

Ecclesiastical Offices (Age Limit) Measure
Guidance Issued by the Archbishops' Council

Introduction

1. The Archbishop or Bishop is required to have regard to this guidance by virtue of regulation 29A (10) of the Ecclesiastical Offices (Terms of Service) Regulations 2009 (“the Regulations”).
2. In addition to this guidance, the Archbishops' Council will issue further supporting material to which the bishop is not required to have regard by the Regulations, but which it is hoped may be found helpful.
3. 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.
4. 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.
5. A direction may be given under regulation 29A to enable a diocesan or suffragan bishop, dean, archdeacon or residentiary canon who holds office under Common Tenure to continue in office up to a maximum age of 75 (but not to enable a person who is already over 70 to take up one of those offices).
6. A direction may be given under regulation 29A to enable a person over 70 to take up an appointment as an incumbent, priest in charge, team vicar or to any other licensed office, or to enable a person who already holds one of those offices under Common Tenure to continue in office beyond the age of 70. The Regulations do not prescribe a maximum age for these offices.

Archbishop's/Bishop's Directions

7. In order for someone over 70 to hold an office, the bishop needs to issue a direction for them to hold office under reg 29A of the Ecclesiastical Offices (Terms of Service) Regulations 2009 for a period specified in the direction. This is required for all office holders over 70, whether
 - the current post is being extended (see paragraphs 22 to 37) or
 - they are starting in a new parochial post (paragraphs 38 to 44).
8. It is recommended that a direction take the form attached as Annex 1.

9. The bishop may not rescind his or her direction as a way of bringing the office to an end. But he or she may decide not to give a further direction, when the term for which the office is held under an existing direction comes to an end. However, if the intention is that the direction is unlikely to be renewed, it will be important to give the office holder advance warning, as time may be needed to arrange retirement housing. Alternatively, the direction may be extended for a further period or periods.
10. Where an existing office holder is continued in office beyond the age of 70, in addition to the direction, a statement of changes should be issued under regulation 6 of the Regulations giving the office holder particulars of the changes to the matters contained in his or her statement of particulars previously issued under regulations 3 to 5.
11. Where a direction is issued so that a person may take up a new appointment, in addition to the direction, a deed of institution or licence will also need to be issued in the usual way.
12. Office holders are not required to hold their office for the whole period specified in a direction if they wish to resign earlier than that. As with any other appointment, they are required to give three months' notice before resigning their office, but this requirement can be waived by mutual agreement.
13. The consent of the PCC is required to extend the term of office of an existing parochial appointment over 70. See paragraphs 25-26. The consent needs to be in the form of a resolution at a PCC meeting. However, the requirement to obtain the consent of the PCC applies only in the case of extensions, not where it is proposed to make a new appointment of a person aged over 70.

Reasons for the bishop to issue a direction

14. It is not intended for it to become standard practice that office holders remain in office beyond 70. The bishop may only issue a direction if he or she considers that the pastoral needs of the parish or of the diocese make it desirable to give the direction. It may not be issued in order to enhance someone's pension provision or retain the status of an office holder purely for personal reasons. It is not a reflection on someone's ministry if a decision is made not to issue a direction. There should be no expectation on the part of the office holder or the parish that a direction will be issued.
15. The bishop will also need to consider the health of the office holder and their physical and mental capacity and whether any reasonable adjustments would be required to enable them to stay in office beyond 70. This will best be done by arranging for an occupational health assessment.
16. When considering whether to extend the term of office of an existing office holder who has reached 70, the bishop will also need to consider a number of other factors before issuing a direction. These are outlined in paragraphs 31 to 37.

Occupational health assessments

17. Regulation 29A(9) provides that an archbishop or bishop must not give a direction unless he or she considers that the person in question will be capable of performing the duties of the office throughout the period for which the person is to hold the office.
18. The archbishop or bishop should therefore require the person in question to have an occupational health assessment before issuing a direction, unless there has been an occupational health assessment within the last 12 months.
19. There is no requirement to obtain an occupational health assessment every time there is an extension of an existing direction unless, in the archbishop's or bishop's opinion, there is a specific reason for doing so. However a new assessment should take place at least every 5 years.
20. If the person in question has a disability which would prevent him or her from performing the duties of the office, the archbishop or bishop should consider whether there are any reasonable adjustments that could be made to enable that person to hold the office.

How long should the term be for?

21. This will very much depend on circumstances. Sometimes a comparatively short term may be appropriate. As there is no restriction on the number of occasions on which the term can be renewed, there is no need for long terms. However, in most situations it will probably not be worth having a term that is shorter than a year.

Extensions to existing appointments

Who might raise the possibility of extending an appointment?

22. Sometimes a request may come from the office holder (or in the case of a parochial office the PCC) for them to remain in office after 70. However, the decision whether or not to issue a direction is for the archbishop or bishop, who is not obliged to agree to any request for an extension. The archbishop or bishop should not give a direction continuing an office holder in office without the office holder's agreement.

Parochial and non-parochial appointments

23. The archbishop or bishop has power to direct that the term of any existing office that is held under Common Tenure be extended for a fixed period after the office holder has reached 70. However, the provisions for clergy over 70 apply differently to parochial and non- parochial appointments.

Parochial appointments

24. The ability to extend terms for fixed periods now applies to all parochial appointments, including incumbencies. In the case of all parochial appointments held under Common Tenure – stipendiary reader or licensed layworker, assistant curate, incumbent, priest in charge, team rector and team vicar - these extensions

may be renewed as often as the bishop considers this to be appropriate and the person in question is prepared to continue in office.

25. The bishop may only extend the term of an appointment when he or she considers that the pastoral needs of the parish or diocese make it desirable to do so by giving a direction. Before extending the term of these appointments, the bishop is required to obtain the consent of the PCC. Before asking the PCC, the bishop should confer with the Churchwardens.
26. The consent needs to take the form of a specific resolution of the PCC. Arrangements should be made in advance of the PCC meeting which considers whether to give consent to the bishop issuing a direction, to ensure that the office holder is not chairing the meeting or present when the item is discussed.

Extending the term of other appointments

27. The diocesan bishop may issue a direction to extend the term of office of a dean, residentiary canon, archdeacon, or suffragan bishop who has reached 70 and who holds office under Common Tenure. The bishop should only do so when he or she considers that the pastoral needs of the cathedral or the diocese make it desirable to do so. The bishop may only extend the term of office of a suffragan bishop or dean with the agreement of the archbishop. The archbishop may extend the term of office of a diocesan bishop who holds office under Common Tenure beyond the age of 70.
28. The term of the extension for non-parochial appointments is limited to a maximum of 5 years. If the term is for less than 5 years, it is renewable, but only until the end of the 5 year period.

General licences and licences issued under the Extra-Parochial Ministry Measure 1967

29. As there is normally no default retirement age for employed posts, the bishop should issue a direction in respect of those who hold a general licence, or a licence under the Extra-Parochial Ministry Measure 1967, and who carry out their ministry under a contract of employment once these clergy reach 70, so that the position of the person under ecclesiastical law is consistent with the terms of their employment.¹
30. It will be for the bishop to decide whether it is appropriate to renew the licences of office holders who are carrying out their duties under general licence or a licence under the 1967 Measure without a contract of employment (and if so, for how long).

¹ It is intended to include in the Miscellaneous Provisions Measure a provision that will remove Common Tenure office holders who exercise their office under a contract of employment from the scope of the 1975 Measure, so that their term of office no longer automatically ends when they reach 70, as they should not have a default retirement age under ecclesiastical law when they do not have a compulsory retirement age under secular, contract law. If this becomes law (probably not until summer 2018) it will be no longer necessary to issue a direction for employees.

Other factors to consider when issuing a direction to extend an appointment

31. When issuing a direction to extend the term of office of an office holder over 70, the bishop will need to consider a number of additional factors including:
- The ministry of the office holder and how effective it is likely to be if the term is extended
 - The intentions of the office holder for retirement
 - The future long term pastoral needs of the parish and the diocesan deployment strategy
 - The wishes of the parish.

The ministry of the office holder

32. Sources of information about the office holder's ministry include summaries of Ministerial Development Review, and discussions with area deans, archdeacons, churchwardens and colleagues, and other people with regular experience of the office holder's ministry such as funeral directors.
33. In the case of the ministry of an assistant curate or licensed layworker, the views of the incumbent or priest in charge should be obtained, or if a team vicar, the views of the team rector and other members of the team.
34. An effective ministry does not necessarily mean that a direction should be issued, any more than a decision not to issue a direction necessarily means that someone's ministry has not been effective. The critical question is whether it is likely to be effective and beneficial for the parish in the longer term if a direction is issued.

Intention to retire

35. In the case of an extension, the Bishop will need to have checked that the office holder is willing to defer retirement.

The long term pastoral needs of the parish

36. The bishop should consult the Churchwardens about the long term needs of the parish before issuing a direction for someone in a parochial office, and obtain the consent of the PCC.
37. The bishop will also need to consider the requirements of the role and whether the current office holder is able to meet them, subject to making any reasonable adjustments highlighted in the Occupational Health Assessment.

New appointments

38. Clergy over 70 may apply for parochial appointments (as vicar, rector, team rector, team vicar, priest in charge or assistant curate), or for general licences or licences under the 1967 Measure where these are required for them to carry out the duties of an employed role.

39. It is not possible for someone who is 70 or older to take up a new appointment as a bishop, dean, archdeacon or residentiary canon. These offices may only be held by clergy over 70 if the bishop has issued a direction for the existing office holder to remain in office.
40. Applications for parochial appointments from clergy over 70 should be considered in the same way as those from other clergy. Clergy over 70 must not be excluded from consideration simply on grounds of age (as that is a protected characteristic): the only difference is that, if the applicant over 70 is appointed, the term of the office must be time-limited (but renewable) and the bishop will need to arrange for an occupational health assessment to be carried out and to form a view for the purposes of regulation 29A (9) (see above) before issuing a direction.
41. If the bishop has concerns that a cleric over 70 is regularly applying for posts despite having health issues that might prevent them from carrying out the duties of any parochial office, the bishop should ask the person concerned to have an occupational health assessment which will ascertain what form of ministry (if any) the cleric will be able to undertake.
42. Clergy who are not yet 70 may also apply for offices, and will not need a bishop's direction to be appointed if the appointment takes effect before they reach the age of 70. If they are the best candidate, they should be offered the post, subject to an occupational health assessment. However, the bishop is not under any obligation to extend the term of their office once they reach 70. Once they reach 70, they will need to retire unless the bishop makes a direction. If an occupational health assessment took place less than 12 months before their 70th birthday, the bishop may issue a direction without a further occupational health assessment provided that the last assessment took place within the last 12 months, and the bishop has ascertained that the office holder is carrying out his or her duties effectively.
43. In certain circumstances, it may still be appropriate for the bishop to grant permission to officiate where the health assessment has ruled out holding further office, but not ruled out taking occasional services or providing pastoral support, as long as it is clear that the cleric will not be engaging in ministry to an extent that will endanger their health.
44. If you have any questions about this advice, please contact:
hr.clergy@churchofengland.org.

Archbishops' Council

October 2017

Ecclesiastical Offices (Terms of Service) Regulations 2009

I, Bishop² of _____

Give this direction under regulation 29A of the Ecclesiastical Offices (Terms of Service) Regulations 2009 for [the Revd] _____, who [attains the age of 70 years on [date]] [attained the age of 70 years on [date]], to [continue to³] hold the office of _____ from _____⁴ until _____⁵.

[The PCC gave its consent to the Bishop issuing this direction at its meeting on -----] ⁶

[The Archbishop of the province has agreed that this direction should be given⁷.]

[This direction may be further extended by me⁸, but nothing in this direction should be taken as conferring any right for it to be extended.]

+ _____

Dated --/--/----

² The direction will be issued by the Archbishop when a diocesan bishop's term of office is extended beyond his or her 70th birthday.

³ This will be used for extensions.

⁴ In the case of a first extension, this will be the office holder's 70th birthday. In the case of subsequent extensions it will be the day which immediately follows the last day of the previous extension.

⁵ In the case of non-parochial offices, the extension must end no later than the office holder's 75th birthday.

⁶ In the case of parochial offices.

⁷ This is required only in cases where the diocesan bishop directs that a suffragan bishop or dean continue in office after 70.

⁸ In the case of non-parochial offices, no extension may be made that would last beyond the office holder's 75th birthday.