

GENERAL SYNOD**DRAFT ECCLESIASTICAL OFFICES (TERMS OF SERVICE)
(AMENDMENT) REGULATIONS****EXPLANATORY MEMORANDUM***Background*

1. This is the first item of legislation arising out of the work of the Simplification Group, which reported to the General Synod at the February 2015 group of sessions. It makes some amendments to the Ecclesiastical Offices (Terms of Service) Regulations 2009, in response to the issues raised by the Simplification Group's consultation with dioceses before beginning its work last year.

The draft Regulations: amendment of Regulation 27

2. The first change made by the draft Regulations is a small amendment to regulation 27. At present, regulation 27(2) requires all ecclesiastical office-holders to provide a medical certificate if they are absent from work because of illness for a period of more than 7 days. This was thought to be excessively onerous in relation to self-supporting ministers and house for duty clergy, and therefore the amendment limits the requirement to office-holders who are in receipt of a stipend. Self-supporting ministers on Common Tenure will still be required to use "all reasonable endeavours" to make arrangements for the duties of their office to be performed by another person during the absence; where appropriate, this may consist simply of notifying a responsible person or authority of the absence.

The draft Regulations: amendments of Regulation 29

3. The other substantive amendments made by the draft Regulations are changes to regulation 29, which makes provision for the range of circumstances in which a limited term appointment may be made under Common Tenure.
4. A number of diocesan responses expressed dissatisfaction with the lack of flexibility and the inability to make a short-term appointment for "interim ministry". A number of circumstances were cited as examples of cases where it would be very desirable to be able to make a fixed-term appointment: the most common examples were (a) cases where there is a desire to put a new person in and see if a parish can be revived, before moving to consider pastoral reorganisation (b) cases of relationship breakdown within the parish, where it may be helpful to appoint someone for a fixed period before making a fresh permanent appointment and (c) cases where a need has been identified for a change in direction before making a permanent appointment and a parish needs help with the transition.
5. Regulation 3 of the draft Regulations makes provision for creating a new category of "interim posts", in response to these concerns.

6. An appointment to a parish post under the new power may not be made unless the office-holder and the diocesan mission and pastoral committee consent to the appointment. If the appointment is in a cathedral, the Dean and Chapter as well as the office holder must consent to it.
7. A post may be designated an “interim post” for a term of up to three years, and the designation may be renewed once only. The Group were concerned to avoid some parishes becoming perpetual “interim” appointments where no permanent appointment is ever made.
8. The range of circumstances in which the power might be used is wide, and therefore the Simplification Group took the view that it would be unhelpful to include any provision in the regulations themselves specifying when an interim appointment could be made. However, they thought that some general guidance would be very desirable, and therefore included a requirement for a bishop making such an appointment to have regard to guidance published by the Archbishops’ Council. An illustrative draft of some guidance is annexed to this explanatory memorandum to assist the Synod in its consideration of the draft Regulations. The Council will further consider the question of guidance at its meeting in September and will formally issue guidance then.
9. In addition to the new power to appoint an “interim minister”, the draft Regulations also provide (at regulation 4(1)) that a curate in training who has satisfactorily completed IME 4-7 may have the post extended for an additional period of up to one year, to enable him or her to find another post. (A curate who has not satisfactorily completed all the training requirements could have the training period extended under the current rules.) There is a consequential amendment to regulation 20 to reflect this change, at regulation 4(4) of the draft.
10. Finally, there is an amendment to the provisions dealing with Locally Supported Ministers. The Regulations at present provide that an office may not be designated under regulation 29(7A) if the office holder is “in sole or principal charge of the parish in which he or she serves”. Regulation 4(2) amends this provision so that a person may be appointed to a Locally Supported Ministry post on a fixed-term basis provided that he or she is not in sole charge of the **benefice**. This would enable an incumbent of a multi-parish benefice to delegate responsibility for one of the parishes wholly or mainly to a Locally Supported Minister.

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ANNEX

DRAFT Guidance on Interim Posts made under Regulation 29 (7D) of the Ecclesiastical Offices (Terms of Service) Regulations 2009

This is guidance issued by the Archbishops' Council under regulation 29 (7D) of the Ecclesiastical Offices (Terms of Service) Regulations 2009 as amended by the Ecclesiastical Offices (Terms of Service) (Amendment) Regulations 2011. Bishops are required by the Regulations to have regard to this guidance.

1. Introduction

- 1.1 A new category of fixed term post has been created under regulation 29, under which an appointment can be designated as an interim post, when there are good reasons for not making it permanent. When making interim appointments, bishops are required to have regard to this guidance.
- 1.2 An interim appointment may be made for a maximum of three years, and may be renewed only once. Therefore, after a maximum of six years, it will be necessary to make a permanent appointment or else to make provision for the parish in some other way (e.g. by pastoral reorganisation).

2. General Principles

- 2.1 Bishops, when making interim appointments, should have particular regard for the following principles:
 - i. An interim post should primarily be a response to a particular pastoral need or mission opportunity.
 - ii. Before an interim appointment is made there must be a clear understanding and articulation of the particular benefits that will be conferred by making the appointment interim rather than open-ended.
 - iii. The parish should be consulted at an early stage. An interim appointment is only likely to work when the parish accepts that the purpose of the interim appointment is to help it make shifts in understanding, relationships and leadership that will enable it to move forward.
 - iv. An interim post is not a substitute for a proper appointments process: making an interim appointment just to 'see if it works', or in order to avoid the delay required by a proper appointments process, is not acceptable.
 - v. Interim ministry should be a response to the particular circumstances and needs of the parish, not the minister: posts should not be fitted round the needs of a person.

3. When is an interim post appropriate?

- 3.1 It is not the intention of this guidance to be prescriptive about the particular circumstances in which an interim appointment should be made. Listed below is a non-exhaustive list of the potential circumstances that were identified by the Simplification Task Group and which emerged during the consultations undertaken with dioceses:
 - i. To enable the parish to equip itself more effectively for mission;
 - ii. To determine what kind of minister is required in the longer term;

- iii. When the past has been difficult;
- iv. When there is an element of uncertainty about the future.

4. Other regulation 29 appointments as alternatives to interim posts

- 4.1 In some situations it might be better to use one of the other categories of fixed or limited term post permitted by the regulations. Further information about these is available from the HR department of the NCIs on request.

5. Which kinds of office are appropriate for designation as interim posts?

- 5.1 Interim posts will usually be parochial (but may occasionally be archdeacons or cathedral posts). The great majority of parochial interim appointments are likely to be as priest-in-charge, with the following exceptions:

(i) Assistant curates: Training appointments already have their own fixed term category and should not be made on an interim basis, but it might be appropriate to appoint a curate on an interim basis in certain circumstances, for example when an incumbent or priest in charge is temporarily in need of regular assistance or the Diocese or the Church Commissioners are contributing to the costs of an assistant curate post, but only for a limited period¹.

(ii) Incumbents: In exceptional circumstances it may be necessary to respond to the needs of a parish on an interim basis as soon as possible. It will be necessary to obtain the patron's consent to any appointment of an incumbent (whether on an interim basis or not) but it might be more appropriate to consult the patron about suspending the presentation and making an appointment as priest in charge.

(iii) Archdeacons: It is already possible to reallocate duties between archdeaconries as necessary during vacancies and it may be possible to make use of retired archdeacons resident in the diocese. However, there may be exceptional circumstances in which it is appropriate to make an interim appointment as archdeacon, for example if all the archdeaconries in a diocese were vacant at the same time².

(iv) Cathedrals: The Cathedral's own Statutes generally make provision for arrangements when the office of dean is vacant. They also stipulate a maximum number of residentiary canonries. Any interim post would need to comply with the statutes, and would require the consent of the Bishop, Dean and Chapter as well as the person being appointed.

6. The process of making interim appointments

- 6.1 Interim appointments need to be made with the same degree of care as permanent ones. In particular, it is necessary to:
- i. assess why the appointment needs to be interim;

1 Where funding is not from the Church Commissioners, parish or Diocesan Board of Finance, it is possible to make a fixed limited term appointment but this would be done by designating the post as subject to sponsorship funding rather than interim. Where a parish is paying all of the costs of a curacy, the role should be designated as Locally Supported Ministry Post rather than made on an interim basis.

2 Whilst it is possible to reorganise archdeaconries by means of a pastoral scheme, interim posts should not be used as a device to avoid the payment of compensation

- ii. ensure that the parish understands the reasons why the appointment is being made on an interim basis;
- iii. assess what qualities are required in the office holder;
- iv. assess potential candidates against these criteria in order to find the best person;
- v. obtain the consent of the DMPC and the post holder in writing to the post being interim;
- vi. Note that there is no statutory right to compensation. Clergy in interim posts will need to start looking for a new post well before their interim post comes to an end, and bishops need to remind and encourage them to do this.

7. When is an interim post not appropriate?

7.1 Interim posts **MUST** not be made in the following circumstances:

- i. To penalise a parish for following a particular theological tradition;
- ii. To save money or as catch-all means of avoiding making a permanent appointment;
- iii. To provide a temporary appointment for clergy whose appointment has come to an end and who are having difficulty finding another office;
- iv. Purely as a means of avoiding paying compensation for loss of office;
- v. When there is still an incumbent or priest in charge in post, who has not resigned, even if he or she is not actually able to carry out the duties of their office³;
- vi. Across the board. Interim appointments are unlikely to be justifiable or an appropriate response to the particular needs of a parish if every vacancy in an archdeaconry or diocese is filled on an interim basis;
- vii. On a deanery-wide basis. Interim posts, like other posts, cannot be made on a deanery wide basis. If the post is not largely based in a particular parish or BMO, then it would have to be made under a general licence. If non-stipendiary, a ministry carried out under general licence in a particular parish can be brought to an end by ceasing to give consent to minister in that parish, although the general licence remains in force as it can only be terminated in accordance with the Terms of Service Measure and Regulations.
- viii. When the post is employment rather than office. If a cleric on a general licence is in receipt of a stipend, he or she is likely as a matter of law to be an employee. Under the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, someone can be employed on a fixed term basis, but a fixed-term contract is normally automatically converted by law into a contract of indefinite duration (that is a permanent contract) once the employee has completed four years' continuous employment under it or renewals of it.

³ An interim appointment as assistant curate or a different variety of fixed term appointment under regulation 29 (to cover authorised absence as distinct from a vacancy) (Reg 29(1) (a)) may be appropriate in these circumstances.

- ix. Stipendiary licensed lay workers. Non stipendiary licensed lay workers are not on common tenure and the bishop may revoke their licence for any reason that appears to him or her good and reasonable (see Canon E8). Stipendiary licensed lay workers would usually be employed by the parish⁴.

⁴ When on common tenure, there might, however, be good reasons for making an appointment interim, for example if on a time-limited mission funding grant from the Church Commissioners.