure and will therefore be subject to approval by the General Synod. The Terms of Service Implementation Panel has continued its work in relations to both procedures and further illustrative drafts have been provided by the Panel for the information of Synod members in GS Misc 922. It is proposed that the Codes of Practice in respect of both procedures should be laid before Synod at the February 2010 Group of Sessions, when draft Amending Canon No. 29 will also return to the Synod for final approval.

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