

The majority of clergy in the Church of England hold their Ecclesiastical office under Common Tenure. This is part of a framework of terms of service that provides clergy, who are not subject to employment law, certain legal rights and obligations. All clergy are subject to the same standards as outlined in the Clergy discipline measure and Guidelines for the Conduct of Clergy.

### **What is Common Tenure?**

Common Tenure is a form of tenure for clergy office holders which took effect on 31 January 2011. Clergy and other office holders are still appointed as vicars, rectors, assistant curates, priests in charge etc. All new appointments since 31 Jan 2011 have been on common tenure. Assistant curates, priests in charge, team vicars and residentiary canons on fixed term appointments transferred automatically onto common tenure on 31 January 2011.

Under Common Tenure, a post may only be limited to a fixed term in certain specified circumstances and the great majority of office holders may remain in a particular post until they resign or retire.

Clergy with the freehold (including incumbents, deans, archdeacons, and residentiary canons not on fixed term appointments) who did not transfer onto common tenure remained on their existing terms, until they choose to move onto common tenure (which they may do at any time) or leave their current post. Team rectors transfer onto common tenure after their current licence expires.

### **What was the purpose of this legislation?**

This legislation clarified the rights and responsibilities of clergy and improved their terms and conditions in line with best practice. The Government has power to give the rights of employees to those in work who are not employees (including clergy, most of whom are office holders), and is in a position to impose legislation on the Church.

### **Which post holders fall outside the scope of the legislation?**

The following office holders fall outside the scope of the legislation:

- Clergy with permission to officiate;
- Non-stipendiary readers, deaconesses and licensed lay workers;
- Those whose ministry is the subject of a contract of employment (for example, chaplains and diocesan employees) unless the bishop's license authorises them to exercise a wider ministry in the diocese (in which case Common Tenure may apply to that wider ministry);
- Office holders in a Royal Peculiar;
- Dean and residentiary canons of Christ Church Oxford;
- Office of Rural Dean which is made by the bishop by way of letters patent or commission. The office is usually held on a limited term basis by one of the incumbents in the deanery, sometimes elected by his or her peers.
- Office holders in the Channel Islands and the Isle of Man (unless and so far as the legislation is applied to them under the relevant local jurisdictions).

### **What happened to clergy retaining the Freehold?**

Those clergy with the freehold who opted not to move to Common Tenure retained the rights applicable to them until such time as they leave that post. This means that elements of Church legislation and procedures have remained operative for clergy with the freehold and will continue for some years to come. Much of the good practice, which has been clarified by the terms of service regulations, can, of course, be applied to all clergy regardless of their status

Freehold office may be brought to an end through reaching retirement age, ill health, after a breakdown of pastoral relationships, or through the effect of pastoral reorganisation as well as for disciplinary reasons. No clergy currently in freehold appointments has had the freehold taken away from them. An office holder with freehold considering whether to move onto Common Tenure will need to consider for themselves, and take independent advice on doing so.

### **Are clergy involved in pastoral reorganisation able to keep their freehold if they take on an extra parish and benefice if held in plurality?**

Sometimes pastoral schemes are drafted so that existing benefices cease to exist and new benefices are created, with the first incumbent being designated by the scheme. Such incumbents can retain the freehold except if named as 1st Team Rector or Team Vicar.

### **What rights do office holders have under Common Tenure?**

Common Tenure confers on office holders the following rights:

- an entitlement to be provided with a written Statement of Particulars setting out the terms of their appointment;
- an entitlement to an uninterrupted rest period of not less than 24 hours in any period of seven days;
- an entitlement to 36 days' annual leave (in a full-time post);
- an entitlement to maternity, paternity, parental and adoption leave in accordance with directions given by the Archbishops' Council as Central Stipends Authority;
- an entitlement to request time off, or adjustments to the duties of the office, to care for dependants in accordance with directions given by the Archbishops' Council as Central Stipends Authority;
- an entitlement to spend time on certain public duties other than the duties of the office, with the matter being determined by the bishop if there is any dispute;
- access to a grievance procedure
- a right of appeal to an employment tribunal if removed from office on grounds of capability

Incumbents on Common Tenure, like incumbents on freehold, have formal legal ownership of the parsonage house by virtue of holding the benefice as corporation sole. Other office holders have the following rights:

where they are provided with accommodation:

the right to accommodation 'reasonably suitable for the purpose';

the right to object to the disposal, improvement, demolition or reduction of their house of residence;

the right to have the house of residence kept in good repair by a relevant housing provider (in most cases this will be the diocesan parsonages board);

access to arbitration where there is a dispute about the performance of the respective obligations of the housing provider and the office holder which cannot be resolved by the grievance procedure;

where they are not already entitled to compensation, an entitlement to receive to up one year's stipend by way of compensation, in addition to pensions and housing, if displaced as a result of pastoral reorganisation.

#### **Can office holders be made redundant?**

The only mechanism for making clergy office holders 'redundant' is through pastoral reorganisation. The legislation extended the right to be consulted on any pastoral scheme to all office holders under Common Tenure in receipt of a stipend or, who would potentially be affected by the scheme. Under Common Tenure, priests in charge are eligible for compensation for loss of office if they are displaced as a result of pastoral reorganisation. In certain specified cases, it is possible for an appointment to be held for a fixed term under Regulation 29. The termination of such an appointment at the end of the fixed term will not amount to redundancy and will not carry any right to compensation.

#### **Can office holders raise a grievance?**

Under Common Tenure it is possible for clergy to make use of a grievance procedure. There is, however, no resort to an Employment Tribunal if an office holder is dissatisfied at the end of a grievance procedure

#### **Can office holders claim constructive dismissal?**

No. The concept of Constructive Dismissal in law depends upon the existence of a contract of employment the terms of which have been breached by the employer. Office holders under Common Tenure do not serve under a contract of employment.

#### **In what circumstances is a bishop able to remove clergy from office?**

Those holding office on Common Tenure will only be able to be removed from office through the discipline or capability procedures, or the operation

Mission and Pastoral Measure 2011. If the post is in one of the limited categories of fixed or limited term appointments under Regulation 29, it will come to an end at the end of the term. Where an office holder's performance gives cause for concern, a capability procedure may be instigated. In the last resort, where performance is not satisfactory and fails to improve, this may lead to removal from office.

#### **Are clergy able to appeal to an Employment Tribunal against removal from office?**

Office holders have the right to appeal to an Employment Tribunal only if removed from office after a Capability Procedure. Rights under the Mission and Pastoral Measure 2011 to appeal against a pastoral scheme also apply.

#### **What is the position of incumbents who do not live in the parsonage house?**

Amending Canon 29, which amended C25 made provision, where a bishop considers it appropriate in all the circumstances, to permit an incumbent to live in a house other than the parsonage house, whether that house is situated within the benefice or outside it. It will therefore be possible, for example, for the bishop to permit a clergy couple, both of whom are incumbents, to occupy the same house. The Statement of Particulars in such circumstances will need to record the position.

#### **What are the rights of patrons under Common Tenure?**

The rights and responsibilities of patrons were not affected by the Terms of Service legislation. In particular, patrons, subject to the rights of the parish representatives and the bishop, have the right to nominate someone as incumbent. That did not change under Common Tenure. However with increased emphasis on making fair appointments the bishop and diocese will expect best appointments practice to be followed.

#### **What responsibilities do bishops have under Common Tenure?**

The Terms of Service legislation requires diocesan bishops:

to make and keep under review a Ministerial Development Review (MDR) scheme containing arrangements for a person nominated by the bishop to conduct a review with each office holder in the diocese at least once every two years;

to have regard to guidance issued by the Archbishops' Council when carrying out MDR;

to ensure that a written record of the outcome of MDR is kept and to have it signed by the office holder and the reviewer;

to use reasonable endeavours to ensure that office holders in the diocese are afforded opportunities to participate in CME that is appropriate for their ministerial development;

to make appropriate arrangements to ensure that office holders in training posts are provided with suitable training and are afforded time off work as is necessary to complete it;

to nominate an officer of the diocese with responsibility for providing Statements of Particulars and receiving reports of sickness absence

to have regard to the Archbishops' Council's codes of practice concerning the capability and grievance procedures.

#### **What is the relationship between the Role Description and the Statement Of Particulars?**

The Statement of Particulars is a factual statement of the basic terms and conditions of service that apply to the post holder in a particular office. The matters that must be contained in a Statement of Particulars are listed in Regulation 3(4) and (5) and Regulation 26. It is in order to make reference in Statement of Particulars to other documents reasonably accessible to the office holder, such as the diocesan handbook.

There is no legal requirement to provide a Role Description, as distinct from a parish statement of needs under the Patronage (Benefices) Measure 1986. However, it is difficult to ensure effective ministry without clarifying expectations and setting them out in a Role Description. In practice this will be an important element of the terms of service package, especially in relation to Ministerial Development Review. The Role Description should set out the particular duties of the post. It should be agreed with the office holder and regularly reviewed.

#### **What is the status of the Role Description and whose responsibility is it? What needs to be in it? Is it legitimate to change it over a period of time?**

A Role Description serves as a non-binding (but well understood) guide to the requirements of the appointment. In practice, it is unlikely to be helpful unless it has

been agreed by both the bishop and the office holder, and the parish has been involved.

It outlines what needs to be done and what attributes are required in the person doing it. It should help to manage and clarify the expectations of office holders, bishops and parishes. It is a fluid document that changes as the requirements of the role change and should be discussed regularly at ministerial development review to ensure it continues to reflect the nature and requirements of the appointment.

**Can someone on Common Tenure be compelled to take on an additional parish or parishes, if this is supported by parishioners and diocese?**

This would have to be done through pastoral reorganisation, and the office holder would have rights of representation. In situations prior to pastoral reorganisation an office holder may be asked to take on additional benefices or parishes as priest in charge or curate in charge but this may only be done with their agreement.

**Is there a clear way of designating whether in a particular set of circumstances it is more appropriate to use the capability procedure or the Clergy Discipline Measure?**

Each case will need to be looked at on its merits. Discipline is more a matter of specific acts, whereas capability is more general. Neglect of duties could be a matter of either capability or discipline.

**If a post falls within Regulation 29, how should this be reflected in the Statement of Particulars?**

The section of the Statement of Particulars dealing with termination of appointment will need to state the designation of the particular office under Regulation 29(1), quoting the relevant sub-paragraph, e.g. 'Your office is designated under Regulation 29(1)(a) as a post created in order to cover the authorised absence from work of the Reverend XY'.

This section of the Statement of Particulars should also state the fixed term or limiting event, e.g. either

'Your tenure of this office will terminate automatically on [dd.mm.yyyy]' or 'The diocesan bishop may terminate your office by giving no less than x months' prior notice in writing in the event that the Reverend XY notifies the bishop of his/her intention to return to work'.

For posts designated under Regulation 29(1) (g) as held in connection or conjunction with another office or employment, the limiting event will generally be that the office-holder ceases to hold that other office or employment.

**What is the relationship between the Statement of Particulars and the licence (where applicable)?**

The licence is the bishop's authority to the office holder to exercise his or her ministry, under Canon C8. The licence and the Statement of Particulars need to be consistent with one another – for example in the details of the name of the office holder and the title of the benefice, if applicable. It will not always be necessary to issue a new licence immediately when an office holder transfers to Common Tenure – the authority conferred by the existing licence will continue until the expiry of any time limit stated on the licence, at which point it can be renewed either on an open-ended basis or, if the office holder is holding a time-limited Common Tenure post under Regulation 29, for the period applicable to that post.

**Does an office holder need to sign their Statement of Particulars to agree it?**

No, but it may be helpful for the office holder to sign an acknowledgement of receipt to demonstrate that the Statement of Particulars was issued within a month of the office holder taking up the post or moving onto Common Tenure.

**Who should be the person nominated under Regulation 3 to issue the Statement of Particulars?**

The bishop can choose who to nominate for this role, and may nominate more than one person so that provision is made for different categories of office holder – for example, if the diocese has an area scheme, a person for each area. The cathedral administrator will need to be closely involved in the drafting of Statement of Particulars for cathedral clergy so the bishop may decide to nominate him or her for this purpose. This needs to be agreed between the bishop and cathedral at an early stage. The Archbishops' Secretary for Appointments' office will draft Statement of Particulars for deans

**What is the significance of identifying a body responsible for the payment of the stipend?**

Regulation 3(5) (b) requires that the person or body responsible for the payment of the stipend should be stated in the Statement of Particulars. In most cases the DBF (as the body holding the diocesan stipends fund) will be the body named here, but the provisions of the Diocesan Stipends Funds Measure 1953, which governs how the monies in that fund are to be applied, remained unchanged.

**What should be recorded in the Statement of Particulars about rest periods and annual leave?**

The Statement of Particulars should record the actual entitlement for the post in question, reflecting, where appropriate, the minimum requirements specified in Regulations 21 and 22.

#### **What about annual retreats and sabbaticals?**

Retreats can be regarded as part of Continuing Ministerial Education and not as leave. If it is a condition of a sabbatical that the office holder should engage in study related to his or her ministry, this can also be treated as part of CME. Otherwise, a sabbatical would fall within the provision for special leave in Regulation 22(5).

#### **What duties are covered by the right to time off for public duties?**

Regulation 26(4) defines 'public duties' as any work done for (a) a public authority, including membership of a court or tribunal, (b) a charity or registered friendly society or (c) a trade union representing ecclesiastical office holders.

This regulation relates to time off and therefore does not include any public role which is part of the office-holder's normal duties -e.g. acting as governor of a school in the benefice. Nor does it include public duties which the office holder is legally bound to undertake, such as jury service or obeying a witness summons. It is intended to allow the office holder scope to engage in activities for the public benefit which is outside the duties of his or her office, while providing a means of ensuring that time spent on such activities is kept within reasonable bounds.

#### **Must there be two separate statements of particulars where two posts are held by the same person?**

Where an individual serves in more than one role, it will be necessary first to determine whether the roles comprise:

- one office with integral special duties
- more than one office
- an office and a contract of employment.

On this basis a decision should be made as to whether more than one Statement of Particulars is needed. It may be acceptable to provide a single composite Statement of Particulars where a person either (a) holds two or more benefices in plurality under the provisions of the Mission and Pastoral Measure 2011 or (b) holds two or more offices which are each designated under Regulation 29(1) (g) as held in connection or conjunction with the other or others. Such a composite Statement of Particulars should make it clear that it covers more than one office.

Regulation 29 allows a Common Tenure office which is held in conjunction with another office or employment to be expressly linked to that other office or employment, so that it may be terminated if the other element of the role comes to an end. Where the offices are not reciprocally linked (i.e. it would be possible for the office holder to relinquish one without relinquishing the other) then separate statements of particulars should be provided. It would be possible to provide these in one document but it must be understood that, if one of the posts is relinquished, a revised Statement of Particulars will need to be issued (for example, if an incumbent of one benefice ceases to be priest in charge also of another). Particular care would need to be exercised when drafting such statements to be clear which terms relate to which post.

Whilst it may not be necessary to split the stipend between the respective offices where they represent a single full time post, the Statement of Particulars must always specify which office is the one that provides the housing.

#### **What entitlement to stipend does a part-time stipendiary office holder have?**

Under Regulation 11(3) the entitlement of a part-time office holder is to such stipend as may be stated in the Statement of Particulars. So there is no requirement for the stipend in such cases to be calculated on a strict pro-rata basis.

#### **What is the position of associate ministers whose stipend is paid by the parish?**

This depends on the nature of the arrangement, which could amount to the associate minister being held to be an employee of the parish. If it does fall within Common Tenure, it can be designated as a locally supported ministry under Regulation 29.

#### **What type of Statement of Particulars is appropriate for a priest or deacon exercising his or her ministry under a general licence?**

This will depend on the kind of ministry exercised by the priest or deacon. In some instances, we understand, general licences are issued to those exercising ministry under a contract of employment, such as hospital or prison chaplains. In such cases, if the chaplain is only exercising ministry in the context covered by the contract, there should be no need for a separate Statement of Particulars.

**What is the position of an office holder on Common Tenure who reaches the age of 70?**

Those who hold office under Common Tenure are required to retire at 70. The expectation is that the majority by the time they are 70 will have retired from office and will be exercising ministry on the basis of permission to officiate (PTO) which does not commit them to carry out any regular ministry. However, sometimes it may be appropriate for an office holder to remain in office beyond 70. Regulation 29A of the Regulations makes provision for this in relation to an office which is held under Common Tenure. Ultimately, this is a decision for the archbishop or bishop. If he or she wishes to enable someone over 70 to exercise a ministry other than through PTO, the archbishop or bishop will need to issue a direction to that effect. The direction will authorise the holding of the office for a time-limited period.

**What responsibilities do office holders have under Common Tenure?**

The law affecting patronage and the appointments procedure remains unchanged. The Clergy Discipline Measure 2003 and the Canons continue to apply to all clergy whether on Common Tenure or not.

Common Tenure confers the following obligations on office holders

to participate and co-operate in ministerial development review (MDR);

to participate in arrangements approved by the diocesan bishop for continuing ministerial education (CME);

to inform a person nominated by the bishop when unable to perform the duties of office through sickness;

to undergo a medical examination where the bishop has reasonable grounds for concern about the office holder's physical or mental health.

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